
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 22-759

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STATE OF WEST VIRGINIA,

Respondent,

v.

KYLE K. SLAUGHTER,

Petitioner.

RESPONDENT'S BRIEF

Appeal from the September 13, 2022, Order
Circuit Court of Fayette County
Case No. 22-F-109

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TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	ii
I. Introduction.....	1
II. Assignment of Error.....	1
III. Statement of the Case.....	1
A. Fayette County charges.....	1
B. Raleigh County charges	3
IV. Summary of the Argument.....	3
V. Statement Regarding Oral Argument and Decision.....	4
VI. Standard of Review	4
VII. Argument	5
A. Petitioner was entitled to only 30 days of credit for time served on the Fayette County charges	5
B. To the extent the Fayette Court Circuit Court committed any error in failing to award more than 30 days of credit for time served, such error is harmless as Petitioner was awarded 423 days by the Raleigh County Circuit Court, which covers the entire time Petitioner has been in jail since his arrest on the Fayette County charges	7
VIII. Conclusion	8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Martin v. Leverette</i> , 161 W.Va. 547, 244 S.E.2d 39 (1978).....	5
<i>State v. Blake</i> , 197 W.Va. 700, 478 S.E.2d 550 (1996).....	7
<i>State v. Byers</i> , __ W.Va. __, 875 S.E.2d 306 (2022).....	7
<i>State v. Chapman</i> , No. 15-0736, 2016 WL 2978597 (W.Va. Supreme Court, May 23, 2016)	6
<i>State v. Goodnight</i> , 169 W.Va. 366, 287 S.E.2d 504 (1982).....	6
<i>State v. Greene</i> , No. 15-0402, 2016 WL 3463468 (W.Va. Supreme Court, June 21, 2016)	4
<i>State v. James</i> , 277 W.Va. 407, 710 S.E.2d 98 (2011).....	4
<i>State v. McClain</i> , 211 W.Va. 61, 561 S.E.2d 783 (2002).....	4, 5, 6
<i>State v. Miller</i> , No. 20-0860, 2022 WL 1684066 (W.Va. Supreme Court, May 26, 2022)	6
<i>State v. Taylor</i> , 243 W.Va. 20, 842 S.E.2d 224 (2020).....	5, 6
<i>State v. Wears</i> , 222 W.Va. 439, 665 S.E.2d 273 (2008).....	6
<i>State ex rel. Grob v. Blair</i> , 158 W.Va. 647, 214 S.E.2d 330 (1975).....	7
Statutes	
West Virginia Code § 61-11-24.....	6
Other Authorities	
W.Va. R. App. P. 18(a)(3) and (4).....	4

I. INTRODUCTION

Petitioner Kyle K. Slaughter has failed to demonstrate that he has been denied credit for time served in violation of the Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution. To the extent the Fayette County Circuit Court may have erred in awarding credit, such error is harmless as Petitioner has since been awarded credit for all the time he has served since he was arrested in December 2021 by the Raleigh County Circuit Court. As Petitioner cannot demonstrate the existence of reversible error, the Fayette County Circuit Court's September 13, 2022, Order should be affirmed.

II. ASSIGNMENT OF ERROR

Petitioner, by counsel, raises a single assignment of error in his Brief: That the trial court violated Petitioner's constitutional rights against double jeopardy and to equal protection when the court "awarded the Petitioner 30 days of jail credit when he had been unable to post bond and was continuously incarcerated 263 days as of his sentencing date." (Pet'r Br. 1.)

III. STATEMENT OF THE CASE

A. Fayette County charges.

On December 7, 2021, Petitioner was arrested in Fayette County, West Virginia, and charged with Driving Under the Influence Third Offense, Child Neglect, Fleeing, Threats of Terrorist Act, Driving Revoked due to DUI, No Proof of Insurance, and Reckless Driving. (App. 1.) Petitioner "led law enforcement on a high-speed chase in excess of 120" miles per hour, with a minor in the vehicle. (App. 41–42.) He further attempted to bribe the law enforcement officers and then cursed them when they refused to accept Petitioner's bribes. (App. 42.) Petitioner was arraigned in the Fayette County Magistrate Court, where a \$100,000 cash bond was imposed. (App. 1.) Also on December 7, Petitioner was arraigned on an additional charge of Bribery and a

\$5,000 bond was imposed. (App. 2.) Petitioner was subsequently indicted on ten counts (App. 28) and entered a guilty plea to on June 29, 2022, to one count of Bribery in violation of West Virginia Code § 61-5A-3 (App. 3). In exchange for Petitioner's guilty plea, the State dismissed the remaining charges in the Indictment. (App. 9.)

During the sentencing hearing on August 26, 2022, Petitioner's counsel objected to the Presentence Investigation Report ("PSR") and argued that Petitioner had been in jail in excess of the 30 days stated in the PSR. (App. 14.) Counsel acknowledged that Petitioner had been indicted in Raleigh County, West Virginia, but argued that "there is no presumption that there's ever going to be a conviction on it. It might happen. It might not. He has been continuously incarcerated since December 7th and unable to post bond." (App. 14.) The circuit court noted that the probation officer gave Petitioner credit from December 7, 2021, when he was arrested on the Fayette County charges, until the Raleigh County Circuit Court revoked his bond on January 5, 2022. (App. 15.) By Order entered September 13, 2022, the circuit court found Petitioner was entitled to 30 days of jail credit but ordered "that the [Petitioner] may file a motion for reconsideration should he not be convicted on charges arising from an incident that occurred on or about November 15, 2021, in Raleigh County, West Virginia." (App. 17, 24–25, 40–41.) Petitioner was sentenced to an indeterminate period of incarceration of not less than one year nor more than ten years. (App. 24–25, 40.) His effective sentencing date was July 28, 2022. (App. 43.)

On October 31, 2022, Petitioner, acting *pro se*, filed a motion for reconsideration. (App. 47.) By Order entered November 1, 2022, the circuit court denied Petitioner's motion, mistakenly finding that it had given Petitioner "credit for time served from December 7, 2021, through August 26, 2022, for a total credit of two hundred sixty-three (263) days served." (App. 45.)

Petitioner appeals from the September 13, 2022, Sentencing and Commitment Order.

B. Raleigh County charges.

Petitioner was arrested on November 15, 2021, by officers of the Beckley Police Department and charged with malicious wounding and wanton endangerment. (App. 32.) Officers had responded to reports of a shooting at a residence and found Petitioner and two other individuals inside the home. (App. 32.) Petitioner admitted to law enforcement officers that he had fired a 9 millimeter gun at the victim, causing wounds to the victim. (App. 32.) The matter was bound over to the grand jury and Petitioner was released on bond. (App. 14–15, 32.) As a result of the conduct underlying the Fayette County charges, Petitioner’s Raleigh County bond was revoked on January 5, 2022h. (App. 28.) Petitioner was subsequently indicted by a Raleigh County grand jury on May 9, 2022, of Malicious Wounding in violation of West Virginia Code § 61-2-9(a). (App. 37.) On November 16, 2022, Petitioner was convicted of the lesser included offense of Unlawful Wounding, by a plea of guilty, and was sentenced on January 18, 2023, to an indeterminate term of imprisonment of not less than one nor more than five years. (Suppl. App. 1.) The circuit court granted Petitioner “credit for time served in the amount of 423 days.” (Suppl. App. 1.)

IV. SUMMARY OF THE ARGUMENT

This Court should affirm the circuit court’s order as Petitioner was entitled to only 30 days of credit for time served on the Fayette County charges. Once bond was revoked on the Raleigh County charges, such time was attributable to those charges and not the Fayette County charges. Petitioner remained in custody on the Raleigh County charges through the date of Petitioner’s sentencing on the Fayette County charges on August 26, 2022. Double jeopardy and equal protection constitutional guarantees, therefore, were not implicated and the circuit court appropriately awarded only 30 days of credit for time served from Petitioner’s date of arrest of

December 7, 2021, through January 5, 2022, when his bond was revoked on the Raleigh County charges and the time served became attributable to the Raleigh County sentence instead.

Assuming arguendo that the Fayette County Circuit Court committed error in failing to award credit for time served in addition to the 30 days awarded, such error is harmless. This is because Petitioner was sentenced on the Raleigh County charges on January 18, 2023, and was awarded 423 days of credit for time served. This amount exceeds the number of days between the day of his arrest on the Fayette County charges, December 7, 2021, through the date of sentencing on the Raleigh County charges, January 18, 2023. As such, Petitioner has been awarded all the credit due for his time served and any such error by the circuit court is harmless.

Respondent, therefore, requests that this Court affirm the September 13, 2022 Order of the Circuit Court of Fayette County.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary and this case is suitable for disposition by memorandum decision because the record is fully developed and the arguments of both parties are adequately presented in the briefs. W.Va. R. App. P. 18(a)(3) and (4).

VI. STANDARD OF REVIEW

“As a general rule, the sentence imposed by a trial court is not subject to appellate review.” *State v. McClain*, 211 W.Va. 61, 64, 561 S.E.2d 783, 786 (2002). When “it is alleged that a sentencing court has imposed a penalty beyond the statutory limits or for impermissible reasons, appellate review is warranted.” *Id.* (citing Syl. Pt. 4, *State v. Goodnight*, 169 W.Va. 366, 287 S.E.2d 504 (1982)). Sentencing orders are reviewed “under a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands.” Syl. Pt. 1, in part, *State v. James*, 277 W.Va. 407, 710 S.E.2d 98 (2011).

VII. ARGUMENT

A. **Petitioner was entitled to only 30 days of credit for time served on the Fayette County charges.**

Petitioner argues that the circuit court violated his rights under the Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution when it denied him credit for 233 days served pre-trial. (Pet'r Br. 3.) "[W]hen an offense is bailable, a circuit court must grant a criminal defendant credit for time served in confinement while awaiting trial and conviction against the sentence that results from that particular conviction." *State v. Taylor*, 243 W.Va. 20, 23, 842 S.E.2d 224, 227 (2020). This is because "the Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution *require* that" such time be credited. Syl. Pt. 5, *McClain*, 211 W.Va. 61, 561 S.E.2d 783 (citation omitted). These principles are grounded in the premises that sentences may not exceed the statutory maximum and "a criminal defendant who is financially unable to make bond may not be required to spend more time incarcerated than a criminal defendant who is financially able." *Taylor*, 243 W.Va. at 24–25, 842 S.E.2d at 228–29. Moreover, this Court has held that "[t]he Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution require that credit for time spent in jail, either pre-trial or post-trial, shall be credited on an indeterminate sentence where the underlying offense is bailable." Syl. Pt. 1, *Martin v. Leverette*, 161 W.Va. 547, 244 S.E.2d 39 (1978).

Petitioner was arrested on the Fayette County charges on December 7, 2021, and was given 30 days of jail credit by that court. (App. 1, 40–41.) His bond was subsequently revoked on the Raleigh County charges on January 5, 2021. (App. 28.) Petitioner was properly awarded credit for the 30 days served on the Fayette County charges. Once bond was revoked on the Raleigh County charges, Petitioner, even if he posted bail on the Fayette County charges, would have remained in jail. At that point, Petitioner began serving time on the Raleigh County charges. The Fayette

County Circuit Court appropriately did not award additional credit for time served on the Raleigh County charges. *See Taylor*, 243 W.Va. 20, 23, 842 S.E.2d 224, 227 (“[W]here a criminal defendant is incarcerated on separate charges unrelated to his conviction, we have consistently found that criminal defendant is not constitutionally entitled to credit for that time served toward his sentence”). *See also State v. Miller*, No. 20-0860, 2022 WL 1684066, at *3 (W.Va. Supreme Court, May 26, 2022) (memorandum decision) (noting that West Virginia Code § 61-11-24 allows credit for time served only “on a sentence imposed by the court for the term of confinement ‘awaiting such trial and conviction’”) (citations omitted).

Moreover, this Court has consistently held that “criminal defendants are not entitled to have credit for time served during one period applied to two separate sentences.” *State v. Chapman*, No. 15-0736, 2016 WL 2978597, at *3 (W.Va. Supreme Court, May 23, 2016) (memorandum decision). In *Chapman*, the Court affirmed the denial of additional credit when he had already received credit for time served for that period of incarceration. *Id.* Similarly, in *State v. Greene*, the Court again held that “a criminal defendant is not entitled to have credit for time served applied to all overlapping, unrelated charges, if credit was properly applied to at least one of those charges.” *Id.*, No. 15-0402, 2016 WL 3463468, at *4 (W.Va. Supreme Court, June 21, 2016) (memorandum decision) (citing *State v. Wears*, 222 W.Va. 439, 665 S.E.2d 273 (2008)).

Because Petitioner was serving time on the Raleigh County charges beginning January 5, 2022, the rule requiring pre-trial credit is inapplicable for the Fayette County Circuit Court. *See Miller*, 2022 WL 1684066, at *3 (“where a criminal defendant is already incarcerated and serving another sentence, [the rule set forth in *McClain*] is inapplicable”). Credit was properly applied to Petitioner’s Raleigh County charges. For these reasons, Petitioner’s circumstances neither implicated the double jeopardy or equal protection principles such that credit for time served from

January 5, 2022 to August 26, 2022, when Petitioner was sentenced on the Fayette County charges, was constitutionally mandated. The Fayette County Circuit Court's September 13, 2022 Order should be affirmed.

B. To the extent the Fayette Court Circuit Court committed any error in failing to award more than 30 days of credit for time served, such error is harmless as Petitioner was awarded 423 days by the Raleigh County Circuit Court, which covers the entire time Petitioner has been in jail since his arrest on the Fayette County charges.

To the extent the Fayette County Circuit Court committed any error in failing to award additional credit for time served, such error is harmless as Petitioner cannot demonstrate prejudice. The “[f]ailure to observe a constitutional right constitutes reversible error unless it can be shown that the error was harmless beyond a reasonable doubt.” Syl. Pt. 5, *State ex rel. Grob v. Blair*, 158 W.Va. 647, 214 S.E.2d 330 (1975). “In conducting a harmless error analysis, the inquiry is fact specific.” *State v. Byers*, ___ W.Va. ___, 875 S.E.2d 306, 317 (2022) (citing *State v. Blake*, 197 W.Va. 700, 478 S.E.2d 550, 559 (1996) (“Assessments of harmless error are necessarily content-specific.”)).

Petitioner was sentenced on January 18, 2023, on the Raleigh County charges. (Suppl. App 1.) There, he was awarded 423 days of credit for time served. The time between December 7, 2021, when Petitioner was arrested on the Fayette County charges and January 18, 2023, when he was sentenced on the Raleigh County charges, is 407 days. Petitioner, therefore, has been awarded full credit for all time served and then some. Moreover, the Raleigh County Circuit Court ordered that the Raleigh County sentence is to run concurrently with the Fayette County sentence (Suppl. App. 1), which is an additional benefit to Petitioner. Any error on the part of the Fayette County Circuit Court in failing to award more than 30 days of credit for time served is rendered harmless.


VIII. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the September 13, 2022 Sentencing and Commitment Order of the Circuit Court of Fayette County.

Respectfully Submitted,

State of West Virginia,
Respondent,
By Counsel,

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KYLE K. SLAUGHTER,

Petitioner.

CERTIFICATE OF SERVICE

I, Mary Beth Niday, do hereby certify that on the 23rd day of January, 2023, I served a true and accurate copy of the foregoing **Respondent's Brief** upon the below-listed individuals via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

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