



## **Case Summary**

Calvin T. Brown appeals the trial court's determination of the credit time to which he is entitled for his imprisonment pending the revocation of his probation. We affirm.

### **Issue**

Did the trial court properly determine Brown's credit time?

### **Facts and Procedural History**

On September 21, 2004, the trial court sentenced Brown to concurrent terms of nine years, with one year suspended to probation, for two counts of class B felony dealing in cocaine. Brown received 1440 days' credit against his sentence. On February 10, 2006, Brown was placed on probation.

On August 15, 2006, while he was still on probation, Brown was arrested and charged with two counts of class B felony dealing in cocaine. On August 16, 2006, the probation department filed a notice of probation violation. On August 28, 2006, Brown was served in jail with a subpoena for a hearing on the alleged probation violation. On December 11, 2006, the trial court released Brown on the pending cocaine charges because of speedy trial and evidentiary issues and imposed a bond on the probation violation. On December 26, 2006, Brown posted bond and was released from jail.

On February 5, 2007, Brown was arrested and charged with class D felony operating a vehicle as a habitual traffic violator. On March 2, 2007, the probation department filed an

amended notice of probation violation. On March 15, 2007, Brown was served in jail with an arrest warrant for the probation violation.<sup>1</sup>

At a hearing on April 30, 2007, the trial court revoked Brown's probation and credited him with sixty-three days for his imprisonment from December 11 to December 26, 2006, and from March 15 to April 30, 2007. The court also awarded Brown sixty-three days of "good time credit," for a total of 126 days' credit against the execution of his suspended sentence. *See* Ind. Code § 35-50-6-3(a) ("A person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing."). Brown now appeals the trial court's credit time determination.

### **Discussion and Decision**

In *Stephens v. State*, we explained that "[d]etermination of a defendant's pretrial credit is dependent upon (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which sentence is being imposed." 735 N.E.2d 278, 284 (Ind. Ct. App. 2000) (citing, *inter alia*, Ind. Code § 35-50-6-3), *trans. denied*. The parties agree that these principles apply in the probation revocation context.

Brown contends that he should have received credit for his confinement from August 15 through December 10, 2006. We disagree. As the State points out, Brown was arrested and jailed on August 15 as a result of the two unrelated cocaine charges, not as a result of an alleged probation violation. Indeed, a violation was not alleged until August 16, and Brown

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<sup>1</sup> At the revocation hearing, Brown's counsel stated that the arrest warrant was served on March 15. Tr. of 4/30/07 hearing at 13. The chronological case summary, however, indicates that the warrant was served on March 16. Appellant's App. at 10. Because neither party challenges this one-day discrepancy, we do not address it further.

did not receive a subpoena until August 28. The trial court released Brown from the cocaine charges on December 11, 2006, and imposed a bond on the probation revocation. Clearly, then, Brown's confinement from August 15 through December 10, 2006, was not the result of the alleged probation violation.<sup>2</sup> Therefore, we affirm the trial court's determination of Brown's credit time.

Affirmed.

BAILEY, J., and NAJAM, J., concur.

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<sup>2</sup> Brown argues that he may never "get[] sentenced on a second case and therefore he would never receive that jail time credit." Appellant's Br. at 10. Brown's argument is speculative, at best. According to the Indiana Department of Correction, Brown was sentenced on October 10, 2007, to eight years for one count of class B felony dealing in cocaine and an additional three years for being a habitual substance offender in the cause for which he was arrested on August 15, 2006. Indiana Department of Correction, Offender Search, [http://www.in.gov/apps/indcorrection/ofs/?previous\\_page=1&detail=993283](http://www.in.gov/apps/indcorrection/ofs/?previous_page=1&detail=993283) (last visited Dec. 12, 2007). Moreover, every criminal defendant runs the "risk" of not receiving credit for time served in jail on charges that are later dismissed.