

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 31, 2015

**FREDRICK SLEDGE v. TENNESSEE DEPARTMENT OF CORRECTION,
ET AL.**

**Appeal from the Chancery Court for Davidson County
No. 14-1041-III Ellen Hobbs Lyle, Chancellor**

No. M2014-02564-COA-R3-CV – Filed November 20, 2015

Fredrick Sledge (Petitioner), an inmate in the custody of the Tennessee Department of Correction (TDOC), challenges TDOC's calculation of his release eligibility date. The chancery court (the trial court) granted TDOC summary judgment, finding that "the undisputed facts and law establish [Petitioner's] sentence has been correctly calculated." Because the criminal court's order sentencing Petitioner awarded him 3,521 days of pretrial jail credit, while TDOC's calculation of his release eligibility was based upon only 516 days of credit, there is a genuine issue of material fact regarding the correct calculation of his release eligibility date. We vacate the trial court's summary judgment and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Vacated; Case Remanded**

CHARLES D. SUSANO, JR., C.J., delivered the opinion of the court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Fredrick Sledge, Only, Tennessee, appellant, pro se.

Herbert H. Slatery III, Attorney General and Reporter; Andrée Blumstein, Solicitor General; and Jennifer L. Brenner, Senior Counsel, Nashville, Tennessee, for the appellee, Tennessee Department of Correction.

OPINION

I.

On February 23, 1993, a Shelby County jury convicted Petitioner of two counts of aggravated robbery. The criminal court sentenced him to two ten-year sentences, to be served consecutively. On November 4, 1993, another jury convicted Petitioner of first degree felony murder and imposed a death sentence. The next day, the second jury convicted him of especially aggravated robbery. The criminal court imposed a twenty-year sentence, which the criminal court ordered to be served consecutively to his three prior sentences.

On Petitioner's appeal of his convictions for felony murder and especially aggravated robbery, the Court of Criminal Appeals affirmed both convictions, but reversed the death sentence and remanded for resentencing. *State v. Sledge*, No. 02C01-9405-CR-00089, 1997 WL 730245 (Tenn. Crim. App., filed Nov. 25, 1997). The Supreme Court affirmed. *State v. Sledge*, 15 S.W.3d 93 (Tenn. 2000) (affirmed as modified).

Following remand, the criminal court resentenced Petitioner on August 9, 2001, to life imprisonment on the first degree felony murder conviction. That court ordered the Petitioner to serve his life sentence consecutively to the twenty-year sentence for especially aggravated robbery. On appeal, the Court of Criminal Appeals affirmed the consecutive sentence structure. *State v. Sledge*, No. W2001-02402-CCA-R3-CD, 2003 WL 57313 (Tenn. Crim. App., filed Jan. 6, 2003).

On July 16, 2014, Petitioner filed a petition for declaratory judgment in the trial court in the case now before us, asserting that TDOC violated the law by not allowing him to meet with the Board of Probation and Parole, and by not crediting him with 3,521 days of pretrial jail credit awarded to him by the criminal court's August 9, 2001 judgment resentencing him to life imprisonment. TDOC filed a motion to dismiss for failure to state a claim upon which relief can be granted, supported by the affidavit of Candace Whisman, TDOC's Director of Sentence Management Services. The trial court observed that "the affidavit provides the Court with the expert explanation and calculation of Ms. Whisman of the [Petitioner's] sentence in support of [TDOC's] defense that the . . . sentence has been correctly calculated." The trial court correctly treated TDOC's motion as one for summary judgment. The court below granted TDOC summary judgment. Petitioner timely filed a notice of appeal.

II.

The issues presented by Petitioner, as restated, are as follows:

1. Whether TDOC violated the law by refusing to allow Petitioner the opportunity to meet with the parole board for consideration of his release on parole.
2. Whether TDOC violated the trial court's August 9, 2001 order sentencing him to life imprisonment and awarding him 3,521 days of pretrial jail credit, by not crediting him the full 3,521 days in calculating his release eligibility date.

III.

Because the petition was filed after July 1, 2011, Tenn. Code Ann. § 20-16-101 (Supp. 2015) applies to our analysis of summary judgment in this case.¹ That statute provides:

In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

- (1) Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or
- (2) Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

See also *Harris v. Metro. Dev. & Hous. Agency*, No. M2013-01771-COA-R3-CV, 2014 WL 1713329, at *3 (Tenn. Ct. App. M.S., filed Apr. 28, 2014); *Wells Fargo Bank, N.A. v. Lockett*, No. E2013-02186-COA-R3-CV, 2014 WL 1673745, at *2 (Tenn. Ct. App. E.S., filed Apr. 24, 2014). As we observed in *Harris*,

Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on

¹ The Supreme Court recently adopted the same criteria for summary judgment. *Rye v. Women's Care Ctr. Of Memphis, M PLLC*, — S.W.3d —, 2015 WL 6457768 (Tenn. Oct. 26, 2015).

file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04.

Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Publ’g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). The resolution of a motion for summary judgment is a matter of law, thus, we review the trial court’s judgment de novo with no presumption of correctness. *Martin v. Norfolk Southern Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008). The appellate court makes a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1977).

2014 WL 1713329, at *3. In making this determination,

We must view all of the evidence in the light most favorable to the nonmoving party and resolve all factual inferences in the nonmoving party’s favor. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Luther v. Compton*, 5 S.W.3d 635, 639 (Tenn. 1999); *Muhlheim v. Knox Cnty. Bd. of Educ.*, 2 S.W.3d 927, 929 (Tenn. 1999). If the undisputed facts support only one conclusion, then the court’s summary judgment will be upheld because the moving party was entitled to judgment as a matter of law. See *White v. Lawrence*, 975 S.W.2d 525, 529 (Tenn. 1998); *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995).

Wells Fargo Bank, 2014 WL 1673745, at *2.

IV.

As the Supreme Court recently noted, “[a]n inmate dissatisfied with TDOC’s calculation of a release eligibility date may challenge the calculation, but the challenge must comply with the procedures of the [Uniform Administrative Procedures Act].” *Stewart v. Schofield*, 368 S.W.3d 457, 464 (Tenn. 2012). There is no issue in this case regarding Petitioner’s compliance with the requisite UAPA procedures. In *Stewart*, the Court set forth the following guiding principles in determining an inmate’s release eligibility date:

TDOC and the Board [of Probation and Parole] are separate entities charged with distinct, but related, duties concerning an inmate's eligibility for parole. Release on parole is a privilege, not a right. Not all inmates are eligible for parole. For parole-eligible offenses and offenders, TDOC assigns a release eligibility date – “the earliest date an inmate convicted of a felony is eligible for parole.” [Tenn. Code Ann. § 40-35-501(n)]. TDOC has sole authority to calculate an inmate's release eligibility date. A release eligibility date is determined based on offender status, which defines the percentage of the sentence required to be served, less any sentence credits earned and retained by the prisoner. Tenn. Code Ann. § 40-35-501(b)-(f); *see also* **Shorts**, 278 S.W.3d at 278 (discussing release eligibility dates). With respect to the release eligibility date of an inmate serving consecutive, determinate sentences imposed pursuant to the 1989 Act, “the periods of ineligibility for release are calculated for each sentence and are added together to determine the release eligibility date for the consecutive sentences.” Tenn. Code Ann. § 40-35-501(l).²

After an inmate's release eligibility date has been calculated, TDOC notifies the Board of the date. The Board must “conduct a hearing within a reasonable time prior to a defendant's release eligibility date to determine a defendant's fitness for parole.” Tenn. Code Ann. § 40-35-503(d)(1). The authority to grant or deny parole resides with the Board – not TDOC.

368 S.W.3d at 463-64 (footnote added; footnotes in original omitted). The Supreme Court has further emphasized that release eligibility dates “are a function of statute, not trial court findings of fact or conclusions of law.” **Cantrell v. Easterling**, 346 S.W.3d 445, 451, 459 (Tenn. 2011) (stating “[a] defendant's [release eligibility date] does not depend directly upon factual findings by the trial court, but is determined entirely by statute”).

² After **Stewart** was decided, Tenn. Code Ann. § 40-35-501 was amended and section 40-35-501(l) was renumbered to § 40-35-501(m). The subsection referenced in **Stewart** as subsection (l) is currently codified as subsection (m), but the quoted wording has not been changed.

Petitioner claims that TDOC's calculation of his release eligibility date did not credit him with the correct number of pretrial jail days awarded to him by the criminal court's resentencing order. Pretrial jail credits are mandated by Tenn. Code Ann § 40-23-101(c), which provides:

The trial court shall, at the time the sentence is imposed and the defendant is committed to jail, the workhouse or the state penitentiary for imprisonment, render the judgment of the court so as to allow the defendant credit on the sentence for any period of time for which the defendant was committed and held in the . . . county jail or workhouse, pending arraignment and trial. The defendant shall also receive credit on the sentence for the time served in the jail, workhouse or penitentiary subsequent to any conviction arising out of the original offense for which the defendant was tried.

“[T]he award of pretrial jail credits lies strictly within the jurisdiction of the trial court rather than the Department of Correction.” *Borum v. Stewart*, No. W2012-00863-CCA-R3-HC, 2012 WL 3871466, at *2 (Tenn. Crim. App., filed Sept. 6, 2012). Such an award is mandatory. *Id.*; *Tucker v. Morrow*, 335 S.W.3d 116, 123 (Tenn. Crim. App. 2009) (“The statute provides that a detainee has *an absolute right* to credit for time in jail in which he was committed pending his arraignment and trial and for the time he served in the jail, workhouse or penitentiary subsequent to any conviction *arising out* of the original offense for which he was tried.”) (emphasis in original; internal quotation marks omitted).

As this Court and the Court of Criminal Appeals has observed, TDOC may not alter or amend a trial court's judgment order, even if that order is erroneous or illegal:

This court explained in *Bonner v. Tennessee Dept. of Correction*, 84 S.W.3d 576, 581–82 (Tenn. Ct. App. 2001), that TDOC “is required to calculate prison sentences in accordance with the sentencing court's judgment order and with applicable sentencing statutes.” The Tennessee Supreme Court affirmed this rule in *Cantrell v. Easterling*, 346 S.W.3d 445, 457 (Tenn. 2011), when it wrote: “TDOC is required to enforce judgment orders as they are written. TDOC does not have the authority to ‘correct’ what it perceives to be errors, clerical or otherwise, in judgment orders.” *Accord State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978) (TDOC cannot alter a sentencing court's judgment even if that judgment is

illegal); *Grimes v. Parker*, 2008 WL 141129, at *4 (Tenn. Ct. App. Jan. 14, 2008) (same).

The Tennessee Court of Criminal Appeals explained it this way:

The award of pretrial jail credits . . . lies strictly within the purview of the trial court rather than the Department of Correction. . . . [T]he trial court is required at the time of sentencing to allow a defendant pretrial jail credit. The DOC is powerless to change what the trial court awarded or failed to award. . . .

Tucker v. Morrow, 335 S.W.3d 116, 122 (Tenn. Ct. Crim. App. 2009) (citations and quotations omitted).

Robinson v. Whisman, M2011-00999-COA-R3-CV, 2012 WL 1900551, at *4-5 (Tenn. Ct. App. M.S., filed May 24, 2012).

In the present case, Ms. Whisman's detailed and thorough affidavit explains TDOC's calculation of Petitioner's release eligibility date, stating as follows:

Mr. Sledge was convicted [of aggravated robbery] May 17, 1993, in Shelby County Case[s] 9206855 and 9206854 and received a sentence of ten years as a standard range one offender in each case to be served consecutively for a total of twenty years. The court granted 306 days of pretrial jail credit for the dates of July 15, 1992 through May 16, 1993. A total of 80 days of pretrial behavior credit was awarded in accordance with Tenn. Code Ann. § 41-21-236(e)(1) based on the 306 days granted for time in pretrial custody. Copies of the orders are attached.

Mr. Sledge was convicted [of first degree felony murder] November 5, 1993, in Shelby County Case 9204081 and received a sentence of death. Due to this conviction, he was not eligible for parole consideration on the two prior sentences received. The court granted 718 days of pretrial jail credit for the dates of December 18, 1991 up to December 5, 1993 (additional 30 days granted after sentence was imposed

November 5, 1993). Since this was a death sentence and there were no calculated release dates, pretrial behavior credits were not posted. A copy of the order is attached.

Mr. Sledge was convicted [of especially aggravated robbery] December 6, 1993 [*sic*: November 5, 1993],³ in Shelby County Case 9204080 and received a sentence of twenty years as a standard range one offender to be served consecutively to the prior twenty year and death sentences. The pretrial jail credits listed on the order were already granted on prior cases and this sentence was ordered to be served consecutively. The jail credit was already applied to the overall sentence calculation and was not applied for a second time as this would result in duplicate credit. A copy of the order is attached.

On April 24, 2000, mandate was issued in Case Number W1994-00005-SC-R11-DD. The Court of Criminal Appeals remanded the death sentence received in Shelby County Case 9204081 to the trial court for resentencing. . . .

Mr. Sledge was resentenced in Shelby County case 9204081 on August 9, 2001 and received a sentence of life to be served consecutively to the sentence [for especially aggravated robbery] received in Shelby County case 9204080. His overall sentence was now 40 years plus life and release eligibility was calculated at 30% of 40 years or 12 years plus 36 years on the life sentence for a total release eligibility date set at 48 years. A copy of the order is attached.

Mr. Sledge was admitted to the custody of TDOC on December 13, 1993. Due to receiving a sentence of death, he was placed on maximum custody effective February 3, 1994. He was released to the custody of Shelby County on June 4, 2001, for resentencing. He was returned to TDOC custody on October 2, 2001, and was removed from maximum custody and reclassified to minimum restricted custody due to no longer having a death sentence. While in maximum custody

³ The criminal court's judgment order indicates that Petitioner was convicted of especially aggravated robbery in Case 9204080 on November 5, 1993, and sentenced on December 6, 1993. This discrepancy is not pertinent to the issues on appeal.

from February 3, 1994 until October 2, 2001, he was not eligible to receive any sentence reduction credits in accordance with Tenn. Code Ann. §41-21-236.

Mr. Sledge's current release eligibility date is March 13, 2033. *This sentence calculation reflects 516 days of pretrial jail credit for the dates of December 18, 1991 up to date of first sentences received, May 17, 1993.* He has credit for all time served from May 17, 1993 up to date. He has reduced this overall release eligibility date by earning a total of 2,335 days of sentence reduction credits and educational credits in accordance with Tenn. Code Ann. §41-21-236. These credits were earned between the months of June 1993 and January 1994, and November 2001 up to date. He is not currently eligible for parole consideration and has not been eligible at any time in the past.

(Numbering of paragraphs in original omitted; italics and footnote added.)

The problem with TDOC's calculation is that the criminal court awarded Petitioner 3,521 days of pretrial jail credit in its resentencing order – a period of time expressly provided on the judgment order form as being from December 18, 1991, the date Petitioner was incarcerated pending trial, until August 9, 2001, the resentencing date for his murder conviction. Ms. Whisman's affidavit, on its face, establishes that TDOC only credited Petitioner with 516 days of pretrial jail time. TDOC's calculation may well reflect the correct number of pretrial jail credits that *should* have been awarded to Petitioner. *See State v. Cavitt*, No. E1999-00304-CCA-R3-CD, 2000 WL 964941, at *2, *3 (Tenn. Crim. App., filed July 13, 2000) (“This Court has repeatedly held that § 40-23-101(c) provides for credits against the sentence only if the incarceration, claimed as a basis for the credits, arises from the offense for which the sentence was imposed. . . . ‘Double-dipping’ for credits from a period of continuous confinement in this state for two separate and unrelated charges has been rejected by this Court.”); *State v. Davis*, No. E2000-02879-CCA-R3-CD, 2002 WL 340597, at *3 (Tenn. Crim. App., filed Mar. 4, 2002) (“a defendant incarcerated pretrial who then receives a consecutive sentence is allowed pretrial jail credits to be applied only to the first sentence”). But as already discussed, TDOC does not have the authority to alter a trial court's judgment, in this case one that awarded him 3,521 days of pretrial jail credit. Thus, there is a genuine issue of material fact regarding whether TDOC credited Petitioner with the correct number of pretrial jail days.

It is not ascertainable from the record before us whether the criminal court's award of 3,521 pretrial jail credit days was an error of law, or the result of clerical error. If it was a clerical error, the judgment may be subject to correction under Tenn. R. Crim. P. 36, which provides that "the court may at any time correct clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission." See also *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996); *State v. Moore*, 814 S.W.2d 381, 382-83 (Tenn. Crim. App. 1991); *Davis*, 2002 WL 340597, at *3.

Petitioner further argues that TDOC miscalculated his release eligibility date because the period of his ineligibility for release resulting from his life sentence should have been twenty-five years, not thirty-six years as calculated by TDOC. The governing statute on this issue provides that "[f]or consecutive sentences, the periods of ineligibility for release are calculated for each sentence and are added together to determine the release eligibility date for the consecutive sentences." Tenn. Code Ann. § 40-35-501(m). The parties agree that because Petitioner was sentenced as a standard Range I offender to two counts of aggravated robbery and one count of especially aggravated robbery, his total period of ineligibility for release for those convictions is twelve years, or 30% of his aggregate sentence of forty years. Regarding Petitioner's life sentence, Tenn. Code Ann. § 40-35-501(h)(1) provides as follows:

Release eligibility for each defendant receiving a sentence of imprisonment for life for first degree murder shall occur after service of sixty percent (60%) of sixty (60) years less sentence credits earned and retained by the defendant, but in no event shall a defendant sentenced to imprisonment for life be eligible for parole until the defendant has served a minimum of twenty-five (25) full calendar years of the sentence, notwithstanding the governor's power to reduce prison overcrowding pursuant to title 41, chapter 1, part 5, any sentence reduction credits authorized by § 41-21-236 or any other provision of law relating to sentence credits. A defendant receiving a sentence of imprisonment for life for first degree murder shall be entitled to earn and retain sentence credits, but the credits shall not operate to make the

defendant eligible for release prior to the service of twenty-five (25) full calendar years.⁴

Under this statute, the ineligibility period is thirty-six years, less the correct number of pretrial jail credits and sentence reduction credits, with an absolute minimum of twenty-five full calendar years. Obviously, the appropriate number of days credited should be subtracted only once in calculating the release eligibility date. *Jackson v. Donahue*, No. W2013-01718-CCA-R3-HC, 2014 WL 2547764, at *4 (Tenn. Crim. App., filed May 30, 2014) (“a defendant is not entitled to ‘double-dip’ on receiving pre-trial jail credits under certain circumstances when sentences are ordered to be served consecutively”); *Chambers v. Ray*, No. M2011-01841-COA-R3-CV, 2012 WL 4350872, at *2 (Tenn. Ct. App. M.S., filed Sept. 21, 2012); *Cavitt*, 2000 WL 964941, at *3.

Petitioner argues that TDOC violated the principle stated in *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978) that “[t]he Department of Correction may not alter the judgment of a court, even if that judgment is illegal,” by “not affording [him] the opportunity to meet the parole board and having [him,] a Range I offender[,] serve 100% of two sentences for two counts of aggravated robbery and one sentence of especially aggravated robbery that were all to be served at 30%.” Petitioner is correct that he has ended up serving his full sentences for aggravated robbery, but this is because he was subsequently sentenced to death for first degree murder and later resentenced to life imprisonment, and because of his consecutive sentence structure. TDOC has not unlawfully altered the length any of his sentences as imposed by the trial court. Petitioner has not been eligible for parole consideration at any time since he was incarcerated.

⁴ Because Petitioner’s murder offense occurred before July 1, 1995, Tenn. Code Ann. § 40-35-501(h)(1) applies to determine his release eligibility date. As recently stated by the Court of Criminal Appeals,

[r]elative to offenses committed before July 1, 1995, release eligibility and parole for defendants convicted of first degree murder and sentenced to life imprisonment is governed by Code section 40–35–501(h)(1). *Vaughn v. State*, 202 S.W.3d 106, 118 (Tenn. 2006). Relative to offenses committed on or after July 1, 1995, release eligibility is available for defendants convicted of first degree murder and sentenced to life imprisonment, but release from confinement is governed by Code section 40–35–501(i)(1) . . . [which] permit[s] release from confinement for life imprisonment after serving fifty-one years.

State v. Guerrero, No. M2014-01669-CCA-R3-CD, 2015 WL 2208546, at *2 (Tenn. Crim. App., filed May 11, 2015).

V.

The trial court's summary judgment is vacated and the case remanded to the trial court for further proceedings. Costs on appeal are assessed to the appellee, Tennessee Department of Correction.

CHARLES D. SUSANO, JR., CHIEF JUDGE