



Tennessee Supreme Court
DISCRETIONARY APPEALS
Grants & Denials List
December 19, 2016 - December 23, 2016

GRANTS

Style/Appeal Number	County/Trial Judge/ Trial Court No.	Intermediate Court	Supreme Court Action
<u>Nashville</u>			
JASON RAY v. MADISON COUNTY, TENNESSEE M2016-01577-SC-R23-CV	U.S. District Court, Western District (East. Div) J. Daniel Breen 15-1015		Accepts certificaion: (See Attached Order) Order filed 12-21-16

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JASON RAY v. MADISON COUNTY, TENNESSEE

**United States District Court, Western District (East. Div) of Tennessee
No. 15-1015**

No. M2016-01577-SC-R23-CV

ORDER

Pursuant to Tennessee Supreme Court Rule 23, a certification order was filed in this Court on August 4, 2016, by the United States District Court for the Western District (Eastern Division) of Tennessee. Briefs have now been filed pursuant to Section 7, and, upon consideration of the certification order and the briefs filed by the parties, this Court accepts certification of the following question of law:

1. Does a Tennessee sentencing court or the county sheriff possess the ultimate authority to determine the eligibility of a felon sentenced to serve a split confinement sentence in a local jail or workhouse to participate in a trusty work program and, therefore, be entitled to work credits under Tennessee Code Annotated §§ 41-2-146 or 41-2-147?
2. In the event a Tennessee sentencing court issues an improper or potentially improper sentence, does a sheriff have a duty under Rule 36.1 of the Tennessee Rules of Criminal Procedure or under any other Tennessee law to challenge the sentence, or is the duty of the criminal defendant, the defense attorney and the district attorney general to challenge an illegal sentence?

Pursuant to Rule 23, Section 7(B) of the Supreme Court Rules, this Court desires to have oral argument by the parties. The Court further desires supplemental briefing on the following underlying questions:

- (1) When a sentencing court imposes a sentence of split confinement pursuant to Tenn. Code Ann. § 40-35-306, whereby a defendant is ordered to serve a period of continuous confinement of up to one year in the local jail or

workhouse followed by a period of probation, which additional statutory sentencing provisions, if any, dictate how the period of continuous confinement is to be served?

A. Does Tenn. Code Ann. § 40-35-302(d), Tenn. Code Ann. § 40-35-314(b)(1), or any other statutory provision authorize a sentencing court (imposing a sentence of split confinement pursuant to Tenn. Code Ann. § 40-35-306) to fix a percentage of the continuous confinement portion that a defendant must serve prior to being eligible for consideration in a work release/trusty program in the local jail or workhouse?

B. Tenn. Code Ann. § 40-35-211(3) provides that if a defendant is convicted of an offense designated as a felony but the court imposes a sentence of less than one year in the jail or local workhouse, the defendant is considered a felon but he is sentenced as in the case of a misdemeanor. Despite the reference in the Sentencing Commission Comments that this section continues the practice of allowing certain Class E felons to serve a sentence of less than one year in the local jail or workhouse, did the General Assembly intend for this statutory section to apply to a defendant who, as here, was convicted of a Class B felony and received a ten-year sentence to be served in split confinement with 11 months, 29 days confinement in the local jail or workhouse and the balance probated?

(2) If the sentencing court imposes a sentence of split confinement and is authorized to fix a percentage of service that a defendant must serve prior to becoming eligible for work credits, does such authority conflict with Tenn. Code Ann. §§ 41-2-146, 41-2-147, 41-2-150, or any other provision related to earning or crediting work credits?

Mr. Ray is directed to brief these issues and file his supplemental brief no later than January 20, 2017. Madison County shall file its supplemental response no later than thirty (30) days after Mr. Ray's brief is filed.

The Court invites the Tennessee Bar Association, the Tennessee Association of Criminal Defense Lawyers, the Tennessee Attorney General, the Tennessee District Public Defenders Conference, and the Tennessee District Attorneys General Conference to submit amicus curiae briefs addressing any or all of the issues enumerated herein. Such briefs shall be filed no later than thirty (30) days after Mr. Ray's brief is filed. Other organizations may also seek leave of this Court to file amicus curiae briefs. See Tenn. R.

App. P. 31. None of the amicus curiae may participate in oral argument unless a party agrees to share its allotted time.

The Clerk is directed to place this matter on the docket for oral argument upon the completion of briefing.

It is so ORDERED.

PER CURIAM