

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 10, 2023

FILED
01/31/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DAVID CHAD MOSS

**Appeal from the Circuit Court for Maury County
Nos. 25355, 25356 Stella L. Hargrove, Judge**

No. M2021-00043-CCA-R3-CD

Following the trial court’s revocation of his probation, Defendant, David Chad Moss, appeals arguing that the trial court failed to award him jail credit while incarcerated in Kentucky for an unrelated offense. Upon our review, we conclude that Defendant has failed to prepare a sufficient brief in compliance with Tennessee Rule of Appellate Procedure 27(a)(7) and Tennessee Court of Criminal Appeals Rule 10(b). Accordingly, the issue is waived and the appeal is dismissed.

Tenn. R. App. P.3 Appeal as of Right; Appeal Dismissed

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

E. Kendall White, IV, Nashville, Tennessee (on appeal), and Sammy Patterson, Columbia, Tennessee (at trial) for the appellant, David Chad Moss.

Johnathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Brent Cooper, District Attorney General; and Caleb Bayless, Assistant District Attorney General for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

Defendant was indicted by a Maury County Grand Jury for a series of crimes. He was first indicted under criminal docket number 25355 for two counts of criminal simulation, two counts of using false identification and two counts of theft less than \$500. He was then indicted under criminal docket number 25356 for criminal simulation, using

false identification, and theft of services less than \$500. On April 4, 2017, Defendant pled guilty to three counts of criminal simulation, under both docket numbers, in exchange for an effective sentence of four years on probation. On June 22, 2017, the trial court issued a warrant for a probation violation. Defendant pled guilty to the violation and was reinstated. On October 26, 2017, the trial court issued a second and third warrant for several additional probation violations, including failure to report and failed drug screen.

On August 3, 2018, Defendant was arrested in Allen County, Kentucky for driving under the influence. Defendant pled guilty to that charge, in addition to other charges that were pending in Allen County at the time of the arrest. At some point, Defendant was released from the Kentucky Department of Corrections and transferred back to Tennessee where the outstanding warrants were executed. Following a probation revocation hearing, the trial court revoked Defendant's probation in full.

In its written revocation order, the trial court awarded Defendant jail credit for the following periods of time: October 3, 2016 to October 5, 2016; July 20, 2017 to August 24, 2017; and October 29, 2020 to December 10, 2020. Defendant filed a timely appeal on December 30, 2020. On May 6, 2021, the trial court amended its order to reflect that Defendant was entitled to additional jail credit from August 7, 2020 to December 10, 2020.

Analysis

Defendant contends that the trial court erred by failing to give him jail credit for the time that he was incarcerated in Kentucky after waiving extradition on August 8, 2018, until he was served with the revocation warrant. It is unclear when Defendant was served. The State responds that the trial court correctly determined Defendant is not entitled to additional jail credit. The State also responds that because Defendant's brief does not provide citation to the record, Defendant has waived this claim. We agree with the State.

Tennessee Rule of Appellate Procedure 27(a)(7) requires that the appellant set forth an argument for each issue, along with "the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on[.]" Tenn. R. App. P. 27(a)(7). Similarly, Rule 10(b) of the Rules of this Court states plainly that "[i]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court." Tenn. Ct. Crim. App. R. 10(b).

Where there is failure to provide this Court with an adequate appellate record and failure to prepare a sufficient brief in compliance with the Rules of Appellate Procedure, the issue is waived. *State v. Lucy Killebrew*, 760 S.W.2d 228, 236 (Tenn. Crim. App. 1988) (waived issue where Defendant had failed to adequately brief issues by making appropriate

references to the record, cite authority in support of issues, and/or make appropriate arguments); *see also State v. Jason Steven Molthan*, No. M2021-01108-CCA-R3-CD, 2022 WL 17245128, at *2 (Tenn. Crim. App. Nov 28, 2022) *no. perm app. yet filed* (waived issues where Defendant had failed to provide an adequate appellate record and had not prepared a sufficient brief); *see also State v. Sheila Marie Lott*, No. M2008-02127-CCA-R3-CD, 2010 WL 565664, at *4 (Tenn. Crim. App. Feb 18, 2010) (“Appellant also makes a cursory statement that her sentences should have been run concurrently rather than consecutively. Appellant includes no argument or citations to authority to support the statement. [] Because Appellant has failed to cite any authority for this claim, it is waived.”); *see also Dwight Seaton v. State*, No. E1999-01312-CCA-R3-CD, 2000 WL 1177462, at *3 (Tenn. Crim. App. Aug 21, 2000) (waived issue where appellate brief contained no citations to appropriate authorities in support of argument).

In the “Statement of the Facts” section of Defendant’s brief, he states only the following: “There is no record of the facts relied on at trial.” While Defendant cites some applicable law in his brief, he makes not a single reference to the record in the argument section, or anywhere else in his brief. He mentions the revocation hearing on December 10, 2020, and a waiver of extradition, but he fails to make any reference to these matters in his brief. Because of the inadequacy of Defendant’s brief, we must conclude that Defendant has waived appellate consideration of this issue. “We caution counsel, [], that appellate review is frustrated by the failure to include facts relevant to the issues on appeal and the failure to identify the basis in the record for the argument presented and that compliance with the Rules of Appellate Procedure is expected.” *State v. Floyd Pete Lynch*, No. E2019-00195-CCA-R3-CD, 2020 WL 1899611, at *3 (Tenn. Crim. App. Apr 17, 2020). Having concluded that Defendant has failed to comply with the applicable rules, he has waived the issue and we do not reach the merits of his claim.

Conclusion

For the foregoing reasons, we dismiss Defendant’s appeal.

JILL BARTEE AYERS, JUDGE