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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 

NO. 43041-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

CHRIS ALLEN FORTH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Katherine M. Stolz

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in failing to give appellant credit for all the time he served in confinement for the offense for which he was sentenced.

Issue Pertaining to Assignment of Error

Is a remand for resentencing required where the trial court erred in failing to give appellant credit for all the time he served in confinement for the offense for which he was sentenced as statutorily and constitutionally required?

B. STATEMENT OF THE CASE¹

On July 14, 1993, the State charged appellant, Chris Allen Forth, with one count of child molestation in the first degree. CP 1 (Pierce County Superior Court Cause No. 93-1-02523-0). The State amended the information on August 17, 1994, charging Forth with one count of child molestation in the first degree and one count of bailing jumping. CP 47-49.

Following a trial before the Honorable Waldo F. Stone, a jury found Forth guilty as charged on November 8, 1994. CP 50-51. On March 29, 1995, the court sentenced Forth under the Special Sex Offender Sentencing Alternative (SSOSA), suspending a sentence of 75 months in confinement with credit for 142 days of time served. CP 2-12. Forth filed

¹ There is one volume of verbatim report of proceedings: RP - 02/03/12

a notice of appeal on April 26, 1995. CP 52. This Court granted a motion to dismiss the appeal and filed a mandate on November 19, 1996.² CP 53.

On October 30, 1998, the State filed a motion for the issuance of a bench warrant alleging that Forth “failed to have any contact with his CCO since Oct. 1995 and is not in compliance with conditions of sentence.” CP 54. The court entered an order directing the issuance of a bench warrant and a warrant was issued on December 1, 1998. CP 55-56. Forth was arrested on the warrant on December 16, 2011. CP 57.

At a SSOSA revocation hearing on February 3, 2012, the court found that Forth failed to complete treatment and failed to report to his CCO as directed. The court entered an order revoking Forth’s suspended sentence and committed Forth to 75 months in confinement and 36 months of community custody with credit for 191 days of time served. CP 35-39.

Forth filed a timely notice of appeal. CP 40-43.

C. THE TRIAL COURT ERRED IN FAILING TO GIVE FORTH CREDIT FOR ALL THE TIME HE SERVED IN CONFINEMENT FOR THE OFFENSE FOR WHICH HE WAS SENTENCED.

A remand for resentencing is required because the trial court erred in failing to give Forth credit for all the time he served in confinement for

² It should be noted that Forth has filed a motion to recall the mandate. Court of Appeals Case No. 19429-5-II.

the offense for which he was sentenced as statutorily and constitutionally required.

Both federal and state case law requires presentence detention time to be credited against the sentence ultimately imposed. State v. Speaks, 119 Wn.2d 204, 205, 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 Personal Restraint of Costello, 131 Wn. App. 828, 832, 129 P.3d 827 (2006)(citing State v. Cook, 37 Wn. App. 269, 271, 679 P.2d 413 (1984)).

Former RCW 9.94A.120(14) provides, “The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.” This statute “implements a defendant’s constitutional right to receive credit for any time that he has been held in custody by reason of that charge.” State v. Watson, 63 Wn. App. 854, 859, 822 P.2d 327 (1992)(citing State v. Williams, 59 Wn. App. 379, 796 P.2d 1301 (1990)). Credit is not allowed for time served on other charges. In re Personal Restraint of Phelan, 97 Wn.2d 590, 597, 647 P.2d 1026 (1982). Appellate courts review the trial court’s decision on credit for time served de novo. State v. Swiger, 159 Wn.2d 224, 227, 149 P.3d 372 (2006).

The record reflects that Forth served 149 days in confinement before the trial court imposed a SSOSA sentence on March 29, 1995. CP 2-12. On October 30, 1998, the State filed a motion for the issuance of a bench warrant alleging that Forth had not contacted his CCO since October 1995. CP 54. A bench warrant was issued on December 1, 1998 and Forth was arrested on the warrant on December 16, 2011. CP 55 - 57.

At the SSOSA revocation hearing on February 3, 2011, Forth told the court that he has served six months and three days in confinement on the warrant. RP 11. The State responded, "He doesn't get credit for the out-of-state stuff. He only gets credit for the time that you were sitting in our jail." RP 11. The court agreed with the State:

THE COURT: You were sitting in the Idaho jail because you went to another jurisdiction, and we had to extradite you back here. You don't get credit for the time you spent in the Idaho jail. You only get credit for the time you spent in our state and our jail.

RP 12.

Defense counsel informed the court that Forth previously served 142 days in the Pierce County jail and 49 days in the jail after being arrested on the warrant for a total of 191 days, but argued that Forth should also receive credit for the time he served in the Idaho jail pursuant to the warrant. RP 12. The court disagreed, reaffirming its ruling that Forth only gets credit for time served in the Pierce County jail:

THE COURT: Well, he could have always come back to the state of Washington voluntarily and taken care of these matters because you only get credit for sitting in our jail.

RP 12-13.

RCW 9.94A.120(14) requires the sentencing court to “give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.” Contrary to the trial court’s ruling, the statute clearly does not preclude credit for time served out of state nor does it limit credit for time served to confinement in state. The trial court erred in refusing to give Forth credit for the time he was confined in the Idaho jail awaiting extradition pursuant to the warrant because the record substantiates that the “confinement was solely in regard to the offense for which the offender is being sentenced.” The State did not assert, and the court did not find, that Forth was confined in Idaho on other charges and there is no evidence of any other charges. Consequently, the trial court’s refusal to give Forth credit for his confinement time in Idaho violated Forth’s statutory and constitutional rights. In re Personal Restraint of Costello, 131 Wn. App. at 832 (failure to give credit for time served violates due process, denies equal protection, and offends the prohibition against multiple punishments).

A remand is required for the trial court to enter a proper judgment and sentence reflecting the total amount of time Forth served in confinement. Swiger, 159 Wn.2d at 231.

D. CONCLUSION

For the reasons stated, this Court should remand to the trial court for resentencing.

DATED this 19th day of July, 2012.

Respectfully submitted,



VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant, Chris Allen Forth

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402 and Chris Allen Forth, DOC # 728948, Coyote Ridge Corrections Center, P.O. Box 769, Connell, Washington 99326-0769.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 19th day of July, 2012 in Kent, Washington.



VALERIE MARUSHIGE

Attorney at Law

WSBA No. 25851

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