ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Evan Matthew Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Michael C. Niccum,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 20, 2021

Court of Appeals Case No. 21A-CR-1533

Appeal from the Vigo Superior Court

The Honorable John T. Roach, Judge

Trial Court Cause No. 84D01-1512-F4-3033

Mathias, Judge.

[1] Michael C. Niccum appeals his sentence following the trial court's revocation of his probation. Niccum raises a single issue for our review, namely, whether the trial court failed to properly award him accrued time and good time credit for time he spent in jail across three days pending the revocation proceedings. The State concedes that the trial court failed to properly award Niccum his

accrued time but asserts that Niccum is not entitled to good time credit because the date of Niccum's arrest should be excluded from the calculation of good time credit. On this question of first impression, we hold that the calculation of good time credit is a function of the defendant's accrued time. As Niccum's accrued time is three days, he is entitled to one day of good time credit. Therefore, we reverse the trial court's omission of Niccum's credit time from its calculation of his sentence and remand with instructions for the court to award to Niccum three days of accrued time and one day of good time credit.

Facts and Procedural History

[2] In August of 2016, Niccum pleaded guilty to Level 4 felony dealing in methamphetamine and to being a habitual offender. The trial court ordered Niccum to serve an aggregate term of twelve years, with nine years executed and three years suspended to probation. However, the court provided that, if Niccum were to successfully complete rehabilitative programming while in the Department of Correction, it would modify the balance of his sentence. Niccum successfully completed that programming, and, beginning in March of 2018, the court ordered the balance of Niccum's sentence to be served as a suspended sentence of seven years, six months, and fifteen days.

[3] In January of 2021, the State filed its notice of probation violation, which it later amended. The amended notice alleged that Niccum had committed the new offense of Level 6 felony domestic battery as well as five new Class A misdemeanor offenses. At some point on February 27, 2021, Vigo County law enforcement apprehended and arrested Niccum. Niccum spent the remainder of

February 27, all of February 28, and some portion of March 1 in jail before the court released him on his own recognizance.

[4] Thereafter, the court held a hearing on the State's notice of probation violation, after which the court revoked Niccum's probation and ordered him to serve the entirety of his previously suspended sentence of seven years, six months, and fifteen days in the Department of Correction. The trial court did not award Niccum any credit for the time he was actually in jail pending the revocation of his probation. This appeal ensued.

Standard of Review

[5] This appeal presents only a question of statutory interpretation, which we review *de novo*. *Culver Cmty. Tchrs. Ass'n v. Ind. Educ. Emp. Rels. Bd.*, 174 N.E.3d 601, 604 (Ind. 2021). As our supreme court has stated:

> When construing a statute, our primary goal is to determine and effectuate the legislature's intent. To discern that intent, we first look to the statutory language and give effect to its plain and ordinary meaning. Where the language is clear and unambiguous, there is no room for judicial construction. We presume the legislature intended the statutory language to be applied logically and consistently with the statute's underlying policy and goals, and we avoid construing a statute so as to create an absurd result.

Id. at 604–05 (citations and quotation marks omitted). Further, "when confronted with more than one statute on the same subject, we must try to

harmonize any inconsistencies." *State v. Reinhart*, 112 N.E.3d 705, 711 (Ind. 2018).

[6] And, as we have explained:

> "'Under the Indiana Penal Code, prisoners receive credit time that is applied to reduce their term of imprisonment.'" *Rudisel v. State*, 31 N.E.3d 984, 988–89 (Ind. Ct. App. 2015) (quoting *Robinson v. State*, 805 N.E.2d 783, 789 (Ind. 2004)). "The time spent in confinement before sentencing applies toward a prisoner's fixed term of imprisonment." *Id.* at 989. . . . "Because pre-sentence jail time credit is a matter of statutory right, trial courts generally do not have discretion in awarding or denying such credit." *Perry v. State*, 13 N.E.3d 909, 911 (Ind. Ct. App. 2014) (citing *Molden v. State*, 750 N.E.2d 448, 449 (Ind. Ct. App. 2001)).
>
> Indiana treats pre-sentence imprisonment as a form of punishment. *Brown v. State*, 262 Ind. 629, 635, 322 N.E.2d 708, 712 (Ind. 1975); *House v. State*, 901 N.E.2d 598, 601 (Ind. Ct. App. 2009) (citing *Williams v. State*, 759 N.E.2d 661, 664 (Ind. Ct. App. 2001)[]). By enacting statutes that award credit for pre-sentencing confinement, the General Assembly sought "to implement the guarantee of common law and the Fifth Amendment to the U.S. Constitution against double jeopardy." *Brown*, 262 Ind. at 635, 322 N.E.2d at 712. Further, with an eye toward avoiding equal protection violations, the statutes were drafted "to equalize total confinement time among inmates serving identical sentences for identical offenses by allowing those who cannot post bail before sentencing to be given credit towards their sentence for pre-sentence imprisonment or confinement." *Nutt v. State*, 451 N.E.2d 342, 344 (Ind. Ct. App. 1983) (citing *Brown*, 262 Ind. at 635, 322 N.E.2d at 712). Accordingly, during sentencing, a trial court must strive to reach the balance between granting too little or too much credit time,

> while keeping in mind that the grant of credit time, as remedial legislation, "should be liberally construed in favor of those benefitted by the statute." *See House*, 901 N.E.2d at 601 (quoting *Williams*, 759 N.E.2d at 664) (credit time statutes, as remedial legislation, should be liberally construed in favor of those benefitted by the statute).

Purdue v. State, 51 N.E.3d 432, 436 (Ind. Ct. App. 2016).

Niccum is Entitled to Three Days of Accrued Time and to One Day of Good Time Credit.

[7] Niccum contends that the trial court erred when it imposed the entirety of his previously suspended sentence without an offset for the time he spent in jail on February 27, February 28, and March 1. The State agrees that the trial court erred when it did not award Niccum credit for his accrued time on those days. However, the State suggests that we need to remand to the trial court for it to determine Niccum's accrued time.

[8] We agree with the parties that the trial court erred when it did not award Niccum the time he accrued against his sentence while he was in jail prior to the revocation proceedings. *See id.* But we disagree with the State's position that we need to remand to the trial court for it to determine Niccum's accrued time. His accrued time is three days.

[9] Indiana Code section 35-50-6-0.5(1) (2021) defines accrued time as "the amount of time that a person is imprisoned or confined." The State does not dispute that that definition applied to Niccum on February 27 and continued to apply

through February 28 and into March 1. And the State does not expressly refute Niccum's assertion that that span of time is three days.

[10] Indeed, in *Purdue*, the defendant was arrested at some point on January 29, was in jail for all of January 30, and was released at some point on January 31. On appeal, the State conceded that that span of time warranted "three days of credit" even though the defendant was in fact in jail for "48 hours." *Purdue*, 51 N.E.3d at 435 & n.7. And in *Adams v. State*, we relied on *Purdue* to conclude as follows:

> [The defendant's] liberty was deprived . . . for between six and eight hours. The trial court did not recognize [his] loss of liberty for that time. Further, we can only imagine the burden placed upon the Department of Correction if required to "clock in" a defendant upon his or her arrest and then "clock out" that defendant upon the posting of bond for purposes of determining the "time" spent in pre-sentence incarceration to be recognized later against any sentence imposed. We conclude that the rule of lenity informs us to implement the intent of the legislature by . . . remanding the matter to the trial court for the issuance of an order awarding [the defendant] with one day of accrued time.

120 N.E.3d 1058, 1064 (Ind. Ct. App. 2019). Under the same reasoning, Niccum has earned three days of accrued time for the time he spent in confinement across the three days of February 27, February 28, and March 1.

[11] The question on appeal thus turns to whether Niccum is entitled to any good time credit, and the parties' dispute on this issue presents a question of first

impression.[1] The parties agree that any award of good time credit here falls under Indiana Code sections 35-50-6-3.1(c) and -4(b). In particular, section 35-50-6-4(b) states:

> A person:
>
> > (1) who is not a credit restricted felon; and
> >
> > (2) who is imprisoned for a crime other than a Level 6 felony or misdemeanor or imprisoned awaiting trial or sentencing for a crime other than a Level 6 felony or misdemeanor;
>
> is initially assigned to Class B.

And section 35-50-6-3.1(c) states that "[a] person assigned to Class B earns one (1) day of good time credit for every three (3) days the person is imprisoned for a crime or confined awaiting trial or sentencing."

[12] Niccum asserts that, because he has three days of accrued time, those statutes entitle him to one day of good time credit. In response, the State asserts that Indiana Code section 35-50-6-3.1(c) refers to "days," and that the proper interpretation of "day" excludes the "triggering event," that is, the day on which Vigo County law enforcement arrested Niccum. Appellee's Br. at 9–10.

---

[1] The State does not assert that, if the good time credit statute does apply, Niccum is not entitled to the award of good time credit under the statute for any reason.

Thus, according to the State, February 27 does not count for the good time credit calculation under section 35-50-6-3.1(c).

[13] In *Adams*, we rejected a similar argument made by the State as to the definition of accrued time. We explained:

> The State cites *Dobeski v. State*, 64 N.E.3d 1257 (Ind. Ct. App. 2016) in support of the trial court's ruling [to not award one day of accrued time]. In *Dobeski*, the central issue was how to calculate the passage of time. The statute in that case required that the defendant register as a sex offender not more than seven *days* after his release from a penal facility. Ind. Code § 11-8-8-7(g) (2013) (emphasis added). Dobeski argued the evidence was insufficient to support his conviction for failure to register as a sex offender because seven days had not yet elapsed at the time he was arrested. The State had argued that the "days" referred to in the statute were twenty-four-hour periods, beginning with the moment Dobeski had been released from prison. The trial court agreed with the State and Dobeski appealed.
>
> On appeal, Dobeski argued that Indiana Trial Rule 6(A) applied. That trial rule governs the computation of time, and provides:
>
> > In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is:
> >
> > (1) a Saturday,
> >
> > (2) a Sunday,

> (3) a legal holiday as defined by state statute, or
>
> (4) a day the office in which the act is to be done is closed during regular business hours.
>
> In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a day on which the office is closed. When the period of time allowed is less than seven [7] days, intermediate Saturdays, Sundays, legal holidays, and days on which the office is closed shall be excluded from the computations.

T.R. 6(A).

This rule of trial procedure was considered in *Dobeski* because Indiana Criminal Rule 21 provides that the rules of trial procedure apply in criminal proceedings when they are not in conflict with any specific rule adopted for the conduct of criminal proceedings. Further support was found in the computation of time used in the Indiana Rules of Appellate Procedure and the computation set out by statute for administrative procedures and orders. *See Dobeski*, 64 N.E.3d at 1260–61.

Further, we held that "Indiana case law has long defined a 'day' as a twenty-four-hour period running from midnight to midnight." *Id.* at 1261. "Indeed, the legislature's use of a seventy-two-hour time frame elsewhere in I.C. § 11-8-8-7 indicates that when the legislature intends for a time frame to be calculated as a period of hours rather than full calendar days, it will make that intention clear." *Id.* The trial court's computation of time was reversed and remanded because the rule of lenity required an interpretation of the statute construing the term day to be a calendar day instead of a twenty-four-hour period. *Id.* at 1262.

> The State's argument here is that under that reasoning set forth in *Dobeski* the first day should not be included and that Adams was not entitled to any accrued time.
>
> * * *
>
> In this case, however, the governing statute[, the definition of accrued time,] refers to the amount of "time" that a person is imprisoned or confined. Ind. Code § 35-50-6-0.5. Hence, there is no reference to days, as argued by Adams, or hours, as argued by the State. Further, the term "time" is not defined elsewhere in Title 35, Article 50. As such, we deem the statutory reference to time to be ambiguous.

Adams, 120 N.E.3d at 1062–63. We then held, following *Purdue* and the rule of lenity, that a six-to-eight-hour period of confinement entitled the defendant to "one day of accrued time." *Id.* at 1064.

[14] Here, the State again relies on *Dobeski* and related cases to assert that a "day" under the good time credit statute excludes the day of the triggering event. The State further asserts that *Adams* is not persuasive on the issue of good time credit because *Adams* was concerned about accrued time and the ambiguous statutory term "time," not "day." *See id.* at 1062–63.

[15] We are not persuaded by the State's argument. *Dobeski* was not about the calculation of good time credit, and we are not persuaded that our legislature intended the award of good time credit to be determined by our rules of procedure. Rather, the calculation of good time credit is a function of the defendant's accrued time.

[16] The statutory scheme for determining credit time makes our legislature's intent clear. Indiana Code section 35-50-6-3.1(c) states that a person assigned to Class B earns one day of good time credit "for every three (3) days *the person is imprisoned . . . or confined*." (Emphasis added.) Similarly, Indiana Code section 35-50-6-0.5(4) defines "[g]ood time credit" as "a reduction in a person's term of imprisonment or confinement awarded for the person's good behavior *while imprisoned or confined*." (Emphasis added.) And, again, the definition of "accrued time" is "the amount of time that a person is imprisoned or confined." Thus, accrued time is the amount of time a person is imprisoned or confined, and an award of good time credit turns on how many days the person is imprisoned or confined.

[17] The unambiguous language of the statutory scheme for determining credit time makes clear that our legislature intended the calculation of good time credit to be a function of the defendant's accrued time. The State's argument to the contrary contravenes the plain language of the statutes and would disharmonize the statutory scheme. *See Reinhart*, 112 N.E.3d at 711. We therefore reject the State's argument.

[18] As Niccum has earned three days of accrued time, he is entitled to one day of good time credit under Indiana Code section 35-50-6-3.1(c). We reverse the trial court's imposition of the entirety of Niccum's previously suspended sentence and remand with instructions that the court award Niccum three days of accrued time and one day of good time credit against his sentence.

[19] Reversed and remanded with instructions.

Bailey, J., and Altice, J., concur.