

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 4, 2021

FILED

07/22/2021

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JIMMY LEE PEARCE, JR.

Appeal from the Circuit Court for Fayette County
No. 12-CR-130, 12-CR-167 J. Weber McCraw, Judge

No. W2020-00552-CCA-R3-CD

Defendant, Jimmy Lee Pearce, Jr., appeals the trial court's denial of his "Petition for Pretrial Jail Credits." On appeal, he claims that the trial court erred by failing to enter amended judgments to include credits noted in the trial court's amended revocation order. Following our review of the entire record and the briefs of the parties, we affirm the judgment of the trial court

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JILL BARTEE AYERS, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and D. KELLY THOMAS, JR., J., joined.

Jimmy Lee Pearce, Jr., Henning, Tennessee, Pro Se,

Herbert H. Slatery III, Attorney General and Reporter; Jonathan H. Wardle, Assistant Attorney General; Mark E. Davidson, District Attorney General; Falen Chandler, Assistant District Attorney, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

On October 12, 2012, Defendant pled guilty in case 12-CR-130 ("case 130") to attempted evidence tampering and was sentenced to four years. He also pled guilty in case 12-CR-167 ("case 167") to aggravated assault and possession of a handgun by a convicted felon and was sentenced to seven years on the aggravated assault conviction and two years on the handgun conviction. The trial court ordered the sentences in both cases to run concurrently for a total effective sentence of seven years as a Range II offender, to be served on community corrections after service of 90 days incarceration. Defendant's

pretrial jail credit from March 16, 2012, to March 20, 2012, and pretrial jail credit from July 21, 2012, to October 12, 2012, are noted on the judgments, the corresponding plea petitions, and the trial court's sentencing order.

On January 2, 2013, just over three months after he pled guilty, a petition was filed to revoke Defendant's community corrections sentence based on numerous alleged violations. Following a hearing, the trial court revoked Defendant's community corrections sentence and ordered him to be reinstated after serving 60 days of shock incarceration. The reinstatement order entered February 28, 2013, notes 77 days in the community corrections program and 38 days jail credit toward the 60-day shock incarceration ordered to be served following the February 25, 2013, hearing. ("Order I.")

Following Defendant's release, just three months later on May 15, 2013, a second violation of community corrections petition was filed against Defendant for various alleged violations including an arrest on new charges. On July 22, 2013, Defendant pled guilty in case 13-CR-134 ("case 134") to the five counts as charged and received an effective sentence of eight years on probation to be served consecutively to the seven-year sentence in cases 130 and 167. *See State v. Jimmy Lee Pearce, Jr.*, No. W2009-0341-CCA-R3-CD, 2019 WL 5681477, at *1 (Tenn. Crim. App., at Jackson, Oct. 31, 2019), *no perm. app. filed*. Following his guilty plea in case 134, the trial court revoked the community corrections sentence in case 130 and case 167. In its revocation order of December 2, 2013, the trial court awarded Defendant community corrections credit of 140 days and jail credit of 212 days for time spent in custody from May 5, 2013, to December 2, 2013, and transferred Defendant's supervision to probation to align with case 134. ("Order II.")

On July 16, 2014, the trial court entered an amended revocation order to add that Defendant's sentence would be transferred to probation "after 600 days of shock incarceration." ("Order III.")

On October 27, 2015, a probation violation warrant was issued in case 167 and case 134 based on Defendant testing positive for marijuana on February 10, 2015, March 19, 2015, and September 24, 2015.¹ Defendant stipulated to violating his probation. *Id.* On August 23, 2016, the trial court reinstated Defendant to probation after 60 days of shock incarceration with 56 days jail credit as of the date of the order. ("Order IV.")

¹ The dates of the three drug tests suggest that the "600" days of shock incarceration may be a typographical error and that the trial court may have ordered "60 days" of incarceration consistent with its previous revocation order on February 25, 2013. In addition, subsequent violation of probation reports do not mention the 600 days as part of Defendant's supervision history.

On October 19, 2016, a probation violation warrant was issued against Defendant for a number of violations including seven new charges stemming from a traffic stop in Hardeman County on September 9, 2016. Following a hearing, the trial court revoked Defendant's probation "in full." The revocation order entered on October 30, 2017, contains no reference to jail credit or community corrections credit. ("Probation Revocation Order.") Defendant did not appeal the revocation of his probation in case 130 and 167 but did seek an appeal in case 134. See *Jimmy Lee Pearce, Jr.*, 2019 WL 5681477, at *2.

The record contains a series of letters from Defendant to the trial court in which Defendant took issue with the calculation of his sentence by the Tennessee Department of Correction ("TDOC"). Beginning September 2018, Defendant filed several motions asking the trial court to intervene in the calculation of his sentence by TDOC. First, he filed a motion to correct a clerical error under Tenn. R. Crim. P. 36 ("Rule 36 motion") because his TOMIS report showed a consecutive alignment of case 130 and case 167. He allegedly received the same information at his parole hearing. Because the judgments reflected the correct alignment of case 130 and case 167, the trial court denied the Rule 36 motion to correct a clerical error on September 20, 2018. No appeal was taken.

Second, Defendant filed a motion to correct an illegal sentence under Tenn. R. Crim. P. 36.1 ("Rule 36.1 motion") to challenge the full revocation of his probation. He argued that his sentence in case 134 was illegal "because the trial court revoked a probationary sentence which he had not yet begun to serve and the revocation resulted in an effective sentence of continuous confinement." *Jimmy Lee Pearce, Jr.*, 2019 WL 5681477 at *2. The trial court denied the motion on the ground that the sentence was not illegal. *Id.* This court noted that Defendant had the right to appeal the revocation order but chose not to do so. *Id.* at *2. This court held that Defendant's sentence was not illegal because continuous confinement was prohibited for defendants convicted of non-violent property offenses and none of Defendant's convictions were non-violent property offenses. *Id.* Because Defendant failed to allege or establish a fatal sentencing error, this court affirmed the trial court's judgment of summary dismissal. *Id.* at *1-*2.

Next, on January 9, 2020, Defendant filed a petition for pretrial jail credits. The trial court denied the petition on the grounds that it lacked specificity as to "which credits have been omitted and as to which cases ... credits are incorrect." On that same date, Defendant filed a "motion for correction or reduction of sentence" under Tenn. R. Crim. P. 35 ("Rule 35 motion") in which he admitted that he had erroneously filed a Rule 36.1 motion to challenge the legality of his sentence in case 134. The trial court found no error in the judgments warranting correction and found Defendant to be an unsuitable candidate for sentence reduction. Defendant did not appeal the denial of his petition for pretrial jail credits or the denial of his Rule 35 motion.

On February 28, 2020, Defendant filed a “motion to correct judgment to include pre[trial] jail credits” in case 130 and case 167. Relying on Rule 36, Rule 36.1, and T.C.A. § 40-23-101, Defendant asserted that TDOC “failed to compute” 952 days the trial court granted him following the revocation and reinstatement of his probation on December 5, 2013. He further asserted that TDOC failed to recognize additional jail credit from November 8, 2016, to June 24, 2019, and 56 days of “good behavior credit” he accrued while he was incarcerated in the county jail. As supporting proof, Defendant attached a copy of the trial court’s July 16, 2014, amended revocation order and a TOMIS report. Using the same language it had used to deny his petition for pretrial jail credits, the trial court held that Defendant had “filed this request under multiple docket numbers and without copies of judgment sheets; therefore, the Court is somewhat at a loss as to which credits have been omitted and as to which cases that credits are incorrect. Without greater specificity from [Defendant], the Court denies the petition.” The trial court signed the order on February 28, 2020, and a copy of the order was mailed to Defendant on March 4, 2020. It is from this order Defendant filed a notice of appeal on April 3, 2020.

Analysis

I

Timeliness of Appeal

Although the State does not contest the timeliness of Defendant’s notice of appeal, we must consider the timeliness of the appeal because it is the duty of this court to determine whether jurisdiction exists in every case. *State v. Comer*, 278 S.W.3d 758, 760 (Tenn. Crim. App. 2008). As the State correctly points out, the original record transmitted to this court contained the trial court’s order with the “Date of Entry” of February 28, 2020, but the order did not bear court clerk’s file-stamp showing the date the order was entered. *See State v. Bobby Lee Allen Robinette*, No. E2014-01688-CCA-R3-CD, 2015 WL 4745065, at *3-4 (Tenn. Crim. App., at Knoxville, Aug. 11, 2015) (the file-stamp date provides evidence of when the order was entered), *no perm. app. filed*.

Because the time period for filing the notice of appeal begins to run on the date the judgment or order is stamp filed with the clerk after being signed by the trial judge, this court deemed it necessary to have the record supplemented with the file-stamped copy of the trial court’s order or a copy of the trial court’s minutes reflecting the entry of the order. Tenn. R. App. P. 24(e); *State v. Byington*, 284 S.W.3d 220, 224 (Tenn. 2009). The orders in the supplemented record clearly indicate that the trial court received and entered the order denying Defendant’s motion on March 4, 2020. Thus, Defendant’s notice of appeal, filed on April 3, 2020, was timely filed. Tenn. R. App. P. 4(a).

II

Clerical Error/Jail Credit/Amended Judgment Forms

On appeal, Defendant relies on Tennessee Rule of Criminal Procedure 36 and Tennessee Code Annotated section 40-23-101 in asserting that the trial court erred in denying his motion to amend the judgments in case 130 and case 167 with 952 days of community corrections credit and post-judgment jail credit, an additional 60 days spent in “shock incarceration,” and 56 days of good behavior credits he accrued while serving time in the county jail. The State argues that the trial court properly denied Defendant’s motion because he is raising a claim that must be addressed under the Uniform Administrative Procedures Act (“UAPA”). We agree with the State.

Rule 36 states that “the court may at any time correct clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission.” Tenn. R. Crim. P. 36. “Clerical errors ‘arise simply from a clerical mistake in filling out the uniform judgment document.’ ” *State v. Wooden*, 478 S.W.3d 585, 595 (Tenn. 2015) (quoting *Cantrell v. Easterling*, 346 S.W.3d 445, 449 (Tenn. 2011)). Correcting clerical mistakes may include “supply[ing] omitted or overlooked information.” *State v. Allen*, 593 S.W.3d 145, 154 (Tenn. Jan. 29, 2020); *see, e.g., Steven Anderson v. Russell Washburn, Warden*, No. M2018-00661-SC-R11-HC, – S.W.3d –, 2019 WL 3071311, at *1 (Tenn. June 27, 2019) (a failure to award pretrial jail credits would constitute a clerical error).

Accordingly, a clerical error in an order revoking probation may be corrected at any time. *State v. Jeffery Siler*, No. E2020-00468-CCA-R3-CD, 2020 WL 6130919, at *3 (Tenn. Crim. App., at Knoxville, Oct. 19, 2020) (citing *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996), *perm. app. denied* (Tenn. Feb. 4, 2021)). For instance, the trial court is required to note all credits on the judgment order revoking probation in order to guide TDOC in calculating a defendant’s sentence release date. *State v. Edward Chumney*, No. W2004-00474-CCA-R30-CD, 2005 WL 924263, at *1, n.1 (Tenn. Crim. App., at Jackson, Aug. 21, 2005), *no perm. app. filed*. Such credits include time spent in community corrections. Unlike probation, defendants in a community corrections program are entitled to credit “for time spent in community corrections prior to the revocation,” whereas defendants violating the terms of probation are not so entitled. *State v. McNack*, 356 S.W.3d 906, 911 (Tenn. 2011) (citing *Carpenter v. State*, 136 S.W.3d 308, 612 (Tenn. 2004)); T.C.A. § 40-36-106(e)(3)(B) (a defendant “receives credit only for actual time served in the community-based alternative program”).

Thus, the omission of community corrections credit upon revocation of probation or community corrections will necessitate the entry of a corrected judgment reflecting those

credits. *See Edward Chumney*, 2005 WL 924263, at *1, n.1 (revocation affirmed but case remanded for entry of the correct jail and community corrections credit earned by the defendant on his revoked sentences); *State v. Alfred R. Mason*, No. E2019-00916-CCA-R3-CD, 2020 WL 974207, at *3-*4 (Tenn. Crim. App., at Knoxville, Feb. 28, 2020 (revocation affirmed but case remanded for trial court to enter amended judgments to reflect credit for time served on community corrections prior to the issuance or revocation warrants), *no perm. app. filed*); *State v. Christopher v. Colligan*, No. M2018-01443-CCA-R3-CD, 2019 WL 3064059, at *3-*5 (Tenn. Crim. App., at Nashville, Tenn. Crim. App. July 12, 2019) (remand for entry of community corrections credit, the trial court’s judgment otherwise affirmed as modified), *no perm. app. filed*.

The same does not hold true for post-judgment jail credit. In general, trial courts are governed by Tennessee Code Annotated section 40-23-101 regarding the award of pretrial jail credit and post-judgment jail credit on the judgment of conviction. The Statute provides:

The trial court shall, at the time the sentence is imposed and the defendant is committed to jail, the workhouse or the state penitentiary for imprisonment, render the judgment of the court so as to allow the defendant credit on the sentence for any period of time for which the defendant was committed and held in the city jail or juvenile court detention prior to waiver of juvenile court jurisdiction, or county jail or workhouse, pending arraignment and trial. The defendant shall also receive credit on the sentence for the time served in the jail, workhouse or penitentiary subsequent to any conviction arising out of the original offense for which the defendant was tried.

T.C.A. § 40-23-101(c). In *Yates v. Parker*, this court addressed whether the statute requires the trial court to include post-judgment jail credit on a judgment of conviction or in an amended judgment in the context of a habeas corpus petition and held that it does not. 371 S.W.3d 152, 155 (Tenn. Crim. App. 2012). Rather, the statute “allow[s] a defendant the benefit of additional days in confinement after a conviction but before sentencing.” *Id.*; *see also State v. Christopher Oliver*, No. 03C01-9212-CR-00447, 1993 WL 152408, at *1-*2 (Tenn. Crim. App. May 11, 1993) (defendant entitled to jail and good behavior credit earned in county jail while waiting for trial), *no perm. app. filed*.

Furthermore, TDOC possesses the authority to determine the release eligibility and sentence expiration of defendants “regardless of where they are housed.” *Id.* To that end,

Notwithstanding any other law to the contrary, [TDOC] is responsible for calculating the sentence expiration date and the release eligibility date of any felony offender sentenced to the department and any felony offender

sentenced to confinement in a local jail or workhouse for one (1) or more years.

T.C.A. § 40-35-501(r); *see also State v. Michelle Bennington*, No. E2020-00025-CCA-R3-CD, 2021 WL 753645, at *2 (Tenn. Crim. App., at Knoxville, Feb. 26, 2021) (“[t]here is ‘no law to the contrary’” to TDOC’s authority under T.C.A. § 40-35-501(r)), *no perm. app. filed*. Challenges to the miscalculation of release eligibility by TDOC must first be sought through the UAPA. *See Stewart v. Schofield*, 368 S.W.3d 457, 463-64 (Tenn. 2012); *Shorts v. Bartholomew*, 278 S.W.3d 268, 278-79 (Tenn. 2009).

We review the trial court’s ruling on a Rule 36 motion for an abuse of discretion. *Marcus Deangelo Lee v. State*, No. W2013-01088-CCA-R3-CO, 2014 WL 902450, at *3 (Tenn. Crim. App., at Jackson, Mar. 7, 2014), *no perm. app. filed*.

Here, the record shows that Defendant earned 140 days of community corrections credit before his sentence was transferred to probation on December 3, 2015. All of the trial court’s orders revoking Defendant’s community corrections sentence (Orders I -IV) consistently set out his community corrections credit prior to his transfer to probation supervision. While the Probation Revocation Order does not mention community corrections credit, Defendant’s community corrections sentence had been revoked and transferred to probation; thus, he could not have accumulated any further community corrections credit.

Defendant further argues that the trial court should have amended the judgments of conviction to include his post-judgment jail credit. Defendant’s dispute as to the remaining days of credit must be pursued through the TDOC administratively. TDOC, not the trial court, is responsible for calculating post-judgment jail credit on Defendant’s sentence in case 130, 167, and 134. *Stewart*, 368 S.W.3d at 464; *Shorts*, 278 S.W.3d at 278-79; *Yates*, 371 S.W.3d at 155; T.C.A. If Defendant believes that TDOC overlooked an award of jail credit or miscalculated his sentence, his remedy lies under the UAPA, T.C.A. §§ 4-5-101, -325, not Rule 36, Rule 36.1, or T.C.A. § 40-23-101. Defendant is not entitled to relief on this claim.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

JILL BARTEE AYERS, JUDGE