

FILED
May 05, 2014
Court of Appeals
Division III
State of Washington

No. 31803-6-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

VERNON R. JOHNSON, JR.,

Defendant/Appellant.

Appellant's Brief

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A. ASSIGNMENT OF ERROR

The trial court erred in failing to give Mr. Johnson credit for time served from the date he was arrested and held on the underlying charges.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Is Mr. Johnson entitled to receive credit for time served even though he was being held on other charges simultaneously?

C. STATEMENT OF THE CASE

Mr. Johnson pled guilty to vehicular assault and possession of a stolen motor vehicle. 5/23/13 RP 4. At sentencing his attorney requested credit for approximately 276 days he served from the date he was arrested on the underlying charges. 6/24/13 RP 19-21. The arrest date was September 21, 2012. 6/24/13 RP 16. The State argued and the Court agreed that Mr. Johnson should not get any credit for time served because after his arrest he was served with two outstanding felony warrants from Oregon and Missouri. 6/24/13 RP 16, 18, 24.

This appeal followed. CP 51.

D. ARGUMENT

Mr. Johnson is entitled to receive credit for time served even though he was being held on other charges simultaneously.

Offenders are entitled to receive credit for all pretrial detention served. *State v. Speaks*, 119 Wn.2d 204, 206, 829 P.2d 1096 (1992). “Failure to allow such credit violates due process, denies equal protection, and offends the prohibition against multiple punishments.” *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 832, 129 P.3d 827 (2006). In *Costello*, the court stated former RCW 9.94A.120(17) (now renumbered as RCW 9.94A.505(6)) “ ‘simply represents the codification of the constitutional requirement that an offender is entitled to credit for time served prior to sentencing.’ ” *Costello*, 131 Wn. App. at 833 (quoting *State v. Williams*, 59 Wn. App. 379, 382, 796 P.2d 1301 (1990)).

Generally, credit is not allowed for time served on other charges. *In re Pers. Restraint of Phelan*, 97 Wn.2d 590, 597, 647 P.2d 1026 (1982). If, however, the offender is confined on two charges simultaneously, any time not credited towards one charge must be credited towards the other. *In re Schaupp*, 66 Wn. App. 45, 49–50, 831 P.2d 156, 158–59 (1992).

Here, Mr. Johnson was served with two outstanding felony warrants from Oregon and Missouri after he was arrested on these charges. 6/24/13 RP 16. As in *Schaupp* he was confined on multiple charges. Since he was being held in Washington, the Washington charges herein took priority over the warrants from Oregon and Missouri. In other words he did not have the choice of waving extradition and being transported to take care of the outstanding warrants in those other jurisdictions as long as the Washington charges were pending. Given these facts it is only fair that he receive credit for the time he served since his arrest on the Washington charges.

Furthermore, the trial court herein has no control over whether the Oregon or Missouri courts eventually give Mr. Johnson credit for the time he was being held on their warrants. It is thus conceivable that unless he receives credit for time served on these Washington charges, he might not receive credit for any of the charges on which he was being held. Therefore, in accordance with *Schaupp*, Mr. Johnson should be given credit for the time served since his arrest.

E. CONCLUSION

For the reasons stated the matter should be remanded with instructions to amend the Judgment and Sentence to include credit for time served since the arrest date.

Respectfully submitted May 5, 2014,

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