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FILED
May 26 2009, 9:21 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

RACHEL N. MILLS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-0811-CR-658
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth Scheibenberger, Judge
Cause No. 02D04-0805-FB-72

May 26, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Rachel Mills appeals the trial court's denial of pre-sentence credit time. We affirm.

Issue

Mills raises one issue, which we restate as whether she should have been awarded pre-sentence credit time.

Facts

On May 1, 2008, Mills was charged with two counts of Class B felony dealing in cocaine and one count of Class C felony dealing in a look-a-like substance. On May 6, 2008, Mills was taken into federal custody based on the revocation of her "supervised release," which was the result of a federal felony conviction for making a false statement. App. p. 17. On May 12, 2008, an arrest warrant was issued for Mills based on the dealing charges. At some point, Mills was also alleged to have violated her probation, which arose out of a 2007 Class D felony conviction.

Mills pled guilty to one count of Class B felony dealing in cocaine and the remaining charges were dismissed. Mills also admitted to violating her probation. The trial court sentenced Mills to eight years on the Class B felony cocaine conviction and ordered that sentence to be served consecutive to the federal sentence and the sentence imposed on the probation revocation. The trial court sentenced Mills to one and a half years on the probation revocation.

At the sentencing hearing, the parties and the trial court discussed the award of pre-sentence credit time from May 6, 2008, until the October 6, 2008 sentencing hearing.

Mills's attorney argued that she was entitled to have the 151 days of credit applied to either the Class B felony sentence or the probation revocation sentence. The State acknowledged that Mills was entitled to the 151 days of credit but argued that if she was receiving those days as a credit toward her federal sentence then she should not get credit for them toward either of her state sentences.

Although there was no documentary evidence showing whether Mills was serving her federal sentence, at the sentencing hearing, Mills stated, "From what I've heard, my release date is December 14th for federal and Allen County is a federal holding facility." Tr. p. 10. Relying on that statement, the trial court concluded that Mills was receiving the credit toward the federal sentence and was not entitled to credit toward either of the state sentences. The trial stated, however, "If she's not - - she doesn't get any credit in the federal case for time she spent here, I will give her the credit, but I need documentation." Id. at 11. Mills now appeals.

Analysis

Mills argues that the trial court's decision to deny her pre-sentence credit time toward the state sentences was based on mere speculation and that she is entitled to credit toward one of the state sentences. Initially, we point out that Mills admitted during the sentencing hearing that she was serving the federal sentence. Moreover, if she was not serving the federal sentence, the trial court told her to request that the credit time be applied to one of her state sentences. There is no indication that Mills made such a request or that she did not receive credit toward her federal sentence during the time in question.

As to whether she should get credit toward her federal sentence and one of her state sentences as a matter of law, in Bennett v. State, 802 N.E.2d 919, 922 (Ind. 2004), the defendant, who was sentenced to consecutive sentences pursuant to a plea agreement, argued that the trial court improperly denied him pretrial credit. Our supreme court rejected that argument, holding that '"where a defendant is confined during the same time period for multiple offenses for which he is convicted and sentenced to consecutive terms, credit time is applied against the aggregate sentence, not against each individual sentence.'" Bennett, 802 N.E.2d at 922 (quoting Lanham v. State, 540 N.E.2d 612, 613 (Ind. Ct. App. 1989)), trans. denied; see also Shane v. State, 716 N.E.2d 391, 400 (Ind. 1999). In another case in which we concluded that a defendant was not entitled to "double credit," we observed that awarding "'full credit' on each sentence, when the sentences must be served consecutively, enables a defendant to serve part of his sentences concurrently, a result the legislature could not have intended." Diedrich v. State, 744 N.E.2d 1004, 1006 (Ind. Ct. App. 2001).

Further, our supreme court has observed, "Indiana defendants are not entitled to credit on an Indiana sentence while incarcerated in another state." Penick v. State, 659 N.E.2d 484, 489 (Ind. 1995). We see no reason why this reasoning should not also apply to a defendant's federal incarceration.

The trial court ordered all of Mills's sentences to be served consecutively. If the 151 days of credit were applied toward her federal sentence and one of her state

sentences, Mills would serve a portion of her sentences concurrently.[1] This is not what the trial court ordered, nor is it permitted by Indiana case law. See id. Under these facts, where Mills admitted she was serving her federal sentence and there is no evidence to the contrary, the trial court properly declined to give her credit toward the state sentences.

Conclusion

The trial court properly did not apply the 151 days of credit toward her state sentences. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.

[1] To the extent Mills argues that she should receive 151 days of credit to both of her state sentences, we disagree. Because the trial court ordered all of the sentences to be served consecutively, she would only be entitled to 151 days of credit toward one of her state sentences. See Bennett, 802 N.E.2d at 922.