

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1999

FILED
December 1, 1999
Cecil CROWS ON, Jr.
Appellate Court Clerk

TRAY D. TURNER)
)
 APPELLANT)
)
 VS.)
)
 STATE OF TENNESSEE)
)
 APPELLEE)

C.C.A. NO. 03CO1-9902-CR-00088
KNOX CIRCUIT NO. 67228
HON. RAY L. JENKINS, JUDGE

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED
JOE H. WALKER, III, Sp. JUDGE

OPINION

The appellant appeals as of right from the denial of his request for re-calculation of his jail credit. The trial court found that appellant received the correct amount of jail credit and dismissed the petition.

Appellant was charged with aggravated robbery. He entered a plea of guilty to a lesser offense of attempt to commit aggravated robbery in March, 1995, in exchange for a sentence of five years as a standard offender. He was eventually placed with a community corrections program, and served with that program until May, 1997, when his service was revoked. Appellant was convicted in a different case in Knox County Criminal Court, of two counts of aggravated robbery, and received a twelve year sentence as a standard offender, consecutive to his conviction for attempted aggravated robbery.

Appellant now asserts that the state did not live up to the plea agreement since he is no longer eligible for parole consideration at the expiration of thirty percent of a five year sentence for attempt to commit aggravated robbery. Appellant overlooks the fact that he committed two aggravated robberies while he was participating in the community corrections program.

The trial court has the authority to determine credit for service during the alternative sentencing program, or to re-sentence the defendant who fails to comply with the provisions of the program. T.C.A. 40-36-106. A defendant sentenced under the Act is placed on notice that upon revocation of the sentence due to the conduct of defendant, a greater sentence may be imposed. State v. Griffith, 787 S.W.2d 340 (Tenn. 1990).

Appellant also challenges the State's computation of his parole eligibility, release eligibility and certification to the parole board. An inmate who wishes to challenge the calculation of his sentence by the Department of Corrections must do so through the Administrative Procedure's Act. T.C.A. 4-5-223, et. seq. Brigham v. Lack, 755 S.W.2d 469 (Tenn.Crim.App.1988). Therefore, the trial court was correct in dismissing the petition.

The trial court concluded that appellant had been given credit for the proper amount of jail time. A review of the record confirms that the trial court was correct in this conclusion. Appellant was sentenced to five years in March, 1995, for the offense of attempted aggravated robbery, and received pre-trial jail credit of 278 days. The sentence was ordered to be served in the community corrections program, which was revoked May 1, 1997. The revocation order gave appellant credit toward the service of his sentence for additional days successfully served on the program, and not for those days appellant was considered in violation status because he had absconded from supervision.

Because of the new convictions received by appellant for aggravated robbery, he is not eligible for parole consideration at this time.

The judgment of the trial court is affirmed.

JOE H. WALKER, Sp. JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

ALAN E. GLENN, JUDGE

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JUDGMENT

Came the appellant, Tray D. Turner, by counsel, and the state, by the Attorney General, and this case was heard on the record on appeal from the Criminal Court of Knox County; and upon consideration thereof, this Court is of the opinion that there is no reversible error in the

judgment of the trial court.

Our opinion is hereby incorporated in this judgment as if set out verbatim.

It is, therefore, ordered and adjudged by this Court that the judgment of the trial court is AFFIRMED, and the case is remanded to the Criminal Court of Knox County for execution of the judgment of that court and for collection of costs accrued below.

It appears that appellant is indigent. Costs of appeal will be paid by the State of Tennessee.

PER CURIAM

DAVID G. HAYES, JUDGE
ALAN E. GLENN, JUDGE
JOE H. WALKER, III, Sp. JUDGE