Circuit Court for Baltimore City
Case No.: 193253004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 616

September Term, 2022

TRACEY HAWES

v.

STATE OF MARYLAND

Nazarian,
Ripken,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: October 28, 2022

Following a 1994 trial in the Circuit Court for Baltimore City, a jury found Tracey Hawes, appellant, guilty of first-degree murder, use of a handgun in the commission of a crime of violence, and wearing, carrying, or transporting a handgun. The court sentenced him to life imprisonment plus 10 years to be served consecutively. This Court affirmed the judgments on direct appeal. *Hawes v. State*, No. 675, Sept. Term, 1994. After that, appellant mounted numerous attacks on his convictions and sentences. Some of those proceedings are summarized in this Court's opinion in *Hawes v. State*, 216 Md. App. 105 (2014).[1]

On April 19, 2022, appellant, acting *pro se*, filed a motion to correct his commitment record seeking to be awarded credit against his sentence for time spent in custody awaiting trial.[2] On May 20, 2022, the circuit court signed an order summarily

[1] Since the time when we filed that opinion, appellant has continued filing papers in the circuit court attacking his convictions and sentences. The record reflects that, among other things, appellant has filed, in total, as many as eight motions to reopen his closed post-conviction proceedings, and five motions to correct an illegal sentence.

[2] Maryland Rule 4-351, titled *Commitment Record*, provides:

> (a) *Content*. When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver or transmit to the officer into whose custody the defendant has been placed a commitment record containing:
>
> (1) The name and date of birth of the defendant;
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> (2) The docket reference of the action and the name of the sentencing judge;
>
> (3) The offense and each count for which the defendant was sentenced;
>
> (4) The sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law;

(continued)

denying his motion prompting this appeal. For the reasons stated below, we shall affirm the judgment of the circuit court in part, reverse in part, and remand the case with instructions to amend appellant's commitment record consistent with this opinion.

Background

We have gleaned from the available appellate record and the briefs of the parties the following sequence of events germane to appellant's claim that he is entitled to credit against his sentence for time served in custody awaiting trial.[3]

On August 9, 1993, appellant was arrested for battery in a case (hereinafter the battery case) unrelated to the present case (the murder case). Seventeen days later, on August 26, 1993, while detained in the battery case, the State charged appellant with first-degree murder in the present case. A few weeks later, on September 20, 1993, the State entered a *nolle prosequi* in the battery case. After that, appellant remained in custody in the present case.

> (5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence;
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> (6) the details or a copy of any order or judgment of restitution; and
>
> (7) the details or a copy of any request for victim notification.
>
> (b) *Effect of Error*. An omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction. The commitment record may be corrected at any time upon motion, or, after notice to the parties and an opportunity to object, on the Court's own initiative.

[3] We have been provided no transcripts of any proceedings that took place in the circuit court.

On March 31, 1994, the court sentenced appellant in the present case (the murder case). At that time, the court awarded appellant 217 days credit for the time he spent in custody between August 26, 1993 (the date he was charged with murder in the present case while he was already in custody for the battery case) and March 31, 1994 (the date of sentencing in the present case).

The Applicable Law

The pertinent statute related to awarding credit for time spent in custody awaiting trial which was in effect at the time of appellant's sentencing proceeding, Art. 27 § 638C(a) of the Code of Maryland (1992)[4], provided in pertinent part:[5]

[4] The content of Art. 27 § 638C(a) is now found in Section 6-218(b) of the Criminal Procedure ("CP) Article of the Md. Code, which states:

> (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:
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> (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.

[5] Appellant claims, due to *ex post facto* considerations, that he is entitled to the benefit of the application of Art. 27 § 638C(a) rather than CP §6-218. For the purposes of this appeal, we will accept that contention. We hasten to point out, however, that, regardless of which version of the statute upon which we were to rely, it would make no difference to (continued)

> 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 any case where a person has been in custody due to a charge that culminated in a dismissal or acquittal, the amount of time that would have been credited against a sentence for the charge, had one been imposed, shall be credited against any sentence that is based upon a charge for which a warrant or commitment was lodged during the pendency of such custody. 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. This section does not apply to a parolee who is returned to the custody of the Division of Correction as a result of a subsequent offense and is incarcerated prior to the date on which he is sentenced for the subsequent offense.

Appellant's Contentions

As noted earlier, on April 19, 2022, appellant, acting *pro se*, filed a motion seeking to correct the commitment record, the denial of which is the subject of this appeal. In both that motion and in his *pro se* briefs filed in this Court, it is somewhat unclear what precise remedy appellant seeks. Appellant acknowledges that the circuit court ordered his sentence

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the outcome of this case because there is no analytically meaningful distinction between the two statutes. In *Allen v. State*, 402 Md. 59 (2007), the Court of Appeals explained:

> When a substantial part of an Article is revised, a change in the phraseology of a statute as part of a recodification will ordinarily not be deemed to modify the law unless the change is such that the intention of the Legislature to modify the law is unmistakable. Furthermore, recodification of statutes is presumed to be for the purpose of clarity rather than change of meaning and, thus, even a change in the phraseology of a statute by a codification will not ordinarily modify the law unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code.

Id. at 71–72 (cleaned up).

to begin on the day he was charged in the murder case (August 26, 1993), but, among other things, seems to be arguing that the court's decision to do so was not the correct method of crediting him for the time he spent in custody awaiting trial. Specifically, in his motion filed in the circuit court, appellant contended in pertinent part:

> [Appellant] postures that the sentencing court failed to give him credit for the 193[6] days he was in custody prior to sentencing, which includes the 18 days [appellant] was in custody prior to being charge[d] with first-degree murder on August 26, 1993[.] [Appellant] contends that pursuant to Maryland Rule 4-351(a)(4) the court is required to embody in the Commitment Record, "the sentence on each count, the date sentence was imposed, the date from which the sentence runs, and credit allow[ed] to the defendant by law." In the case at bar, the trial court failed to state on the record the date the sentence was imposed, erroneously stated the date the sentence runs (which was suppose[d] to start on March 31, 1994, and not August 26, 1993), and failed to give any credit to the defendant by law (which is the 220 days in pre-trial custody).
>
> These errors created a prejudicial effect on [appellant] and failed to define for prison officials the [appellant]'s proper entitlement of the 220 days pretrial credit, as legislatively mandated to diminish [appellant's] indeterminate life sentence. The effect causes [appellant] to do an additional 220 days with the sentence that [the] trial court gave."

In his briefs in this Court, appellant makes an argument analytically indistinct from the one he raised in the circuit court. As far as we can discern, in essence, appellant appears to contend that trial court erred both (1) with respect to the amount of credit it awarded him

[6] In his motion filed in the circuit court appellant variously claims that he was entitled to 193 and/or 220 days credit for time spent in custody awaiting trial. In his briefs filed in this Court appellant regularly claims he is entitled to 220 days credit. Appellant never shows his math to substantiate either number. As far as we can discern, both numbers appear to be the product of arithmetic errors because when either are subtracted from the date of sentencing they point to dates of no significance in the record. We take judicial notice that the difference between August 9, 1993 and March 31, 1994 is 234 days, the difference between August 26, 1993 and March 31, 1994 is 217 days, and the difference between August 9, 1993 and August 26, 1993 is 17 days.

for the time he spent in custody before trial, and (2) with respect to how the court awarded that credit.[7]

Discussion

I.

As noted earlier, the sentencing court awarded appellant 217 days credit for the time he spent in custody between August 26, 1993 (the date he was charged with murder in the present case) and March 31, 1994 (the date of sentencing in the present case). Appellant contends that he is also entitled to credit for the time he spent in custody between the date when he was arrested in the battery case (August 9, 1993) and the date he was charged in the murder case (August 26, 1993). The State agrees and so do we.

Art. 27 § 638C(a) provided in pertinent part that:

> In any case where a person has been in custody due to a charge that culminated in a dismissal or acquittal, the amount of time that would have been credited against a sentence for the charge, had one been imposed, shall be credited against any sentence that is based upon a charge for which a warrant or commitment was lodged during the pendency of such custody.

CP Section 6-218(b)(2) provides:

> (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.

Based on either of the foregoing statutes, because appellant was charged in the murder case while in custody for the battery case, and because the charges in the battery

[7] We have liberally construed appellant's *pro se* papers. *See Simms v. Shearin*, 221 Md. App. 460, 480 (2015) (noting that we generally liberally construe papers filed by *pro se* litigants).

case were later dismissed, appellant is entitled to credit against his sentence in the murder case for the 17 days he spent in custody for the battery case. As a result, we remand this case to the circuit court for it to issue an amended commitment record reflecting that appellant is to be awarded credit against his sentence in this case for the time he spent in custody beginning August 9, 1993.

II.

The method the circuit court utilized to award appellant credit for his time spent in custody awaiting trial involved back-dating his sentence to begin the date he was charged in the present case (August 26, 1993). His claim appears to be that, pursuant to the relevant statute, the sentencing court was required to start his life sentence on the date of the sentencing proceeding (March 31, 1994) and then "diminish" it, as required by Art. 27 § 638C(a), when awarding the credit. According to appellant, rather than "diminishing" his life sentence, the court effectively increased his life sentence by ordering his life sentence to begin on a date prior to the sentencing date.[8]

Appellant suggests that, to effectuate the intent of the legislature and therefore "diminish" his life sentence within the meaning of Art. 27 § 638C(a), the circuit court was required to begin his sentence on the date of his sentencing proceeding (March 31, 1994), calculate his life expectancy, deduct his time spent in custody from his life expectancy, and then impose a life sentence with all but that latter amount suspended. We disagree.

[8] In *Bratt v. State*, 468 Md. 481 (2020), the Court of Appeals decided that the failure to properly award pretrial credit does not render a sentence illegal within the contemplation of Maryland Rule 4-345. *Id*. at 496. Thus, to the extent that appellant is suggesting that his sentence is illegal, we reject that argument.

Appellant's suggestion that his sentence was increased by back-dating his sentence to account for the time he spent in custody awaiting trial, while clever, cannot work as all life sentences are precisely the same duration – life – no matter when they begin. In our view, the circuit court's decision to back-date appellant's sentence to the date he was arrested effectuates the intention of the legislature to ensure that he received credit for all the time he spent in custody awaiting trial. *See Dedo v. State*, 343 Md. 2, 9 (1996) (noting that, by enacting Art. 27 § 638C(a), "the General Assembly sought to ensure that a defendant receive as much credit as possible for time spent in custody as is consistent with constitutional and practical considerations" (citation and quotation marks omitted)).

Consequently, we affirm in part, and reverse in part, the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED WITH INSTRUCTIONS TO AMEND APPELLANT'S COMMITMENT RECORD CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EVENLY.