IN THE COURT OF APPEALS OF IOWA

No. 9-479 / 08-1181
Filed July 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD ALLEN MILLSAP, SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Richard Millsap appeals from the denial of his motion to correct an illegal sentence. **AFFIRMED.**

Christopher Kragnes, Des Moines, for appellant, and Richard Millsap, Fort Dodge, pro se.

Thomas J. Miller, Attorney General, and William A. Hill, Assistant Attorney General, John P. Sarcone, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Richard Millsap appeals from the denial of his motion to correct an illegal sentence,[1] arguing the Iowa department of corrections improperly calculates earned time and did not properly credit time he served in jail. We affirm.

I. Background Facts and Proceedings.

Richard Millsap Sr. was convicted of two counts of child endangerment in violation of Iowa Code section 726.6(1)(a) (2003), and one count of driving while barred in violation of Iowa Code section 321.561. He received two ten-year terms on the child endangerment convictions, and a two-year term on the driving while barred conviction, the terms to be served consecutively. On September 8, 2003, a judgment of conviction was entered and Millsap was committed to the custody of the director of the Iowa Department of Corrections (IDOC) for a term not to exceed twenty-two years with credit on the sentence for seventy-two days, the time he spent in the county jail prior to conviction. The IDOC calculated a tentative discharge date of June 27, 2013.

On February 21, 2008, Millsap filed a motion for correction of illegal sentence challenging the IDOC's calculation of the length of his sentence. He argues the IDOC improperly calculates earned time. He also contends he was given improper credit for his time served in jail. The IDOC filed a resistance to

[1] The district court correctly noted that Millsap's sentence is not illegal; rather Millsap is challenging the calculation of credit to be applied to his sentence, which may be challenged in an administrative law action. *See* Iowa Code § 822.2 (2003); *see e.g.*, *State v. Bradham*, 480 N.W.2d 28, 28 (Iowa 1992) (noting reformatory inmates challenged computation of release date in postconviction relief action). However, because the department of corrections did not raise the issue, the district court considered the merits, as will we.

the motion and, after a hearing, the district court denied the relief requested. Millsap appeals.

II. Scope and Standard of Review.

The extent of credit to which Millsap is entitled is a matter of statutory construction and application. Statutory construction involves questions of the law that we review without deference to the trial court. *See State v. Bond*, 493 N.W.2d 826, 828 (Iowa 1992).

III. Analysis.

The IDOC calculates a "tentative discharge date" for an inmate who is committed to its custody. This tentative discharge date is a result of the sentence imposed and any reductions in sentence applicable under Iowa Code chapter 903A. Where consecutive sentences are imposed, the second or further sentence begins at the expiration of the first or succeeding sentence. *See* Iowa Code § 901.8. Consecutive sentences are thus construed as one continuous sentence in calculating reductions of sentence for earned time. *Id.* § 903A.7. Our starting point thus begins with Millsap's twenty-two year sentence (365.25 x 22 = 8035.5 days).

The sentence may be reduced pursuant to Iowa Code chapter 903A. Iowa Code section 903A.2 allows for credit for earned time:

> 1. Each inmate committed to the custody of the director of the department of corrections is eligible to earn a reduction of sentence . . . . An inmate of an institution under the control of the department of corrections who is serving a category "A" sentence is eligible for a reduction of sentence equal to one and two-tenths days for each day the inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction. The programs include but are not limited to the following:

(1) Employment in the institution.
(2) Iowa state industries.
(3) An employment program established by the director.
(4) A treatment program established by the director.
(5) An inmate educational program approved by the director.

. . . .

3. 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.

. . . .

Under this section, earned time accrues at the rate of 1.2 days for "for each day the inmate demonstrates good conduct and satisfactorily participates in any program" identified by the director to earn the reduction. For purposes of the tentative discharge date, the IDOC calculates all possible earned time and reduces the sentence imposed by the possible earned time.

Pursuant to section 903A.2(1), for each five days an inmate serves, the inmate is eligible for eleven days of earned time credit (5 days + (5 x 1.2 days) = 11 days). The IDOC uses the fraction .454545 to calculate the earned time reduction (5/11 = .454545 . . . ad infinitum, which the IDOC has rounded to six decimal places). Using this method of calculation, the IDOC calculated Millsap's days to be served as follows:

8035 (rounded down from 8035.5)
X
.454545 (earned time credit)
3652 (days to be served assuming all earned time actually earned).

The IDOC then reduced this number by seventy-two, the days Millsap served in jail prior to entry of judgment. The resulting tentative discharge date is

June 27, 2013. We find no error in the IDOC's calculation of Millsap's tentative discharge date.

Millsap's appellate counsel argues that the IDOC should use .45 as the correct multiple to determine an inmate's earned credit. Using this multiple would result in Millsap receiving thirty-six additional days of earned time credit on his twenty-two year term. However, the calculation used by the IDOC is not incorrect and Millsap offers no authority for his argument that the IDOC should follow the "common practice of not exceeding two decimal places." The multiple used by the IDOC more accurately reflects the 1.2 days earned time credit than does the more lenient fraction espoused by Millsap.

In his pro se brief, Millsap complains that the IDOC's method of calculating a tentative discharge date is contrary to statute because "[o]ffenders have not earned any credits" at the time they are committed to the IDOC. He argues his sentence is not being calculated monthly as required by statute. This claim was not addressed by the district court and, therefore, we will not address it on appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

Millsap, pro se, also contends the IDOC did not properly calculate the credit to which he is entitled for the time he spent in jail prior to his conviction. He argues he should have received 158 days of credit, not 72 because the time he spent in jail should also be subject to earned time credit (72 + (72 x 1.2) = 158 days of credit). The State concedes that the earned time reduction applies to presentence jail credit under the statute, and demonstrates that IDOC's

calculation of an inmate's tentative discharge date includes an award of 1.2 days earned time for every day of an inmate's sentence. We agree.

The IDOC's calculation of Millsap's tentative discharge date first grants a deduction for earned time on every day of his twenty-two year sentence—8035 days x .454545 = 3652 days to be served before tentative discharge.[2] The IDOC's second step is to deduct the number of days served in jail presentence—seventy-two days for Millsap. The number of days to be served before tentative discharge is then 3580, which is added to the effective date of the sentence, September 8, 2003, for a discharge date of June 27, 2013. Thus, this discharge date has given Millsap the benefit of days served "demonstrat[ing] good conduct and satisfactorily participat[ing] in any program or placement status identified by the director to earn the reduction earned time."

Millsap argues, in effect, that the earned time calculation should apply to his seventy-two days of presentence jail credit twice—once in the total number of days to be served in a twenty-two-year sentence, and again after the earned time deduction has been taken off the entire sentence. Although he is entitled to the earned time credit on his seventy-two days of jail credit, he is entitled to the deduction only once.[3] The IDOC's calculation reduces the entire sentence by the

[2] 3652 + (3652 x 1.2) = 8034.4 (This calculation actually benefits Millsap as his sentence is 8035 days.) So long as an inmate "demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction," the tentative discharge date incorporates the earned time sentence reduction.

[3] While the district court stated Millsap "receives no earned time for time served in jail during his pretrial detention," the IDOC's calculation does award earned time to the entire sentence, and time served presentencing is appropriately credited.

earned time calculation, and then deducts the seventy-two days from the net number of days to be served on the sentence.

Millsap was confined for seventy-two days prior to sentencing, for which the IDOC has given him credit. Earned time has been calculated on every day of his sentence. We find no error.

AFFIRMED.