

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
September 6, 2023 Session

FILED

09/13/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DESMOND ANDERSON

**Appeal from the Circuit Court for Madison County
No. 13-84 Donald H. Allen, Judge**

No. W2022-01758-CCA-R3-CD

The Defendant, Desmond Anderson, was convicted of three offenses in 2013, and the trial court sentenced the Defendant to serve an effective sentence of twenty years consisting of concurrent sentences of varying lengths. The trial court awarded pretrial jail credit on Count 1 but did not do so in Counts 2 or 3. The Defendant later filed a motion pursuant to Tennessee Rule of Criminal Procedure 36 seeking to have appropriate pretrial jail credit awarded on all concurrent sentences. The trial court summarily denied the motion, concluding that the request was an administrative matter for the Tennessee Department of Correction. The Defendant appealed, and the State concedes error. We agree. We respectfully vacate the trial court's order and remand the case for entry of corrected judgments in Counts 2 and 3 to award appropriate pretrial jail credit on all concurrent sentences.

**Tenn. R. App. P. 3 Appeal as of Right;
Order of the Circuit Court Vacated; Case Remanded**

TOM GREENHOLTZ, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and J. ROSS DYER, JJ., joined.

Desmond Anderson, Clifton, Tennessee, pro se.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; and Alfred Lynn Earls, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On June 6, 2013, a Madison County jury found the Defendant, Desmond Anderson, guilty of aggravated burglary in Count 1, especially aggravated kidnapping in Count 2, and aggravated robbery in Count 3. The trial court sentenced the Defendant to serve an effective sentence of twenty years consisting of concurrent sentences of varying lengths. The trial court awarded pretrial jail credit of 282 days on the judgment for Count 1 but did not award any pretrial jail credit on the judgments for Counts 2 and 3.

On October 25, 2022, the Defendant filed a motion pursuant to Tennessee Rule of Criminal Procedure 36 seeking to have the trial court award the pretrial jail credit on all three concurrent sentences. The trial court summarily dismissed the motion by an order entered on November 18, 2022. In this order, the court concluded that the “complaint concerns administrative issues as to how the Tennessee Department of Correction awards the jail credits since the [c]ourt has awarded those credits.”

The Defendant filed a timely notice of appeal. In this appeal, the Defendant argues that the trial court failed to award his earned pretrial jail credit on all three judgments and instead only recognized the pretrial jail credit on the first judgment. The State agrees, as do we. We respectfully vacate the trial court’s order and remand the case for entry of corrected judgments in Counts 2 and 3 to award pretrial jail credit earned by the Defendant on all concurrent sentences.

STANDARD OF APPELLATE REVIEW

Our supreme court has recognized that “the first question for a reviewing court on any issue is ‘what is the appropriate standard of review?’” *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). In this case, the issue is whether the trial court properly denied the Defendant’s motion to correct a clerical error in his judgments pursuant to Tennessee Rule of Criminal Procedure 36. “A trial court’s ruling on a Rule 36 motion is reviewed under an abuse of discretion standard.” *Hardin v. State*, No. E2021-01244-CCA-R3-PC, 2022 WL 3355020, at *4 (Tenn. Crim. App. Aug. 15, 2022), *no perm. app. filed*.

ANALYSIS

“The judgment form for any criminal conviction shall indicate ‘[t]he amount, if any, of pretrial jail credit awarded pursuant to [Tennessee Code Annotated section] 40-23-

101[.]” *State v. Troutt*, No. M2021-01248-CCA-R3-CD, 2022 WL 17076600, at *3 (Tenn. Crim. App. Nov. 18, 2022) (quoting Tenn. Code Ann. § 40-35-209(e)(1)(P)), *no perm. app. filed*. As such, when concurrent sentences are ordered, the trial court must award the appropriate pretrial jail credit earned by the Defendant on each judgment. *See, e.g., State v. Anthony*, No. W2021-00668-CCA-R3-CD, 2022 WL 2826852, at *2 (Tenn. Crim. App. July 20, 2022) (“As this court has explained, when the trial court orders concurrent alignment of the sentences, the award of pretrial jail credits should be included on each judgment to provide the full benefit of the credits against the aggregate sentence.”), *perm. app. denied* (Tenn. Dec. 19, 2022).

A “[f]ailure to award pretrial jail credits is a clerical error.” *State v. Mostella*, No. M2020-01474-CCA-R3-CD, 2022 WL 187438, at *2 (Tenn. Crim. App. Jan. 21, 2022) (citing *State v. Brown*, 479 S.W.3d 200, 213 (Tenn. 2015)), *perm. app. denied* (Tenn. May 18, 2022). Our supreme court has recognized that when a trial court has failed to award pretrial jail credits, the appropriate relief is to correct the judgment through Tennessee Rule of Criminal Procedure 36. *See Anderson v. Washburn*, No. M2018-00661-SC-R11-HC, 2019 WL 3071311, at *1 (Tenn. June 27, 2019) (Order). Clerical errors “may be corrected at any time under Tennessee Rule of Criminal Procedure 36.” *State v. Wooden*, 478 S.W.3d 585, 595 (Tenn. 2015) (citations and internal quotation marks omitted).

The trial court believed that it complied with its duty to award pretrial jail credits when it awarded the credits on Count 1 and clarified that the other counts were aligned concurrently with Count 1. As such, in the trial court’s contemplation, the Defendant’s issue was an administrative issue within the responsibility of the Department of Correction.

It is true that the Department of Correction “is responsible for calculating the sentence expiration date and the release eligibility date of any felony offender sentenced to the department[.]” Tenn. Code Ann. §§ 40-35-501(r); 40-28-129. However, it is also true that “the award of pretrial jail credits lies strictly within the jurisdiction of the trial court rather than the Department of Correction.” *Sledge v. Tenn. Dep’t of Correction*, No. M2014-02564-COA-R3-CV, 2015 WL 7428578, at *4 (Tenn. Ct. App. Nov. 20, 2015) (citation and internal quotation marks omitted), *no perm. app. filed*. Because the Department of Correction “is required to enforce judgment orders as they are written,” *Cantrell v. Easterling*, 346 S.W.3d 445, 457 (Tenn. 2011), “it is the trial court, rather than the Tennessee Department of Correction, which has the authority to correct the judgment” to award earned, but omitted, pretrial jail credit. *State v. Wallace*, No. W2019-01140-CCA-R3-CD, 2020 WL 6317111, at *2 (Tenn. Crim. App. Oct. 28, 2020), *perm. app. denied* (Tenn. Feb. 5, 2021).

Accordingly, we conclude that a trial court has both the authority and the obligation to award the pretrial jail credit earned by a defendant on each concurrent judgment. Of course, “[c]oncurrent sentences do no[t] necessarily begin and end at the same time—they simply run together during the time they overlap.” *Brown v. Tennessee Dep’t of Correction*, 11 S.W.3d 911, 913 (Tenn. Ct. App. 1999) (citation and internal quotation marks omitted). As such, the pretrial jail credit earned by a defendant on concurrent sentences may not be identical in each case. But, even if the pretrial jail credit is identical for all concurrent sentences, the trial court must nevertheless award the appropriate pretrial jail credit on each of the respective judgments.¹

CONCLUSION

In summary, we hold that when sentences are ordered to be served concurrently, each judgment of conviction must award the appropriate pretrial jail credit earned by a defendant on that count. Here, the trial court erred by awarding pretrial jail credit on one of three concurrent judgments only. As such, we respectfully vacate the trial court’s order denying the Defendant’s Rule 36 motion. We remand the case for entry of corrected judgments in Counts 2 and 3 to award appropriate pretrial jail credit earned by the Defendant on all concurrent sentences.

TOM GREENHOLTZ, JUDGE

¹ In contrast, where the trial court orders that a defendant serve *consecutive* sentences, the court should award the pretrial jail credit earned by a defendant only on the first judgment in sequence. *E.g., Anthony*, 2022 WL 2826852, at *2 (“[A] defendant ordered to serve consecutive sentences is only entitled to pretrial jail credit on the first sentence.”).