IN THE COURT OF APPEALS OF IOWA

No. 6-786 / 06-0263
Filed November 16, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARIO MATTHEW SALAZAR,
Defendant-Appellant.

Appeal from the Iowa District Court for Tama County, William L. Thomas, Judge.

Mario Salazar appeals from the sentence imposed by the district court upon his convictions for burglary in the second degree and willful injury causing serious injury. **AFFIRMED.**

Chad R. Frese and Melissa A. Nine, of Kaplan & Frese, LLP, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, Brent D. Heeren, County Attorney, and , Richard Vander Mey, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Mario Salazar appeals from the sentence imposed by the district court upon his convictions for burglary in the second degree and willful injury causing serious injury. He contends the court erred in not giving him credit for the time he spent on pretrial release under the supervision of the department of correctional services. We affirm.

According to the minutes of evidence and guilty plea transcript, on February 29, 2004, Salazar entered the home of Vicente Ruelas without permission and while Ruelas was home. Salazar was armed with a pistol when he entered the residence and intentionally shot Ruelas with no legal justification. Salazar was originally charged with attempted murder and burglary in the first degree. At Salazar's initial appearance on May 20, 2004, the district court released him under the supervision of the department of correctional services. The specific conditions of his release included "electronic home monitoring and detention."

On January 19, 2006, the State filed an amended trial information charging Salazar with the additional crimes of willful injury causing serious injury and assault while participating in a felony. Pursuant to a plea agreement Salazar pled guilty to willful injury causing serious injury and burglary in the second degree, a lesser included offense of first-degree burglary. As part of the agreement the State agreed to dismiss the other two counts.

The district court accepted the guilty plea. Salazar waived any delay in sentencing and his right to file a motion in arrest of judgment. The court followed

the agreement of the parties and ordered Salazar to serve two consecutive ten-year terms of imprisonment. Salazar requested he be allowed credit against his sentence for the time he spent subject to the electronic home monitoring and detention from May 20, 2004, until January 19, 2006. He claimed he had not left his house during that period other than to meet with his attorney and his physician. The court allowed Salazar credit for time he had served in jail but did not give him any credit for the time he spent on pretrial release under the supervision of the department of correctional services.

Our review of sentencing decisions is for correction of errors at law. Iowa R. App. P. 6.4; *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). The general rule requiring error preservation is not ordinarily applicable to void, illegal, or procedurally defective sentences. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994). A defendant is not required to raise a claim of an improper or illegal sentence in the trial court in order to preserve a right of appeal on that ground. *Id.* The issue raised by Salazar involves interpretation and application of two statutory provisions. Accordingly, our review is for correction of errors at law. *State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000); *State v. Carpenter*, 616 N.W.2d 540, 542 (Iowa 2000); *State v. Hawk*, 616 N.W.2d 527, 528 (Iowa 2000).

Salazar appeals his sentence, contending the district court erred in failing to give him credit for the time he spent on pretrial release under the supervision of the department of correctional services[1] while subject to electronic monitoring

[1] Although Salazar at several points in his brief asserts that his pretrial release was under the supervision of the Iowa "Department of Corrections," we believe his release

and in-home detention. He relies on sections 903A.2(3) (2003) and 903A.5 in support of the contention he is entitled to credit.

Section 903A.5 provides in relevant part:

> An inmate shall not be discharged from the custody of the director of the Iowa department of corrections until the inmate has served the full term for which the inmate was sentenced, less earned time and other credits earned and not forfeited. . . . If an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the term of the sentence.

This section does provide for credit for time spent "confined to a county jail or other correctional or mental facility." However, it does not provide credit for time spent subject to electronic monitoring and home detention while on pretrial release. We do not believe the meaning of "county jail or other correctional or mental facility" is ambiguous. Our supreme court has determined that the words of section 903A.5 are unambiguous and "clearly and only allow credit for time served in state correctional institutions or detention facilities." *State v. Rodenburg,* 562 N.W.2d 186, 189 (Iowa 1997). Salazar's home was not a state correctional institution or a detention facility. Thus, the time Salazar spent on

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was instead clearly under the supervision of the judicial district's "Department of Correctional Services." *See* Iowa Code § 904.102 (establishing the Iowa Department of Corrections); *id.* § 905.2 (establishing judicial district departments of correctional services); *id.* § 904.111 (allowing chapter 28E agreements between the department of corrections and district departments of correctional services); *id*. § 811.2(1)(a) providing for pretrial release to an organization agreeing to supervise the defendant); *see also State v. Reitenbaugh*, 392 N.W.2d 486, 488 (Iowa 1986) (noting that the defendant's pretrial release was conditioned upon reporting to a pre-trial supervisor in the department of correctional services); *Wenman v. State*, 327 N.W.2d 216, 216 (Iowa 1982) (noting that following arrest the defendant was released to the supervision of the department of correctional services); *State v. Gilroy*, 313 N.W.2d 513, 515 (Iowa 1981) (noting that defendant's pretrial release was subject to supervision of the department of correctional services).

pretrial release "confined" to his home and subject to electronic monitoring does not fit within the meaning of "county jail or other correctional or mental facility" under section 903A.5.

Furthermore, Salazar was not "confined" in his home "because of failure to furnish bail or because of being charged with a nonbailable offense." Thus, it would not serve the underlying purpose of this portion of the statute to give Salazar credit on his sentence for the time he spent subject to in-home detention. *See, e.g., People v. Whiteside*, 468 N.W.2d 504, 508 (Mich. 1991) (holding, in a case involving a similar statute, that because the purpose of the statute "is to equalize the position of one who cannot post bond with that of a person who is financially able to do so, a showing that presentence confinement was the result of inability to post pond is an essential prerequisite to the award of sentence credit under the statute.").

Section 903A.2(3) provides:

> Time served in a jail or another facility prior to actual placement in an institution under the control of the department of corrections and credited against the sentence by the court shall accrue for the purpose of reduction of sentence under this section. Time which elapses during an escape shall not accrue for purposes of reduction of sentence under this section.

Clearly Salazar's home is not a "jail." Furthermore, we look at the statute as a whole, and not isolated words or phrases. *State v. Young*, 686 N.W.2d 182, 184-85 (Iowa 2004). When we do so it seems apparent that the legislature intended the term "another facility" to include places similar to a jail, places formally designated as places of detention or confinement, and not the private residences of individuals. We conclude the time Salazar was on pretrial release subject to

electronic monitoring and in-home detention is simply not the functional equivalent of "[t]ime served in a jail or another facility" as set forth is section 903A.2(3).

For the reasons set forth above, we conclude neither section 903A.5 nor section 903A.2(3) provides for credit for time spent on pretrial release under the supervision of the department of correctional services and subject to electronic monitoring and home detention. The district court was correct in not allowing credit against Salazar's sentence for that time.

AFFIRMED.