

Circuit Court for Charles County
Case No.: C-08-CR-18-000797

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 156

September Term, 2020

DEVIONTE HICKS

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 5, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On January 28, 2019, pursuant to a binding guilty plea agreement, appellant, Devionte Hicks, pleaded guilty in the Circuit Court for Charles County to two counts of robbery. On December 19, 2019, in accordance with the terms of the plea agreement, the court sentenced appellant to fifteen years' imprisonment with all but eighteen months suspended for one of the robbery counts, and to a consecutive fully suspended term of fifteen years' imprisonment for the other. The court awarded appellant 137 days of credit for time served in prison between his arrest on September 13, 2018, and the entry of his guilty plea on January 28, 2019.

Thereafter, appellant filed a motion in the circuit court seeking credit for additional time served, which the court granted in part and denied in part. Appellant noted an appeal from that decision. For the reasons stated below, we shall affirm the judgment of the circuit court.

BACKGROUND

As noted, appellant was arrested and placed in custody on September 13, 2018. He was seventeen years old at the time. On September 28, 2018, he was transferred from the county detention center to Cheltenham Youth Detention Center (Cheltenham) to await trial. On January 28, 2019, appellant pleaded guilty under a binding guilty plea agreement that contemplated an eighteen-month cap on active incarceration. Under the agreement, the State agreed to enter a *nolle prosequi* on all charges other than the two robbery counts, and the defense agreed to withdraw a motion to transfer the case to juvenile court. Also, appellant was told that he would be credited for all the time he spent at Cheltenham. Any

suspended portion of the sentence and the duration of any probation were left to the discretion of the court.

Defense counsel and the court also worked out a “hybrid” sentencing arrangement whereby the sentencing would be deferred for some number of months while appellant spent time in a juvenile facility to hopefully take advantage of its treatment programs. Also, the court wanted to utilize this “hybrid” arrangement so that appellant would be on supervised probation as an adult. The State neither agreed to, nor objected to, such an arrangement but made it clear that it was not a part of the guilty plea agreement.

In order to accomplish the “hybrid” arrangement, appellant made an oral motion to have an earlier unrelated juvenile case removed from the stet docket, which the court granted. Appellant then pleaded involved on the juvenile matter and the court committed him to the Department of Juvenile Services. Appellant then returned to Cheltenham while a placement at a different facility could be arranged. On March 11, 2019, appellant was moved to the Silver Oak Academy (Silver Oak) where he stayed until he was sentenced in this case on December 19, 2019.

During the sentencing proceeding, the court learned that appellant had not taken full advantage of his opportunities at Silver Oak and that he would not successfully complete that placement. Before the court imposed sentence, a discussion took place on the record about how much credit for time served appellant was due. The parties seemed to have agreed that appellant was entitled to no less than 137 days credit (the “non-discretionary” credit) which reflected the time between appellant’s arrest and the day appellant pleaded guilty in this case, and pleaded involved in the juvenile matter. Appellant asked the court

to give him credit for the time between the day he was arrested and the date of the sentencing hearing, which was 462 days. The State contended that appellant was not entitled to credit for the time he spent in Silver Oak because he was “serving that in another case, in a juvenile case.” In the end, the court gave appellant 137 days of credit for time served.

Two months later, appellant filed a motion in the circuit court seeking credit for the 462 days of time served between his September 13, 2018 arrest and the December 19, 2019 sentencing proceeding. He claimed he was entitled to credit for that period of time because “that placement was a result [of] the conduct charged in the above captioned case.”

In the alternative, appellant asserted that he was at least “entitled to credit for the additional time he spent detained at Cheltenham from January 28, 2019, through March 11, 2019. He claimed that he was entitled to credit for that period of time because “he was still in custody for the charge for which this sentence was imposed.”

In response, the court did not award appellant the 462 days, but did increase the 137 days it had previously awarded him to 180 days. The increase in credit for time served appears to have reflected the number of days between appellant’s arrest and the point in time when he was transferred from Cheltenham to Silver Oak.¹

DISCUSSION

Section 6-218 of the Criminal Procedure Article of the Md. Code (“CP”) provides for credit for time served pretrial. In relevant part, the statute states:

¹ There are actually 179 days between September 13, 2018 and March 11, 2019.

(b)(1) A defendant who is convicted and sentenced shall receive credit against and a reduction of the term of a definite or life sentence ... for all time spent in the custody of a correctional facility, hospital, facility for persons with mental disorders, or other unit because of:

- (i) the charge for which the sentence is imposed; or
- (ii) the conduct on which the charge is based.

(2) If a defendant is in custody because of a charge that results in a dismissal or acquittal, the time that would have been credited if a sentence had been imposed shall be credited against any sentence that is based on a charge for which a warrant or commitment was filed during that custody.

(3) In a case other than a case described in paragraph (2) of this subsection, the sentencing court may apply credit against a sentence for time spent in custody for another charge or crime.

As can be seen, while the court is required to award credit under CP Section 6-218(b)(1), the court has discretion to award credit under CP Section 6-218(b)(3). CP Section 6-218(b)(1) requires credit to be applied when a person is in custody because of the charge for which the sentence is imposed, or because of the conduct on which the charge is based. In the present case, when appellant was placed in juvenile custody on January 28, 2019, he was no longer in custody for the crimes he was accused of committing in this case. As a result, he was not in custody because of the charges in this case or his conduct in this case. Therefore, CP Section 6-218(b)(1) is inapplicable and the court was not required to award credit against his sentence for the time he spent in juvenile custody after he pleaded guilty in this case and pleaded involved in the juvenile matter.

CP Section 6-218(b)(3), however, permitted the court, in its discretion, to award appellant with credit for any time after it transferred him to juvenile custody.

“A court’s decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *Wheeler v. State*, 459 Md. 555, 560 (2018) (citations and quotations omitted). This Court has explained that a “trial court abuses its discretion only when no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.” *Baker v. State*, 223 Md. App. 750, 759 (2015) (citations and quotations omitted).

When ruling on appellant’s motion, the Court exercised that discretion by increasing appellant’s credit from 137 days to 180 days to reflect the time that he spent in Cheltenham after he was committed to juvenile custody, but before he was transferred to Silver Oak.

We discern no error or abuse of discretion on the part of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**