

Starcher, J., dissenting:	FILED	RELEASED
	July 19, 2000	July 21, 2000
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	SUPREME COURT OF APPEALS OF WEST VIRGINIA	SUPREME COURT OF APPEALS OF WEST VIRGINIA

The majority opinion has crafted, in Syllabus Point 3, an excellent rule regarding home incarceration. I dissent because the majority opinion failed to apply the rule it created to the defendant and the facts of this case.

The rule is quite simple: If an “offender” is placed on home incarceration as a condition of post-conviction bail, then the offender is entitled to receive credit toward any sentence imposed for time spent on home incarceration. The language of the Home Incarceration Act specifically, plainly supports the rule adopted by the majority opinion.

The defendant in this case spent 543 days on home incarceration, waiting for this Court to issue an opinion in her case. If she had spent that time in a prison, she would be entitled to “good time” credit, that is, she would have received 2 days credit toward her sentence for every day she spent in a correctional facility. *See W.Va. Code, 28-5-27 [1984]*. By staying locked up in her parents’ house she lost this benefit.

The majority opinion concedes that the defendant in this case is an “offender” as defined by the Home Incarceration Act. The majority opinion even concedes that the defendant was placed on home incarceration. The majority opinion then concludes that because the circuit judge’s home incarceration order *did not* specifically give the defendant liberties that are within the discretion of the

judge and allowed by the Act -- like the limited right to go to church or school -- then the defendant, for some reason, wasn't really on home incarceration and is therefore not entitled to credit under the Act.

I simply cannot understand the majority's logic. Great rule, poor reasoning, bad result.

I therefore dissent.