

STATEMENT OF THE CASE

Keith Hollins appeals from the trial court's denial of a pro se motion for jail time credit filed in each of two cases. He presents a single issue for review, namely, whether the trial court abused its discretion when it denied his motions.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 28, 2003, the State charged Hollins in Cause Number 49G05-0310-FB-186715 ("Cause Number 186715") with three counts of Robbery, as Class C felonies; one count of Robbery, as a Class B felony; one count of Resisting Law Enforcement, as a Class D felony; and one count each of Carrying a Handgun Without a License, Criminal Recklessness, Resisting Law Enforcement, and Driving While License Suspended, as Class A misdemeanors. Hollins was arrested the same day and he was released on October 31, 2003, with a no contact order.

On November 24, 2003, the State charged Hollins in Cause Number 49G05-0311-FC-202938 ("Cause Number 202938") with four counts of Robbery, as Class C felonies. Hollins was incarcerated on November 25, 2003, but was released on November 26, 2003. His release was without conditions in Cause Number 186715. In Cause Number 202938 his release was conditioned on GPS monitoring, random weekly urinalyses, and a no contact order, but it allowed Hollins to go to work, attend church, and attend appointments with his attorney.¹ The CCS in Cause Number 186715 shows that Hollins

¹ Hollins asserts that he was incarcerated from November 25 through December 1, 2003, but the CCS in both cases indicates he was released on November 26, 2003.

also may have been incarcerated again in December 2003, but the only relevant entry indicates that a motion for release was granted on December 19, 2003.

On March 26, 2004, Hollins was in custody in Cause Number 202938 due to a violation of his community corrections release conditions. He remained in custody until April 28, 2004, when he entered guilty pleas and was sentenced in both cases. In Cause Number 186715, the trial court entered a judgment of conviction on four counts of robbery, as Class C felonies, and dismissed the remaining counts. The court sentenced Hollins to six years on each count, to run concurrently. In Cause Number 202938, the court entered a judgment of conviction on four counts of robbery, as Class C felonies, and sentenced him to six years on each count, with four years on each count suspended and 42 days credit for time served. The sentences in Cause Number 202938 were to be served concurrent with each other but consecutive to the sentences imposed in Cause Number 186715.

In Cause Number 186715, Hollins filed on August 2, 2004, a motion for credit for time served before sentencing.² The trial court denied that motion on August 6. On May 24, 2005, Hollins again filed a motion for credit time,³ which the trial court denied on the same date. On August 12, 2005, Hollins filed a pro se motion for jail time credit, which the trial court denied on October 21, 2005.

² The record on appeal does not contain a copy of the motion.

³ The record on appeal does not contain a copy of the motion, nor does the record indicate what type of credit time Hollins sought (e.g., credit for pretrial incarceration, good time credit, or educational credit).

In Cause Number 202938, Hollins filed a motion on August 2, 2004, for credit time for time served before sentencing.⁴ The trial court denied that motion on August 6, 2004. On May 24, 2005, Hollins filed a pro se motion for jail time credit, which the trial court denied on May 31. On August 4, 2005, Hollins filed a subsequent pro se motion for jail time credit. The trial court denied that motion on October 21, 2005, noting that Hollins “gets no credit time for GPS.” Appellant’s App. at 43.

Hollins appeals from the October 2005 denial of his motions for jail time credit in both cases.

DISCUSSION AND DECISION

Hollins contends that the trial court abused its discretion when it denied his request for jail time credit. Although styled as a motion for credit time, such a motion should be treated as a petition for post-conviction relief if it requires consideration of matters outside the face of the sentencing judgment. See Murfitt v. State, 812 N.E.2d 809, 811 (Ind. Ct. App. 2004). Post-conviction procedures do not afford the convicted an opportunity for a “super-appeal.” Wilson v. State, 799 N.E.2d 51, 53 (Ind. Ct. App. 2003). Rather, they create a narrow remedy for subsequent collateral challenges to convictions that must be based on grounds enumerated in the post-conviction rules. Diaz v. State, 753 N.E.2d 724, 727 (Ind. Ct. App. 2001), trans. denied. Petitioners must establish their grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). A hearing on a petition for post-conviction relief is not required if

⁴ The record on appeal does not contain a copy of the motion.

the petition demonstrates conclusively on its face that the petitioner is not entitled to relief. Id. at 1(4)(f).

Our decision in Murfitt illustrates when a request for sentence correction should be treated as a petition for post-conviction relief. There, the appellant's request for additional credit days "required consideration of matters outside the face of the sentencing judgment[.]" Murfitt, 812 N.E.2d at 811. Relying on the supreme court's decision in Robinson v. State, 805 N.E.2d 783 (Ind. 2004), this court held that such a claim should be presented by way of a petition for post-conviction relief. Id. Like Murfitt, Hollins requested additional credit time, and determination of that request requires consideration of matters outside the face of the sentencing judgment. As a result, we treat Hollins' October 17, 2005, motion for home detention credit as a petition for post-conviction relief.

Pro se litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2005), trans. denied. It is an appellant's duty to provide a record that reflects the error alleged. Williams v. State, 690 N.E.2d 162, 176 (Ind. 1987). To the extent the record is inadequate, it results in waiver of the issue. Id.

We note initially that Hollins filed successive motions for credit time. Generally, a petitioner is precluded from raising an issue in a successive petition for post-conviction relief where that issue had been determined adversely in a prior petition. Kindred v. State, 674 N.E.2d 570, 575 (Ind. Ct. App. 1997), trans. denied. But the State has not argued that Hollins' successive petitions requested the same relief, and the earlier

petitions are not contained in the record transmitted on appeal. Because we cannot determine whether the October 2005 motions for credit time request the same relief as the earlier motions, we will address Hollins' motions in both cases.

Credit for Jail Time

Hollins contends that the trial court erred when it denied his request for additional jail time credit. But Hollins has failed to provide citations to the record to support his allegation that he is entitled to additional credit time. As such, he has waived the issue for appellate review. See Ind. Appellate Rule 22, 46(A)(8). Waiver notwithstanding, we address the merits of Hollins' appeal.

Hollins contends that he is entitled to 170 days jail time credit but was given only 42 days of credit. Our review of the record does not yield support for Hollins' claim that he is due 170 days of credit. The sentencing order confirms that the trial court gave Hollins 42 days of actual jail time credit against the consecutive sentences imposed in Cause Numbers 202938 and 186715. But we cannot discern how Hollins calculated the 170 days he alleges he was due. Our review of the CCS in both causes shows that Hollins was incarcerated from October 28 through October 31, 2003; from November 25 through November 26, 2003; and then from March 26 through April 28, 2004. The CCS in Cause Number 186715 also indicates that Hollins may have been incarcerated in December 2003, because on December 19, 2003, the court granted a motion "for release of [Hollins.]" Appellant's App. at 7.

Our review of the record shows that Hollins was incarcerated for a total of forty days in October and November 2003 and March through April 28, 2004. It also appears

that Hollins was incarcerated for some period in December 2003 in Cause Number 186715, which resulted in his release on December 19. But even if we could confirm in the record provided the number of days that Hollins was incarcerated in December 2003, the number of days he was incarcerated would not reach 170. As such, the record on appeal does not support Hollins' contention that he is entitled to a total of 170 days of jail time credit.

Credit for GPS Monitoring

Hollins also contends that he is entitled to jail time credit for the period he was on electronic GPS monitoring. We cannot agree. First, we note, again, that Hollins has not provided citations to the record to support his allegation that he is entitled to additional credit time. As such, he has waived the issue for appellate review. See Ind. App. R. 22, 46(A)(8). Waiver notwithstanding, we address the merits of Hollins' appeal on this issue.

Hollins asserts that he is entitled to credit for the period he spent on GPS monitoring. The State argues that a defendant is entitled to jail time credit only when he is "incarcerated in a prison, jail, or other facility that imposes substantially similar restrictions on the defendant's personal liberties." Appellee's Brief at 5 (citing Purcell v. State, 721 N.E.2d 220, 224 n.5 (Ind. 1999); Groves v. State, 823 N.E.2d 1229, 1244 (Ind. Ct. App. 2005)). The State further asserts that Hollins' time on GPS monitoring does not qualify as incarceration. We must agree with the State.

A defendant is not credited for time served on home detention as a condition of pretrial release. Senn v. State, 766 N.E.2d 1190, 1199-1200 (Ind. Ct. App. 2002) (citing

Molden v. State, 750 N.E.2d 448, 450-51 (Ind. Ct. App. 2001). Our supreme court has spoken on the question of credit for time served in pretrial home detention:

Although not directly before us today, we have revisited the question and conclude that a trial court is within its discretion to deny a defendant credit toward [his] sentence for pretrial time served on home detention. Absent legislative direction, we believe 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.

Id. at 1200 (quoting Purcell, 721 N.E.2d at 224 n.6). In that regard, the supreme court in Purcell specifically “return[ed] to and adopt[ed] Judge Sullivan’s conclusion” Capes v. State, 615 N.E.2d 450, 455 (Ind. Ct. App. 1993), vacated on other grounds, where this court held that a person who is confined in home detention awaiting trial should not earn sentence credit under Indiana Code Section 35-50-6-3.

Our review of the record shows that in Cause Number 202938 Hollins was released on November 26, 2003. As a condition of his release, the trial court ordered Hollins to be placed on GPS monitoring, to submit to random weekly urinalyses, and to have no contact with certain persons. Hollins’ release conditions specifically allowed him to go to work, attend church, and attend appointments with his attorney. Although the trial court did not mention home detention, the conditions imposed on his release indicate that he was released to home detention with GPS monitoring and the specified stated liberties. Because a defendant confined to home detention awaiting trial should not earn sentence credit, Hollins is not entitled to credit for time served while he was on GPS monitoring. See Purcell, 721 N.E.2d 220, 224 n.6; Capes, 615 N.E.2d 455; Senn, 766 N.E.2d at 1199-1200; Molden, 750 N.E.2d at 450-51.

Hollins argues that a person who is placed in a community corrections program is entitled to earn credit time under “IC 35-50-6.” Appellant’s Brief at 4. Indiana Code Sections 35-50-6-1 through -8 defines when and how a defendant earns good time credit. Here, Hollins petitioned for credit for time served. Thus, Indiana Code Sections 35-50-6-1 through -8 are not applicable here.

Conclusion

The record does not support Hollins’ argument that he is due 170 days of credit for time served awaiting sentencing in Cause Numbers 186714 and 202938. Indeed, we cannot verify on the record provided the exact number of days that Hollins was incarcerated before he was sentenced. And, while the record shows that Hollins was also released for a time on GPS monitoring and other conditions while awaiting sentencing, the release described in the record is equivalent to home detention. Hollins is not entitled to credit for time served on home detention before he was sentenced. Thus, we hold that the trial court did not err when it denied Hollins’ motion for credit time.

Affirmed.

MAY, J., and MATHIAS, J., concur.