

STATEMENT OF THE CASE

Appellant-Defendant Michael Calhoun appeals the trial court's partial denial of his motion to correct erroneous sentence and denial of his motion to correct error. We affirm.

ISSUE

Calhoun raises one issue, which we restate as whether the trial court abused its discretion by refusing to reduce the period of time during which Calhoun is subject to electronic alcohol monitoring as a condition of probation.

FACTS AND PROCEDURAL HISTORY

In 2006, Calhoun was arrested and charged in Cause Number 25D01-0603-FD-86 ("FD-86") with operating a vehicle with a blood alcohol content ("BAC") of at least 0.15, a Class D felony based on a prior offense, Indiana Code sections 9-30-5-1 (2001) and 9-30-5-3 (2004), and operating a vehicle while never having received a valid license, a Class C misdemeanor, Indiana Code section 9-24-18-1 (1991).

In 2007, Calhoun was arrested and charged in Cause Number 25D01-0706-FD-174 ("FD-174") with operating a vehicle while intoxicated, a Class D felony based on a prior offense, Indiana Code sections 9-30-5-2 (2001) and 9-30-5-3 (2004); reckless driving, a Class B misdemeanor, Indiana Code section 9-21-8-52 (2005); operating a vehicle while never having received a valid license, a Class C misdemeanor, Indiana Code section 9-24-18-1 (1991); and consuming an alcoholic beverage while operating a vehicle, a Class B infraction, Indiana Code section 9-30-15-4 (1994).

At the time of these arrests, Calhoun was on probation in Cause Number 25D01-0405-FD-78 (“FD-78”) for a conviction of operating a vehicle with a BAC of at least 0.08 or higher, a Class D felony based on a prior offense. Ind. Code §§ 9-30-5-1 (2001) and 9-30-5-3 (2004). The State asked the trial court to revoke Calhoun’s probation in FD-78 based upon the pending charges in FD-86 and FD-174.

Calhoun and the State negotiated a plea agreement for all three cases. Calhoun pleaded guilty to one count of operating a vehicle with a BAC of at least 0.15 with a prior conviction in FD-86 and one count of operating a vehicle while intoxicated with a prior conviction in FD-174. In FD-78, Calhoun admitted that he violated the terms of his probation.

In FD-86, the court sentenced Calhoun to serve three years, with all but nine months of the sentence suspended to probation. The court further ordered Calhoun to serve his probation on home detention with alcohol monitoring via a Secure Continuous Remote Alcohol Monitor, or “SCRAM.” In FD-174, the court sentenced Calhoun to serve three years, with two years suspended to probation. The court further ordered Calhoun to serve his probation on home detention subject to alcohol monitoring by SCRAM. In FD-78, the court sentenced Calhoun to 644 days. The court further ordered Calhoun to serve his sentences in FD-86, FD-174, and FD-78 consecutively. Calhoun did not appeal his sentences.

Calhoun served the executed portion of his sentences and was released to home detention and alcohol monitoring by SCRAM. Next, Calhoun filed a motion to correct erroneous sentence. The trial court held a hearing. After the hearing, the trial court

reduced Calhoun's term of home detention to six months in each cause but did not reduce Calhoun's term of alcohol monitoring by SCRAM.

Calhoun filed a motion to correct error, which the trial court denied. This appeal followed.

DISCUSSION AND DECISION

An inmate who believes he or she has been erroneously sentenced may file a motion to correct the sentence pursuant to the governing statute, as follows:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

Ind. Code § 35-38-1-15 (1983).

When we review the trial court's decision on such a motion, we defer to the trial court's factual findings and review its decision only for abuse of discretion. *Newsom v. State*, 851 N.E.2d 1287, 1289 (Ind. Ct. App. 2006). Similarly, the standard of appellate review of trial court rulings on motions to correct error is abuse of discretion. *Paragon Family Rest. v. Bartolini*, 799 N.E.2d 1048, 1055 (Ind. 2003) (citing *Sanchez v. State*, 675 N.E.2d 306, 310 (Ind. 1996)). The parties agree that this appeal presents a question of statutory interpretation. A question of statutory interpretation is a matter of law to be determined de novo. *Recker v. State*, 904 N.E.2d 724, 726 (Ind. Ct. App. 2009), *trans. denied*.

When the parties dispute the application of a statute, we independently determine the statute's meaning and apply it to the facts before us, using the express language of the statute and following the rules of statutory construction. *Id.* When the language of a statute is clear and unambiguous, we need not apply any rules of construction other than to require that words and phrases be taken in their plain, ordinary and usual sense. *Houston v. State*, 898 N.E.2d 358, 361 (Ind. Ct. App. 2008), *trans. denied*.

This case requires us to consider the statutes governing home detention. As a condition of probation, a court may order a defendant confined to his or her home for a period of home detention. Ind. Code § 35-38-2.5-5 (2001). The period of time served on home detention may not exceed the minimum term of imprisonment prescribed for a felony or the maximum term of imprisonment prescribed for a misdemeanor for the crime committed by the defendant. *Id.*

A court may not order home detention for a defendant unless a defendant agrees to abide by all of the requirements set forth in the court's order. Ind. Code § 35-38-2.5-7 (2005). Among other requirements, a defendant must maintain a working telephone in the home and must, if ordered by the court, maintain "a monitoring device in the offender's home or on the offender's person, or both." Ind. Code § 35-38-2.5-6 (2007).

The key issue here is whether the SCRAM is a "monitoring device" for the purposes of Indiana Code section 35-38-2.5-6. Calhoun asserts that the SCRAM is a monitoring device as that term is used in Indiana Code section 35-38-2.5-6. Therefore, Calhoun contends, use of the device is governed by the home detention statutes, and the time limit set forth in Indiana Code section 35-38-2.5-5 applies to his term of alcohol

monitoring. The State responds that SCRAM is not a monitoring device, and therefore Calhoun's term of alcohol monitoring by SCRAM is not limited by Indiana Code section 35-38-2.5-5.

For the purposes of the statutes that govern home detention, a monitoring device is defined as follows:

(a) As used in this chapter, "monitoring device" means an electronic device that:

(1) can record or transmit information twenty-four (24) hours each day regarding an offender's:

- (A) presence or absence from the offender's home; or
- (B) precise location;

(2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home;

(3) with the written consent of the offender and with the written consent of other persons residing in the home at the time an order for home detention is entered, may record or transmit:

- (A) a visual image;
- (B) an electronic communication or any sound; or
- (C) information regarding the offender's activities while inside the offender's home; and

(4) can notify a probation department, a community corrections program, or a contract agency if the offender violates the terms of a home detention order.

(b) The term includes any device that can reliably determine the location of an offender and track the locations where the offender has been, including a device that uses a global positioning system satellite service.

Ind. Code § 35-38-2.5-3 (2005).

At this point, it is necessary to consider the SCRAM system's design and purposes. The SCRAM is an ankle bracelet, which an offender must wear at all times, and it comes with a portable modem. The bracelet contains a sensor pack that can detect the presence of alcohol in vapor as the vapor "migrates through [the offender's] skin." Appellant's App. p. 269. The bracelet tests the offender for alcohol pursuant to a pre-

determined schedule. Next, the bracelet stores the test results and transmits the data wirelessly through the modem to a monitoring agency. The SCRAM allows an offender to continue “normal daily routines” outside the home because the offender can take the modem with him or her and plug the modem into any ordinary phone line. *Id.* An offender needs to be near the modem “at least once per day” at a time selected by the offender so that the bracelet can transmit testing data to the monitoring agency. *Id.* If the offender plans to travel and move the modem to another location, the offender must contact the monitoring agency in advance.

Pursuant to the plain language of Indiana Code section 35-38-2.5-3, the SCRAM is not a “monitoring device” for the purposes of home detention statutes. The SCRAM bracelet does not track an offender’s presence or absence from the home, or the offender’s precise location, twenty-four hours a day. To the contrary, it appears that the bracelet does not transmit the offender’s location to the monitoring agency, merely alcohol testing data. Furthermore, the purpose of the SCRAM is to allow an offender to maintain normal routines outside the home, rather than subject the offender’s movements to constant scrutiny. An offender need only be near the modem at least once per day to allow the stored testing data to be transmitted, and the modem does not necessarily need to remain in the offender’s home.

Calhoun contends that the Indiana Supreme Court’s decision in *Chism v. State*, 824 N.E.2d 334, 335 (Ind. 2005), supports his claim. We disagree. In that case, the appellant, Chism, contended that the statutes that govern home detention did not authorize the use of global positioning system (“GPS”) equipment to monitor him on

home detention. *Id.* Our Supreme Court concluded that the GPS equipment was a monitoring device for the purposes of Indiana Code section 35-38-2.5-3 because the equipment informed the authorities whether the offender was home. *Id.*

In this case, the SCRAM is not analogous to the GPS equipment at issue in *Chism* because the SCRAM bracelet and modem do not inform monitoring authorities whether an offender is at home. The purpose of the SCRAM is to transmit alcohol testing results. Consequently, the facts of *Chism* are distinguishable, and that case does not compel reversal of the trial court's judgment.

We conclude that the trial court properly determined that the SCRAM was not a monitoring device, and therefore Calhoun's term of alcohol monitoring by SCRAM was not subject to the limits set forth in Indiana Code section 35-38-2.5-5. The trial court did not abuse its discretion by partially denying Calhoun's motion to correct erroneous sentence or by denying Calhoun's motion to correct error.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

ROBB, J., and BRADFORD, J., concur.