

Circuit Court for Cecil County
Case No. C-07-CR-20-000373

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 666

September Term, 2022

MARCELLIS MAYS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: May 19, 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.

** 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.

For slightly more than a year during the COVID-19 pandemic, Marcellis Mays was in court-ordered home detention awaiting trial on drug-related charges pending in the Circuit Court for Cecil County. He eventually pleaded guilty to possession with intent to distribute cocaine and was sentenced to seven years in prison, but the court declined to credit him for the time he spent in home detention. On appeal, Mr. Mays challenges the circuit court's decision to deny him sentencing credit for the time he spent on pre-trial home detention. We reverse the judgment and remand with directions to award Mr. Mays credit for home detention from June 7, 2020, to June 19, 2021.

I. BACKGROUND

On June 3, 2020, Mr. Mays was indicted for possession with intent to distribute cocaine and marijuana, importation of a controlled dangerous substance, and lesser included offenses. At his bail review hearing the next day, the State expressed concerns that Mr. Mays was a flight risk and a danger to the community based on his prior convictions, the amount of substances recovered at his arrest, and the belief that Mr. Mays lacked ties to the State of Maryland. In response, counsel for Mr. Mays argued that he had substantial ties to the State of Maryland, where several of his family members reside, that he had never missed a court appearance, and that he was not a flight risk. Defense counsel also informed the court that Mr. Mays had been approved by ALERT, a home confinement monitoring company, for their home monitoring program, and contended that the State's concerns could be mitigated by keeping Mr. Mays on home detention:

[T]hey say he's a danger to the community from his record, that can be mitigated by if you place him on home detention.

With here they can supervise him, they can put him on conditions, they can have him tested, they can do whatever Your Honor wants so he doesn't leave.

The court, satisfied that the home detention arrangement would address some of the State's concerns, ordered Mr. Mays detained pre-trial through home detention with ALERT. The order listed the conditions for Mr. Mays's home detention:

That Marcellis Mays is to be released from the Cecil County Detention Center on a \$50,000.00 secured bond and is also placed on pre-trial home detention with ALERT, a private electronic home detention program beginning 48 hours from his release from the Cecil County Detention Center; and

IT IS FURTHER ORDERED that during the period of home detention, Defendant may attend court appearances, legal appointments with his attorney, employment or to seek employment, personal medical appointments and home detention appointments. All activities are to be coordinated in advance with ALERT.

Mr. Mays was on pre-trial home detention between June 7, 2020, and June 19, 2021.

In a letter docketed on June 29, 2021, Timothy Schlauch, Executive Director of ALERT, informed the court that ALERT had been unable to locate Mr. Mays since June 19, 2021, because Mr. Mays's GPS battery died:

On June 19, 2021, Mr. Mays[']s GPS battery died. At this time ALERT is not able to document Mr. Mays[']s whereabouts since approximately 9:00 pm on June 19, 2021, in addition Mr. Mays left for New York on June 17, 2021, and failed to notify ALERT of his departure to New York.

Your Honor, at this time I provide you with this information so the Court may take whatever action they feel is appropriate in this case.

In response, the court issued a bench warrant for Mr. Mays for failure to comply with a court order or condition of probation.

On October 28, 2021, counsel for Mr. Mays, who recently had learned that a warrant had been issued for him, filed a motion to recall the bench warrant. He explained that Mr. Mays had been having issues with ALERT’s charging devices and that Mr. Mays had not absconded or violated any laws. On November 3, 2021, the court granted Mr. Mays’s motion and recalled the bench warrant.

On November 9, 2021, Mr. Mays pleaded guilty to one count of possession with intent to distribute cocaine. During sentencing, counsel for Mr. Mays asked the court to credit Mr. Mays’s time on home detention against his sentence. The State responded that the conditions of Mr. Mays’s home detention “weren’t that restrictive on him,” and that he wasn’t entitled to credit for his time spent on home detention. The circuit court sentenced Mr. Mays to seven years in prison and did not credit him for the time he spent in pre-trial home detention, reasoning that “[g]iven the level of supervision and home detention, [it didn’t] believe credit is appropriate.”

On May 19, 2022, Mr. Mays filed a Motion to Correct Commitment Or In The Alternative Motion To Correct Illegal Sentence in which he argued that the time he spent in home detention entitled him to credit against his sentence under Maryland Code (2001, 2018 Repl. Vol.), § 6-218(b)(1) of the Criminal Procedure Article (“CP”) and asked the court to award him credit for the time he served on home detention from June 7, 2020, to June 19, 2021. The State opposed Mr. Mays’s motion and maintained that Mr. Mays’s home detention had been voluntary and not sufficiently restrictive to qualify for credit for

time served. The circuit court denied Mr. Mays’s motion without explanation. Mr. Mays filed this timely notice of appeal.

II. DISCUSSION

This appeal raises one question: whether the circuit court erred in denying Mr. Mays’s motion for credit against his sentence for the year he spent in pre-trial home detention.¹ When considering whether an individual is entitled to credit against his sentence under CP § 6-218, we review the circuit court’s ruling *de novo*. *Gilmer v. State*, 389 Md. 656, 662 (2005) (“The construction of [CP § 6-218] implicate[s] a *de novo* review.” (citation omitted)).

A. Mr. Mays Was Entitled To Credit For His Time Served In Pre-Trial Detention.

Mr. Mays argues that the court erred in refusing to credit his time spent in home detention against his sentence because “while in home detention, [he] was in custody, subject to substantial restrictions, and exposed to prosecution for escape,” all of which are factors that, if satisfied, require a court to award credit for time served under CP § 6-218. The State responds that the denial was proper because Mr. Mays’s home detention was voluntary, gave him “broad freedoms to carry out his responsibilities,” and thus was not custodial in nature. Furthermore, the State argues, because the detention did not include

¹ Mr. Mays phrased the Question Presented as, “Did the lower court err in denying Appellant’s motion for credit against his sentence for time spent in pretrial home detention?”

The State phrased the Question Presented as, “Did the circuit court properly determine that Mays’s [sic] was not entitled to credit for time spent in home detention?”

substantial restrictions, Mr. Mays could not have been prosecuted for escape, and he didn't present any evidence to support a finding that he could have been prosecuted for escape.

Convicted defendants are entitled to credit for time spent in custody before trial:

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 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). This statute “ensure[s] that a defendant receive[s] as much credit as possible for time spent in custody as is consistent with constitutional and practical considerations.” *Johnson v. State*, 236 Md. App. 82, 89 (2018) (quoting *Fleeger v. State*, 301 Md. 155, 165 (1984)). To satisfy this purpose, defendants receive credit for time spent in home detention so long as the detention was “sufficiently incarcerative” to qualify as custody. *Dedo v. State*, 343 Md. 2, 12 (1996).

Several interlocking considerations drive whether home detention is custodial and entitles a defendant to sentence credit. The “key feature of custody” is the defendant’s exposure to the crime of escape. *Johnson*, 236 Md. App. at 89. “Where a defendant is punishable for the crime of escape for an unauthorized departure from the place of confinement, the custody requirement . . . is met. A defendant is not in ‘custody’ . . . if the conditions of the defendant’s confinement do not impose substantial restrictions on the defendant’s freedom of association, activity and movement *such that unauthorized absence from the place of confinement is chargeable as the criminal offense of escape . . .*” *Dedo*,

343 Md. at 11 (emphasis added). More broadly, the conditions of confinement must impose restrictions on the defendant’s freedom such that the overall set of conditions isn’t “inconsistent with the term” custody. *Johnson*, 236 Md. App. at 89. And the defendant’s home confinement must be “involuntary and pursuant to a court commitment to a public institution.” *Id.* at 90 (quoting *Balderston v. State*, 93 Md. App. 364, 368 (1992)). If a defendant can be charged with escape, “his confinement necessarily is involuntary.” *Toney v. State*, 140 Md. App. 690, 694 (2001) (quoting *Dedo*, 343 Md. at 13).

1. *Exposure to prosecution for escape.*

Mr. Mays’s confinement was custodial because he could have been prosecuted for escape under Maryland Code (2002, 2021 Repl. Vol.), § 9-405 of the Criminal Law Article (“CR”), had he left his home without permission. CR § 9-405(a)(1) provides that “a person who has been lawfully arrested may not knowingly depart from custody without the authorization of a law enforcement or judicial officer.” The statute labels “a place identified in a home detention order or agreement” as a place from which a person cannot escape and a person who is committed to home detention by the court as a person who is not allowed to escape. CR §§ 9-405(a)(3)(ii), (b)(1)(iii). Mr. Mays’s home qualifies, and Mr. Mays qualifies as such a person, so he was exposed to potential prosecution for escape. *See Spriggs v. State*, 152 Md. App. 62, 69 (2003) (“A court may order home detention, monitored by a licensed private home detention monitoring agency, as a condition of pre-trial release. A place identified in such an order is a place of confinement, and a defendant

who violates a restriction on movement or fails to return under a home detention order or agreement may be found guilty of first degree escape.”).

The State argues that the circuit court didn’t err in denying Mr. Mays credit because he failed to present to the court his agreement with ALERT or any evidence that he could be prosecuted for escape. But the home detention agreement wasn’t necessary to establish Mr. Mays’s culpability for escape. *See Spriggs*, 152 Md. App. at 66 (granting credit for time spent in home detention even though the defendant did not offer his home detention agreement into evidence). Nor must the home detention order state *explicitly* that Mr. Mays could be prosecuted for escape. *See Toney*, 140 Md. App. at 695 (holding that a defendant was in custody because he could be prosecuted for escape although the home detention order did not expressly advise him of that fact). The home detention order and the substantial restrictions the court imposed on Mr. Mays, included in the record and discussed below, were sufficient to establish that Mr. Mays could be prosecuted for escape; it’s irrelevant that the home detention order did not mention explicitly that Mr. Mays could be prosecuted for escape. And the fact that the State sought and obtained a bench warrant when the GPS battery died is tangible evidence that the circuit court viewed Mr. Mays’s home detention as custody and that he would be escaping if he left.

2. *Restrictiveness of home detention conditions.*

Moreover, the conditions of Mr. Mays’s home detention order were sufficiently restrictive to qualify his home detention as custodial. We have on several occasions considered and found home detention restrictions on defendants sufficiently restrictive and

awarded credit for time served in home detention. *See Johnson*, 236 Md. App. at 85 (subject to 24-hour monitoring device but allowed to attend work, counseling, medical and legal appointments, weekly religious service, school, and to seek employment); *Toney*, 140 Md. App. at 693 (subject to electronic monitoring but permitted to leave his residence with permission from his case manager); *Spriggs*, 152 Md. App. at 64 (subject to electronic monitoring and confined to home unless given specific permission to leave “from an official obligated to report to the Court anything that he does”); *Kang v. State*, 163 Md. App. 22, 46 (2005) (subject to ankle bracelet monitoring and under a “24/7 curfew except for work, court and meeting with his attorney” (cleaned up)).

Mr. Mays’s conditions were consistent with these precedents. He was monitored by GPS and was allowed by the court order to attend court appearances, legal appointments with his attorney, personal medical appointments, and home detention appointments, and to go to work or seek employment. His activities had to be coordinated in advance with ALERT. Like the home detention conditions in *Johnson*, Mr. Mays’ confinement was restrictive enough to be considered custody.

The State argues that *Johnson* doesn’t apply here because in that case, the defendant was required to obtain permission to leave whereas Mr. Mays “merely had to *coordinate* his activities with ALERT and could still attend to essential aspects of his affairs.” We agree that this distinction exists, but it doesn’t change the nature of his confinement. In both cases, the defendants needed and obtained permission to carry out certain activities, and whether the circuit court pre-approved Mr. Mays for certain defined activities or a

monitoring company had to approve them individually is immaterial. The requirement to coordinate with ALERT for the few activities the court allowed rather than being required to ask permission from ALERT did not grant Mr. Mays substantially more freedom than the defendant in *Johnson* had.

To be sure, Mr. Mays’s freedom within his home may have been less restricted than the freedom of the defendant in *Johnson*, who was required to permit monitoring staff to enter his home at any time and was subject to drug testing. 236 Md. App. at 85. But Mr. Mays’s confinement remained sufficiently restrictive given the limited scope of his permission to leave. In light of his exposure to liability for escape and the involuntary nature of the confinement, discussed below, this difference in the restrictiveness of his confinement doesn’t justify denying Mr. Mays credit for the time he spent in pre-trial home detention.

3. *Involuntariness of home confinement.*

Because Mr. Mays could be prosecuted for the crime of escape pursuant to CR § 9-405, his confinement was “necessarily involuntary.” *See Toney*, 140 Md. App. at 694 (quoting *Dedo*, 343 Md. at 13). Even so, the State argues that because Mr. Mays requested home detention at his bail review hearing, his time in home detention was voluntary. But Mr. Mays’s request for home confinement doesn’t change the nature of the confinement. In *Dedo*, when the defendant requested “any type of arrangement to assure that he comes back for sentencing,” the court was “not persuaded that [his] request signifies that the time he spent in home detention was voluntary.” 343 Md. at 13 (cleaned up). Similarly, Mr.

Mays’s request to be placed on home detention, although more explicit than Mr. Dedo’s, didn’t alter the involuntariness of his confinement. When counsel for Mr. Mays suggested home confinement and added that “[the monitoring company] can do whatever Your Honor wants so he doesn’t leave,” Mr. Mays merely suggested conditions that would convince the court of his ensured reappearance. There was no doubt about whether his liberty would be restricted—the only question was how and on what terms.

The State likens this case to *Maus v. State*, 311 Md. at 104–05, where the defendant requested home confinement as a condition of probation and was denied credit. We disagree. Although the Court in *Maus* relied on the fact that the defendant had requested confinement, Mr. Maus’s confinement was a condition of probation. The Court recognized that distinction and went on to explain that “a court cannot impose imprisonment as a condition of probation And while acceptance of stringent conditions of probation (as opposed to incarceration) may pose a hard choice, it is a choice nevertheless. The probationer must consent to the conditions” *Id.* at 104 (citations omitted). When the alternative is not imprisonment, as in *Maus*, it’s rational to define the defendant’s confinement as voluntary. *See Dedo*, 343 Md. at 13 (citing *Lock v. State*, 609 P.2d 539, 545 (1980), for the proposition that a “defendant faced with [a] choice between probation in residential treatment program and *imprisonment* can not be said to have voluntarily chosen condition of probation” (emphasis added)). Had the court refused to allow Mr. Mays to be held in home detention, he would have awaited trial in jail or a correctional facility. He was going to be confined one way or another, and home confinement for which

he could have been prosecuted for escape was not voluntary, despite his request.

Mr. Mays was in custody because he could have been prosecuted for escape, the conditions of his confinement were sufficiently restrictive, and his pre-trial home detention was not voluntary. We reverse the sentence and remand to the circuit court for resentencing, with the direction that Mr. Mays be credited for his time spent on home detention from June 7, 2020, to June 19, 2021.

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY REVERSED AND
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. APPELLEE TO PAY
COSTS.**