

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 8, 2013

HENRY J. NAGORNY v. SHERIFF SCOTT LAYEL

**Appeal from the Circuit Court for Grainger County
No. 8957II Richard Vance, Judge**

No. E2012-01705-COA-R3-CV-FILED-MAY 7, 2013

This appeal arises from a dispute over the calculation of jail credits. Henry J. Nagorny (“Nagorny”), an incarcerated individual, filed a petition for writ of mandamus in the Circuit Court for Grainger County (“the Trial Court”) seeking to compel Sheriff Scott Layel to award him jail behavior credits that allegedly were due him. The Trial Court dismissed Nagorny’s petition, stating that the calculation of credits is an administrative matter. Nagorny filed an appeal to this Court. We hold that the record in this appeal is insufficient for proper appellate review. Namely, the Trial Court’s final order in the record before us apparently is incomplete and missing certain material. We remand to the Trial Court so that it may correct the defect in the record in keeping with our Opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Case Remanded to the
Circuit Court with Instructions**

D. MICHAEL SWINEY, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and THOMAS R. FRIERSON, II, JJ., joined.

Henry Joshua Nagorny, pro se appellant.

Grainger County Sheriff Scott Layel, appellee.¹

¹Appellee did not file a brief and does not appear to have taken any active role in this case whatsoever.

MEMORANDUM OPINION²

Background

Nagorny apparently was convicted of a criminal offense in 2005, and subsequently violated his probation a number of times. In April 2007, Nagorny appeared in the Trial Court on a violation of probation and was ordered to serve 180 days in jail. In April 2009, Nagorny appeared again in the Trial Court on a violation of probation. Nagorny was ordered to serve 250 days in jail. In July 2010, Nagorny appeared yet again in the Trial Court on a probation violation. This time, Nagorny was ordered to serve the balance of his sentence.

Nagorny asserted that he was owed jail behavior credits, and he took a number of actions seeking an adjustment of his credits. In July 2011, Nagorny sent a Tennessee Department of Correction inmate inquiry form to the Records Office asking about his credits. Nagorny received the following reply: “There is nothing we can do regarding county jail behavior credits. You will need to contact the county for an adjustment if you feel an error has been made—Returning all your paperwork.” In September 2011, Nagorny filed a petition for a declaratory order with the Office of the Commissioner of the Department of Correction. In his petition, Nagorny requested that he be credited with 104 allegedly missing jail behavior credits. Nagorny attached to the petition a number of exhibits chronicling his efforts to get jail behavior credits, including a request to the Director of Sentence Management Services, a request to one Counselor Stanley, and, as already noted, an inquiry to the Records Office. Ultimately, Nagorny’s petition was denied. In an October 2011 letter denying Nagorny’s petition, a TDOC official wrote, in part:

TOMIS shows that you have received jail credit (time served) for the following dates:

- June 16-19, 2005 (4 days) (pretrial jail credit)
- December 6, 2006 - June 4, 2007 (181 days)
- February 5, 2009 - August 4, 2009 (181 days)
- July 19, 2010 - through the date of this letter (480 days)

Jail credit (time served) is not prisoner sentence reduction credit (PSRC). Any dates awarded as jail credit after the sentence imposed date (SID) is not

² Rule 10 of the Rules of the Court of Appeals provides: “This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated ‘MEMORANDUM OPINION,’ shall not be published, and shall not be cited or relied on for any reason in any unrelated case.”

pretrial jail credit (PTJC) and pretrial behavior credit (PTBC) is not authorized. Pretrial jail credit (PTJC) is credit for days incarcerated prior to the sentence imposed date (SID), which in case #4006 (ct 1 & 2) is June 20, 2005.

TOMIS shows that you have received all awarded jail credit. Your sentence structure is correct and your sentence expiration dates are correct. Respectfully, your petition is denied.

In March 2012, Nagorny filed a petition for writ of mandamus in the Trial Court against Grainger County Sheriff Scott Layel seeking to be awarded jail behavior credits he allegedly was owed. In July 2012, Nagorny filed a motion for default judgment, alleging that the Sheriff had failed to take any responsive action in this case. Later in July 2012, the Trial Court entered its order. The Trial Court's order appeared to be based on a template form, and stated: "This cause came on to be heard on the . . . Motion/Petition for calculation of jail credits . . . The Motion/Petition is dismissed . . . calculation [of credits] is administrative matter. See attached." Despite the "See attached" language, no documents are attached to the Trial Court's order. Shortly after entry of the Trial Court's order, Nagorny wrote a letter to the Trial Court clerk requesting the missing material, stating "please send me a copy of the attached information . . . I never received the info showing the grounds for dismissal." Nevertheless, the record contains no documents attached to the order in conjunction with the "See attached" language. Nagorny filed a timely appeal to this Court.

Discussion

Nagorny raises a number of issues on appeal, but we restate his issues as one dispositive issue: whether the Trial Court erred in dismissing Nagorny's petition as it did.

There are several noteworthy aspects about this case. The named respondent/appellee, Grainger County Sheriff Scott Layel, apparently has taken no active role in this case, either below or on appeal. While the Trial Court acted *sua sponte* to dismiss Nagorny's petition for writ of mandamus, the basis for the Trial Court's conclusion is unclear from the record before us. The Trial Court's order included the language "See attached." However, despite Nagorny having written a letter to the clerk of the Trial Court inquiring about this referenced attached material, no such documents appear in the record. In sum, the combined circumstances of this case are such as to hamper effective appellate review.

Tennessee law provides us with an avenue of recourse in cases such as this. Tenn. Code Ann. § 27-3-128 (2000) provides:

Remand for correction of record. The court shall also, in all cases, where, in its opinion, complete justice cannot be had by reason of some defect in the record, want of proper parties, or oversight without culpable negligence, remand the cause to the court below for further proceedings, with proper directions to effectuate the objects of the order, and upon such terms as may be deemed right.

This Court previously has applied Tenn. Code Ann. § 27-3-128 in situations where justice requires a remand to develop the record or facts critical to a determination of one or more issues. *See Murvin v. Cofer*, 968 S.W.2d 304 (Tenn. Ct. App.1997); *Sims v. Stewart*, 973 S.W.2d 597 (Tenn. Ct. App. 1998); *Mullins v. Locke*, E2011-01395-COA-R3-CV, 2012 WL 3012637 (Tenn. Ct. App. July 24, 2012), *perm. app. pending*. Additionally, “[p]ursuant to this statute [Tenn. Code Ann. § 27-3-128], an appellate court is permitted to remand the case for proper findings when the trial court has failed to make adequate factual findings necessary for the appellate court to make a just determination of the issues on appeal.” *John Allen Const., LLC, v. Hancock*, W2004-02920-COA-R3-CV, 2006 WL 473732, at *6 (Tenn. Ct. App. March 1, 2006), *no appl. perm. appeal filed*.

We would much prefer to address and resolve this appeal on its merits. However, given the insufficiency of the record on appeal, we cannot. We, therefore, pursuant to the authority of Tenn. Code Ann. § 27-3-128 (2000), vacate the final judgment and order and remand this cause for entry of a new final judgment and order that, at a minimum, attaches the “See attached” documents referenced by the Trial Court. This is to be achieved within 30 days of the filing of this Opinion. Once the Trial Court augments the record as instructed, the trial court clerk shall transmit the record to the clerk of this Court within 15 days. No new briefing is required in this matter. The original panel assigned to this case will remain on the case. All additional filings in this matter shall retain the Court of Appeals number reflected above.

Conclusion

This cause is remanded to the Trial Court in keeping with Tenn. Code Ann. § 27-3-128, with instructions.

D. MICHAEL SWINEY, JUDGE