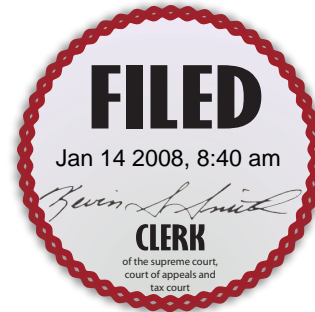


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

GREGORY BOWES
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MARJORIE LAWYER-SMITH
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH DENNIS,)

Appellant-Defendant,)

vs.)

No. 49A02-0706-CR-537

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
The Honorable Mark D. Stoner, Judge
Cause Nos. 49G06-0612-FC-237177, 49G06-0704-FD-069385

January 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Joseph Dennis appeals following his guilty plea and convictions for Domestic Battery¹ in Cause Number 49G06-0612-FC-237177 (“237177”) and Escape² in Cause Number 49G06-0704-FD-069385 (“069385”), both as Class D felonies. Upon appeal Dennis challenges the trial court’s denial of credit time for his pre-trial home detention. We affirm.

FACTS

Cause Number 237177

On December 8, 2006, Dennis and his girlfriend, Tyree Lee, were involved in an argument when Dennis hit Lee in the mouth, causing her bodily injury including splitting her lip and knocking her front tooth loose. Dennis committed this act in the presence of Lee’s child, who was under the age of sixteen.

On December 13, 2006, the State charged Dennis with domestic battery and battery, both as Class A misdemeanors. On January 19, 2007, the State amended its information by adding four additional counts, including Class D felony domestic battery due to the alleged presence of the child, criminal recklessness, and two counts of carrying a handgun without a license.

On February 23, 2007, the trial court placed Dennis on Community Corrections pre-trial release, ordering that he remain on home detention with a GPS monitoring system. On February 26, Dennis was released to GPS monitoring as ordered. On March 5, Community Corrections reported Dennis had completed three days but that on

¹ Ind. Code § 35-42-2-1.3 (2006).

² Ind. Code § 35-44-3-5 (2006).

February 28, 2007, he had failed to charge the GPS equipment battery. That day, the court issued a warrant for his arrest.

Cause Number 069385

On April 22, 2007, Indianapolis Metropolitan Police Officers responded to a report of a disturbance at 9311 East 44th Street. Upon arriving, they found Dennis, who was without his electronic monitoring device and knowingly and intentionally in violation of his home-detention order by being there. Dennis initially misinformed officers as to his name but his true identity was ultimately verified. On April 24, 2007, the State charged Dennis with escape for violating his home detention order to comply with GPS monitoring.

On June 7, 2007, Dennis entered into a plea agreement whereby he agreed to plead guilty to domestic battery in Cause Number 237177 and escape in Cause Number 069385 as Class D felonies, and the State agreed to dismiss all remaining charges. With respect to Cause Number 237177, the plea agreement provided for a 730-day sentence with 365 days executed and 365 days suspended to probation. The plea agreement further provided for Dennis to receive credit time of 134 days and 134 days of good time credit. Dennis did not receive credit for the fifty-four days from February 27th through April 21st during which time he was ordered to be on GPS monitoring. With respect to Cause Number 069385, the plea agreement provided for a 730-day sentence with 365 days executed and 365 days suspended to probation. The sentence in Cause Number 069385 was to run consecutive to the sentence in Cause Number 237177.

During the June 14, 2007 sentencing hearing, the trial court declined to award Dennis credit time for the fifty-four days from February 27th through April 21st when he was ordered to be on GPS monitoring. Dennis now appeals.

DISCUSSION AND DECISION

Upon appeal, Dennis challenges the trial court's denial of credit time for the fifty-four days he was ordered to be on home detention. Generally, because pre-sentence jail time credit is a matter of statutory right, trial courts "'do not have discretion in awarding or denying such credit.'" *James v. State*, 872 N.E.2d 669, 671 (Ind. Ct. App. 2007) (quoting *Molden v. State*, 750 N.E.2d 448, 449 (Ind. Ct. App. 2001)). However, "'a trial court is within its discretion to deny a defendant credit toward sentence for pre-trial time served on home detention.'" *James*, 872 N.E.2d at 672 (quoting *Purcell v. State*, 721 N.E.2d 220, 224 n.6 (Ind. 1999)); *see also Molden*, 750 N.E.2d at 450-51. Such sentencing decisions, which are not mandated by statute and are within the discretion of the trial court, will be reversed only upon a showing of abuse of discretion. *James*, 872 N.E.2d at 671; *Molden*, 750 N.E.2d at 449. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *James*, 872 N.E.2d at 671. The determination of a defendant's pre-trial credit depends on (1) pre-trial confinement, and (2) the pre-trial confinement being a result of the criminal charge for which sentence is being imposed. *Id.* at 672.

As a preliminary matter and as the State points out, we note that Dennis made no showing and provided no documentation demonstrating that he was actually subject to

the full fifty-four-day pre-trial confinement which he now requests credit for. Indeed the facts and circumstances suggest that he was not so confined: not only did Community Corrections file a March 5, 2007 notice of violation indicating that beginning on February 28, 2007, Dennis had failed to charge the GPS battery and his whereabouts were unknown, but he was also subsequently arrested and pled guilty to escape on the very grounds that he was in violation of this home detention. It was Dennis's burden to present us with sufficient documentation for purposes of determining any due credit time, and his failure to meet this burden results in waiver of his claim for the full fifty-four days. *See Brattain v. State*, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002); *see also Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002).

With respect to the two or three days³ over which there appears no dispute regarding Dennis's compliance with home detention, this court and the Supreme Court have repeatedly held that a trial court is within its discretion to deny credit time for pre-trial home detention. *See Purcell*, 721 N.E.2d at 224 n.6; *James*, 872 N.E.2d at 672; and *Molden*, 750 N.E.2d at 451. We decline to revisit these cases.⁴

Dennis further challenges the trial court's denial of credit time on the basis that it denies him equal protection under the law and that it constitutes multiple punishments in

³ In its Notice of Pre-trial Violation, Community Corrections indicated Dennis had completed three days of home detention but also indicated that his placement began on February 26, 2007 and that he was in violation on February 28. Dennis received credit time for February 26, 2007.

⁴ Dennis argues that *Purcell* and *Molden* do not address the 2001 amendments to Indiana Code sections 35-38-2-3 and 35-38-2.5-5 (2006) which provide for credit time for time served on home detention as a condition of probation. These amended provisions do not apply to Dennis because he was on pre-trial home detention, not on home detention as a condition of probation. This court and the Supreme Court have consistently treated pre-trial home detention differently than post-conviction home detention. *See Molden*, 750 N.E.2d at 450-51.

violation of his protections against double jeopardy. We need not address Dennis's equal protection claim on its merits because it is based upon the faulty premise that trial courts are prohibited from awarding credit time for pre-trial home detention. Such is not the case. This court and the Supreme Court have held repeatedly that the determination of pre-trial home detention credit time is within the discretion of the trial court. *See Molden*, 750 N.E.2d at 451 (recognizing that because there is no statute addressing credit for time served while on pre-trial home detention, trial court has discretion in determining whether such detention merits credit time).

As to Dennis's multiple punishments argument, we observe that both the United States and Indiana constitutions prohibit multiple punishments for the same offense. *Grabarczyk v. State*, 772 N.E.2d 428, 432 (Ind. Ct. App. 2002). Dennis contends that his pre-trial home detention constitutes punishment, and that failing to credit this time permits multiple punishments for a single crime. *Purcell*, *James*, and *Molden* suggest that such pre-trial home detention is not so punitive in purpose and effect as to constitute punishment, and Dennis fails to present specific facts or authority indicating otherwise. *See Purcell*, 721 N.E.2d at 224 n.6 (indicating Supreme Court's belief that a defendant is only entitled to credit toward sentence for pre-trial time served in a prison, jail, or other facility which imposes substantially similar restrictions upon personal liberty); *James*, 872 N.E.2d at 672 ("[T]ime spent at home does not place the same restrictions upon personal liberty as time spent in jail or prison.") Accordingly, we conclude this claim is also without merit.

Given Dennis's failure to demonstrate he fully served the claimed credit time, and having rejected his additional challenges on equal protection and double jeopardy grounds, we affirm the trial court's denial of credit time for any pre-trial home detention.

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.