Circuit Court for Baltimore County
Case No. 03-K-14-001288

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 615

September Term, 2022

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SEAN ANTHONY RONE

v.

STATE OF MARYLAND

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Leahy,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Albright, J.

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Filed: May 22, 2023

* At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

On November 19, 2014, the Circuit Court for Baltimore County convicted Sean Anthony Rone, appellant, in two separate cases of first-degree assault of one victim and second-degree rape of another. The first case, involving first-degree assault and other charges, was assigned number 03-K-14-001288 (the "first case" or "Case No. 1288"). The second case, involving second-degree rape and other charges, was assigned number 03-K-14-002870 (the "second case" or "Case No. 2780").

Although Mr. Rone's convictions came at the same time pursuant to a plea agreement, the cases arose separately. After he was arrested in the first case, Mr. Rone posted bail. He then reoffended while out on bail. This led to his arrest and the opening of the second case. After that arrest, the State successfully moved to revoke Mr. Rone's bail, and Mr. Rone was served with an arrest warrant—that is, he was rearrested in the first case while in custody in the second case. Mr. Rone was then held pending trial in both cases.

Mr. Rone entered a plea agreement in both cases and was convicted. Pursuant to that agreement, Mr. Rone received two concurrent sentences: 25 years' imprisonment, with all but 15 years suspended, for first-degree assault in the first case; and 20 years' imprisonment, with all but 15 years suspended, for second-degree rape in the second case.

The commitment record in the first case, however, did not credit the time that Mr. Rone served after he was rearrested in the first case and before he was sentenced.[1] As such, Mr. Rone sought to correct the commitment record, arguing, among other things, that he was entitled to credit in the first case for the time he served while held on the charges in that case.[2] The circuit court denied Mr. Rone's motion, and this timely appeal followed.

Mr. Rone now presents two questions for our review, which we have recast as follows:

1. Did the court err by denying Mr. Rone full credit for time served against his sentence for first-degree assault?

2. Does the commitment record misstate the commencement date for Mr. Rone's first-degree assault sentence?[3]

[1] The commitment record in the second case credited this time.

[2] Under Maryland law, "the nature of a motion is determined by the relief it seeks and not by its label or caption." *Miller v. Mathias*, 428 Md. 419, 442 n.15 (2012) (quotation marks and citation omitted). Mr. Rone requested that the court "correct the commitment and sentencing order . . . to award [him] credit against [his] sentence[.]" As such, it is properly considered a motion to correct the commitment record pursuant to Maryland Rule 4-351. *See Bratt v. State*, 468 Md. 481, 507 (2022).

[3] In his brief, Mr. Rone presented the issues as follows:

1. I have two start dates on a concurrent sentence. Creating two start dates for a sentence that has been run together on the record is a deviation from proper process or procedure.

2. Bond on case K-14-1288 was revoked, yet credit for time served was not fully allocated.

We answer these questions in the affirmative and will remand to the circuit court with instructions to correct the commitment record and docket entries in Case No. 1288.

## BACKGROUND[4]

On February 1, 2014, Mr. Rone was arrested and charged, in the District Court of Maryland, sitting in Baltimore County, with first- and second-degree assault, and bail was set. After posting bail, Mr. Rone was released the following day, on February 2, 2014. As conditions of his release, the district court prohibited Mr. Rone from having any contact with the alleged assault victim and required him to, among other things, "obey all laws."[5] The case was then forwarded to the circuit court,[6] and the State filed a criminal information charging Mr. Rone with first-degree assault and other crimes.

Three months later, while he was out on bail, Mr. Rone reoffended. He was arrested and charged in a second case with second-degree rape and related offenses against a different victim.

[4] Because the facts underlying the crimes of which Mr. Rone was charged are irrelevant here, we will not discuss them further. *See Teixeira v. State*, 213 Md. App. 664, 666 (2013).

[5] Mr. Rone was also advised that an arrest warrant "will be issued for . . . any violation of the condition(s) of release[.]"

[6] When Mr. Rone's case was forwarded, the conditions of his release remained unchanged. *See* Md. Rule 4-216.3(a) ("When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (b) of this Rule.").

On May 28, 2014, the State petitioned the circuit court to revoke Mr. Rone's bail in the first case, arguing that because the allegations in the second case were "substantially similar" to those in the first case, Mr. Rone posed a "threat to public safety." The circuit court issued a "no bail" arrest warrant that same day. In addition to ordering Mr. Rone's arrest, the warrant further directed a peace officer to "[l]odge this warrant as a detainer for the continued detention of the defendant for the offense charged[.]"

On May 30, 2014, copies of the arrest warrant and charging document in the first case were served on Mr. Rone at the Baltimore County Detention Center, where he was incarcerated in connection with the second case. A hearing was then held, in which the circuit court revoked Mr. Rone's bail and remanded him to the custody of the Baltimore County Bureau of Corrections.

On November 19, 2014, the State advised the court that the parties had reached binding plea agreements in both pending cases. In Case No. 1288, Mr. Rone agreed to enter an *Alford* plea to first-degree assault,[7] while the State agreed to recommend a sentence of 25 years with all but 15 suspended. In Case No. 2870, Mr. Rone agreed to

[7] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

plead guilty to second-degree rape, while the State agreed to recommend a concurrent sentence of 20 years with all but 15 suspended.[8]

The circuit court accepted Mr. Rone's pleas, entered verdicts, and scheduled sentencing for December 9, 2014.[9] At that sentencing hearing, the State discussed crediting Mr. Rone for time served in Case No. 1288, indicating that Mr. Rone should receive credit for time he served after being arrested in connection with the second case:

> [THE COURT]: With respect to the case ending in 1288[,] where the Defendant was found guilty of first degree assault, the sentence is twenty-five years. I'm suspending all but fifteen years. The effective date of the sentence is the date of the Defendant's arrest because as I understand it he has never been released pending his trial dates.
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> * * *
>
> [THE STATE]: Your Honor, . . . as to the case ending in 1288, he was released on bail and then he committed the second case in the meantime.
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> [THE COURT]: That's correct.
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> [THE STATE]: So, the start date should be . . . the arrest date in the second case with the addition of possibly a day or two where he served time.
>
> [THE COURT]: Okay. So, the arrest date for the second degree rape was -- just moment. Madam Clerk, do you have that?

[8] The State also agreed to, and Mr. Rone received, five years' probation in both cases. The State agreed not to prosecute the remaining counts in both cases.

[9] Mr. Rone remained in custody continuously from his arrest on May 14, 2014 through his sentencing on December 9, 2014.

[DEFENSE COUNSEL]: Madam Clerk, he did spend some time incarcerated on that first charge.

[THE COURT]: Okay. We'll give him credit for any time served. It looks like the arrest date for the case ending in 2870 - -

[THE DEFENDANT]: I was arrested on the 14th.

[THE COURT]: Madam Clerk, do you have the date? It looks like May 14th, 2014.

[DEFENSE COUNSEL]: Yes.

[THE COURT]: The Defendant is stating that he was held for a period of time before he made bail on the other case. It looks like he made bail on the other case on February the 2nd, 2014. . . . [I]t looks like the date of arrest was February the 1st.

[THE STATE]: Yes, Your Honor.

[THE COURT]: So, it is just a one day credit.

[THE STATE]: Yes, Your Honor. So, February the 1st to the 2nd for the first case.

[THE COURT]: Correct.

[THE STATE]: And then [May][10] the 14th continuously since then.

[THE COURT]: Correct.

* * *

[THE COURT]: So, the sentence . . . with respect to 1288 for first degree assault is twenty-five years, suspend all but fifteen years. With respect to the case ending in 2870 for second degree rape, the sentence is twenty years suspend all

[10] The transcript reflects that State said "February[,]" but this appears to have been in error. Mr. Rone was arrested in connection with the second case on May 14, 2014.

> but fifteen years to be served concurrent with the sentence imposed under 1288.
>
> When the Defendant is released, he will be on five years of supervised probation. Pursuant to his conviction for the second degree rape, he must register as a Tier III sex offender for life.

After the court announced Mr. Rone's sentence, the court clerk issued commitment records. The commitment record in Case No. 1288 indicated that the sentence would be served "concurrent with any other outstanding or unserved sentence and begin on 12/08/14"—that is, one day before the sentencing hearing. The commitment record also indicated, "Credit time accounting from 2/1/14-2/2/14."[11] Although the issue was discussed at sentencing, there was no mention in the commitment record of crediting Mr. Rone for the time he served in Case No. 1288 after he was rearrested.

In April 2022, Mr. Rone moved to correct his commitment record in Case No. 1288,[12] asserting that he was also entitled to credit for the time that he served after he was rearrested in Case No. 1288. The circuit court denied the motion, stating that Mr. Rone

[11] The commitment record in Case No. 2870 does not appear in the record, but docket entries in that case reflect a credit of 209 days' time served and a start date of May 14, 2014. That accounts for the continuous period that Mr. Rone was in custody from his arrest on May 14, 2014 in the second case to his sentencing on December 9, 2014. We take judicial notice of docket entries pursuant to Maryland Rule 5-201. *See Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016), *aff'd*, 452 Md. 663 (2017).

[12] This was not Mr. Rone's first motion seeking time served credit. Two months earlier, he moved to correct an illegal sentence in Case No. 1288, arguing that he should have been awarded 219 days' credit for time served. That calculation appears to have included a computational error, and the circuit court denied the request.

had received one day credit for time served in Case No. 1288 and committed a second offense while on bail in Case No. 2870. The circuit court further stated that Mr. Rone received credit for time served in Case No. 2870 beginning on May 14, 2014. Mr. Rone, *pro se*, timely appealed that denial.

## STANDARD OF REVIEW

"A trial court . . . *must* give a defendant credit for a period of pre-trial incarceration on the charge for which he or she is held[.]" *Stevenson v. State*, 180 Md. App. 440, 457 (2008) (emphasis retained). Accordingly, we review a trial court's decision to deny a defendant credit for time served *de novo*. *See Gilmer v. State*, 389 Md. 656, 662 (2005). The determination of whether to award credit "for time spent in custody for another charge or crime[,]" however, is entrusted to the discretion of the sentencing court and will not be reversed except for an abuse of discretion. *Wilson v. Simms*, 157 Md. App. 82, 95, *cert. denied*, 382 Md. 687 (2004). "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 that court deems minimally acceptable." *Wheeler v. State*, 459 Md. 555, 561 (2018) (quotation marks and citations omitted).

## DISCUSSION

As we understand Mr. Rone's argument, both before the circuit court and on appeal, he asserts that he should have received 194 days of time served credit in Case No. 1288. This includes one day of incarceration in February 2014 before he posted bail and 193 days of incarceration between the execution of the arrest warrant in Case No. 1288

(while Mr. Rone was already in custody on Case No. 2780) and sentencing.[13] As such, Mr. Rone asserts that the start date for his sentence in Case No. 1288 should be May 29, 2014.

The State responds that Mr. Rone is seeking "double-credit" for the period between service of the warrant in Case No. 1288 and sentencing. The State argues that Mr. Rone already received credit for that time in Case No. 2780, and it suggests that Mr. Rone was not in custody for Case No. 1288 during that time because he was instead in custody for Case No. 2780. Although the State acknowledges that an arrest warrant in Case No. 1288 was executed and that Mr. Rone's bail was revoked (on the State's motion), it nevertheless asserts that Mr. Rone should not receive credit in Case No. 1288 because the bail revocation "would not have occurred but for [Mr.] Rone's arrest on the second offense."

### *Criminal Procedure Article § 6-218*

Section 6-218 of the Criminal Procedure Article ("CP") governs credit against sentences for time served in pre-sentence custody and provides, in pertinent part:

> A defendant who is convicted and sentenced shall receive credit against and a reduction of the term of a definite or life sentence, or the minimum and maximum terms of an

[13] This is the period between May 30, 2014 and December 9, 2014. Because Mr. Rone proceeds *pro se* on appeal, we have construed his argument liberally. *See Simms v. State*, 409 Md. 722, 731 (2009). Specifically, although Mr. Rone asserts that the arrest warrant in Case No. 1288 was executed on June 2, 2014, the record reflects that it was executed earlier, on May 30, 2014. That date would provide Mr. Rone with three additional days of time served, and we interpret his request to include these days.

> indeterminate 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.

CP § 6-218(b)(1).

We have held that CP § 6-218(b)(1) is not ambiguous, *see Lawson v. State*, 187 Md. App. 101, 107 (2009), and neither party argues otherwise. As such, though "the cardinal rule of statutory interpretation" is "to ascertain and effectuate . . . the General Assembly's purpose and intent[,]" *Shivers v. State*, 256 Md. App. 639, 658 (2023) (quotations omitted), we can ascertain the General Assembly's purpose and intent in Section 6-218(b)(1) by looking no further than "'the normal, plain meaning of the statute.'" *State v. Bey*, 452 Md. 255, 265 (2017) (quoting *State v. Johnson*, 415 Md. 413, 421 (2010)); *see also Parker v. State*, 193 Md. App. 469, 499 (2010) ("[W]e need not look beyond the statute's provisions and our analysis ends[.]") (quotation omitted).[14]

Section 6-218 of the Criminal Procedure Article serves dual purposes: "to preclude a defendant from 'banking' time before he or she commits a new offense and to eliminate 'dead' time, meaning time spent in custody that will not be credited to a future

[14] Even so, we do not "'read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone.'" *Bey*, 452 Md. at 266 (quoting *Johnson*, 415 Md. at 421). Rather, we construe such language "in light of the [General Assembly's] general purpose and in the context of the statute as a whole." *Gwin v. Motor Vehicle Admin.*, 385 Md. 440, 462 (2005).

sentence." *Dedo v. State*, 343 Md. 2, 9 (1996). That is, the statute is designed "to ensure that a defendant receive as much credit as possible for time spent in custody as is consistent with constitutional and practical considerations." *Fleeger v. State*, 301 Md. 155, 165 (1984) (discussing Md. Code, Art. 2 § 638C(a)).[15] In so doing, the General Assembly "contemplated a practical one-day-for-one-day method of reckoning"—no more, no less. *Blankenship v. State*, 135 Md. App. 615, 618 (2000). Thus, in cases involving multiple sentences, CP § 6-218(b)(1) functions differently depending upon whether the sentences in question are consecutive or concurrent.

[15] *Fleeger* analyzed former Article 27 § 638C, but we have explained that CP § 6-218 was intended to replace former Article 27 § 638C "without substantive change[,]" and neither party argues otherwise. *See Parker*, 193 Md. App. at 506-07 (quoting Revisor's Notes to CP § 6-218, Laws of Maryland 2001, Ch. 10). Article 2 § 638C(a) contained language substantially similar to CP § 6-218:

> Any person who is convicted and sentenced shall receive credit against the term of a definite or life sentence or credit against the minimum and maximum terms of an indeterminate sentence for all time spent in the custody of any state, county or city jail, correctional institution, hospital, mental hospital or other agency as a result of the charge for which sentence is imposed or as a result of the conduct on which the charge is based, and the term of a definite or life sentence or the minimum and maximum terms of an indeterminate sentence shall be diminished thereby.... In all other cases, the sentencing court shall have the discretion to apply credit against a sentence for time spent in custody for another charge or offense[.]

*See Nash v. State*, 69 Md. App. 681, 692-93 (1987) (quoting Art. 2 § 638C(a)) (ellipses in original). As such, for purposes of this opinion, we will draw no distinction between the two statutes.

In a case of consecutive sentences, a defendant cannot apply a period of pre-sentence incarceration to multiple sentences because that would grant a windfall. *Blankenship*, 135 Md. App. at 618. Instead, "when consecutive sentences are imposed . . . periods of presentence incarceration may be credited only against the aggregate of all terms imposed[.]" *Id.* at 619-20 (quotation omitted). The same is true when a defendant receives a new consecutive sentence while already serving a different sentence: the defendant typically cannot apply any time spent serving the extant sentence toward the new consecutive sentence. *See Lawson v. State*, 187 Md. App. 101, 107-08 (2009).

But in a case of concurrent sentences, when a defendant is held pending the relevant charges, "[t]he State will not be permitted to deny a defendant his credit for time served by applying it to one concurrent sentence but not to another." *Blankenship*, 135 Md. App. at 618. This would violate the "one-day-for-one-day principle" because, in effect, a day of time served would not reduce the aggregate sentence. Instead, if applied only to one concurrent sentence, a day of time served could function as no more than a "paper credit[.]" *Id.* at 618 (quotation omitted).

We addressed this situation in *Nash v. State*, where a defendant was charged with multiple offenses related to two different victims. *See Nash v. State*, 69 Md. App. 681, 684 (1987). The charges were severed to provide for two separate trials, one for each victim. The trials occurred about four months apart, and the defendant was convicted in each and ultimately received two nine-month sentences. *Id.* at 684 & n.1, 691. Thus, the defendant spent time in custody serving his first sentence while awaiting his second trial.

*Id.* at 684, 693. We determined that the sentences ran concurrently, and because the two sentences were concurrent, we concluded that the defendant's time in custody after his first conviction counted as time served on the second sentence. *Id.* at 693. This conclusion ensured that one day of incarceration before receiving two concurrent sentences had the same effect as one day of incarceration after receiving both sentences.[16]

Applying the above principles to the facts here, we perceive error in the commitment record in Case No. 1288. The time that Mr. Rone served before sentencing can be divided into three periods, only the third of which is in dispute. *First*, Mr. Rone served one day in February 2014 after he was arrested (in what would become Case No. 1288) and before he posted bail. The parties agree that Mr. Rone is entitled to this day as time served in Case No. 1288. *Second*, Mr. Rone served 16 days after he was arrested in Case No. 2870 and before execution of the arrest warrant in Case No. 1288.[17] These days were served before Mr. Rone was rearrested in Case No. 1288, and Mr. Rone has not argued that he is entitled to these 16 days as time served in Case No. 1288. As such, we do not address them further. *See* Md. Rule 8-131(a).

[16] This was true even though the defendant in *Nash*, like the defendant in *Lawson*, was serving an active sentence while accruing time served. *Nash*, 69 Md. App. at 684 & n.1, 691-92. The difference is that, unlike in *Nash*, the sentences in *Lawson* were consecutive. *See Lawson*, 187 Md. App. at 103-04. Thus, had the defendant in *Lawson* been able to apply a day of time served to multiple sentences, one day of time served before the sentence was imposed would have reduced the defendant's aggregate incarceration by more than one day.

[17] This is the period from May 14, 2014 to May 30, 2014.

*Third*, Mr. Rone served 193 days after execution of the arrest warrant in Case No. 1288 and before he was sentenced in both cases.[18] The State disputes that these days should be credited toward Mr. Rone's sentence in Case No. 1288 because "[b]ut for" Mr. Rone's second offense in Case No. 2780, he "would have remained on bail and not been detained pending his trial" in Case No. 1288. We disagree with the State.

Although it may be true that Mr. Rone would have remained on bail in Case No. 1288 but for his second offense, that is not the relevant inquiry. The question is whether Mr. Rone was in custody "because of the charge for which the sentence was imposed[.]" CP § 6-218(b)(1)(i) (cleaned up). The arrest warrant in Case No. 1288 clarified that it was to be lodged "as a detainer for the *continued* detention of the defendant *for the offense charged*" in Case No. 1288. (Emphasis added); *cf. Parker*, 193 Md. App. at 509 ("Maryland's credit statute . . . restrict[s] credit to those cases where a warrant or commitment is lodged against a defendant while in custody on another charge[.]") (quoting *Fleeger*, 301 Md. at 164). Thus, once the warrant was executed, Mr. Rone was in custody "because of" the charges in Case No. 1288. And once a sentence was imposed, Mr. Rone was entitled to "all time" that he spent in custody. CP § 6-218(b)(1).

[18] This is the period from May 30, 2014 to December 9, 2014. This, of course, does not count the day that Mr. Rone served in custody in February 2014 in Case No. 1288.

When calculating credits for time served, the date on which a defendant is sentenced does not count. *See, e.g., Parker*, 193 Md. App. at 478 n.7

To be sure, the charges in Case No. 1288 were not the only reason that Mr. Rone was in custody during the May 30, 2014 to December 9, 2014 period: Mr. Rone was also in custody pending charges in Case No. 2780. Nevertheless, a person may be held in custody on more than one charge at a time. *See, e.g.*, *Wheeler v. State*, 160 Md. App. 566, 570 (2005) (affirming order that defendant be held without bail pending several charges); *Simmons v. Warden of Baltimore City Jail*, 16 Md. App. 449, 449-50 (1973) (affirming order that defendant be held with bail pending several charges). Indeed, a defendant may be held in custody on pending charges even while simultaneously serving an active sentence, or while in custody for some other reason. *See, e.g.*, *Nash*, 69 Md. App. at 692-93 (reasoning that a defendant "was in custody before [the second] trial and was . . . convicted on the charge for which he was being held[,]" even though the defendant was simultaneously serving an active sentence from his first trial); *Fleeger*, 301 Md. at 164 (noting that "a warrant or commitment" can be "lodged against a defendant while in custody on another charge").

In essence, the State's interpretation of CP § 6-218(b)(1) disregards those principles and would convert the 193 days that Mr. Rone served after his rearrest in Case No. 1288 into a paper credit.[19] As part of a global plea agreement, Mr. Rone entered pleas

[19] The State's interpretation on appeal also appears to contradict its position at sentencing. There, the State indicated that Mr. Rone would be entitled to time served in Case No. 1288 from the date of his arrest in Case No. 2780: "[THE STATE]: So, the start date should be . . . the arrest date in the second case with the addition of possibly a day or two where he served time."

in both Case No. 1288 and Case No. 2780. He then received two concurrent sentences on the same day, each including 15 years' executed incarceration. If the 193 days counted only toward Case No. 2780, they would not reduce Mr. Rone's aggregate amount of incarceration, an incorrect result. *See Blankenship*, 135 Md. App. at 618 ("If the prisoner had been in jail for 85 days prior to being sentenced, he would be entitled to walk out of jail 85 days sooner, even on multiple concurrent sentences.") (citing *Nash*, 69 Md. App. at 691-93). Upon being served with the arrest warrant in Case No. 1288 on May 30, 2014, Mr. Rone was held both because of the first-degree assault charge in Case No. 1288 and the second-degree rape charge in Case No. 2870.[20] After he was convicted of both charges and received concurrent sentences, CP § 8-216(b)(1) required crediting the time Mr. Rone had served on both charges against both sentences.

We hold that, under CP § 6-218(b)(1), Mr. Rone is entitled to one day of credit for time served in Case No. 1288 for his February 1 to February 2, 2014 confinement, and an additional 193 days of credit for time served beginning with his rearrest in that case on May 30th until the court sentenced him on December 9th. Thus, he is entitled to a total of

[20] Indeed, once the arrest warrant was executed in Case No. 1288, Mr. Rone would have remained confined even if the State had opted to dismiss the charges in Case No. 2870. This is because a bail hearing would have been required in Case No. 1288, and such a hearing could have determined that Mr. Rone violated a condition of his bail.

194 days of credit for time served against his first-degree assault sentence in Case No. 1288, and the proper commencement date for that sentence is May 29, 2014.[21]

We remand this case to the circuit court with instructions to amend Mr. Rone's commitment record and the docket entries to reflect a "start date" for Mr. Rone's sentence in Case No. 1288 of May 29, 2014.

**CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH INSTRUCTIONS TO CORRECT APPELLANT'S COMMITMENT RECORD AND DOCKET ENTRIES CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE COUNTY.**

[21] Mr. Rone was rearrested in Case No. 1288 on May 30, 2014. But the commencement date for his sentence is one day earlier to account for the additional day that Mr. Rone spent in custody in Case No. 1288 in February 2014.