Circuit Court for Wicomico County
Case No: 22-K-98-000224

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 444

September Term, 2020

WILLIAM ASBURY ENNIS

v.

STATE OF MARYLAND

Beachley,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 22, 2020

In 1998, William Asbury Ennis, appellant, pled guilty to first-degree murder and was sentenced to life, with all but 40 years suspended, to be followed by a five-year term of probation. In April 2020, Mr. Ennis, representing himself, filed a motion requesting an additional six days of credit for time spent in custody pre-trial. Specifically, he asserted that his sentence was ordered to begin on August 20, 1997, but that he had committed the crime "on 8-14-1997 and was taken into custody one hour later." He attached a portion of a newspaper article dated Friday, August 15, 1997 in which it was reported that, after the shooting, "Ennis was rushed to Peninsula Regional Medical Center in Salisbury for treatment of a bullet wound to the left jaw[]" and "[h]e was under guard Thursday night." He further asserted that, "even evidence submitted by the State's Attorney in court records support this[,]" but he did not point to anything in the record. He requested that the start date of his sentence be corrected to August 14, 1997.

On June 2, 2020, the court (the Honorable Kathleen Beckstead, presiding) filed an order denying relief after concluding that Mr. Ennis "has been given all credit to which he is entitled." Specifically, the court found that the "arrest warrant in this case was issued on August 14, 1997 but was not served until August 20, 1997 at Peninsula Regional Medical Center." The court further found that, "[t]he case file does not mention any history of the Defendant being arrested prior to the August 20, 1997 date."[1]

[1] On June 10, 2020, more than a week after the court filed its order, Mr. Ennis filed a request with the court asking that the court "hear this motion via video conferencing or Skype." He had not requested a hearing when he filed the motion itself.

On appeal, Mr. Ennis maintains that he was in "custody" on August 14, 1997. He acknowledges that the arrest warrant was not served until August 20, 1997, but claims that "[t]here was no hurry because I was already in custody of the Wicomico Sheriff's Department" and points to the newspaper article that reported he was "under guard Thursday night," the 14th of August while at the hospital. He also claims, apparently for the first time on appeal, that he had "tried to leave the hospital room at which time Wicomico Sheriff's Deputy prevented me from leaving."

The State responds that the court properly denied Mr. Ennis's motion because he failed to establish that he was "in custody a full week before he was arrested on these charges." The State notes that the limited record before us includes a docket entry that shows Mr. Ennis was in custody on September 8, 1997, but the docket entries "do not show when that custody began." And the State maintains that the newspaper article Mr. Ennis relies on "shows only that on Thursday, August 15, 1997 he was 'under guard.'" The State points out that the article does not mention "when or how long Ennis was under guard, how long he remained in the hospital or where he was transported thereafter." Thus, the State asserts that Mr. Ennis failed to meet his burden that he was entitled to the additional six days of credit which he sought.

Section 6-218 of the Criminal Procedure Article of the Md. Code provides for credit for time served pretrial. In relevant part, the statute states:

> (b)(1) A defendant who is convicted and sentenced shall receive credit against and a reduction of the term of a definite or life sentence . . . for all time spent in the custody of a correctional facility, hospital, facility for persons with mental disorders, or other unit because of:

(i) the charge for which the sentence is imposed; or
(ii) the conduct on which the charge is based.

Mr. Ennis claims that he was in the State's custody beginning August 14, 1997, but his only proof is the newspaper article mentioning that on the night of August 14th he "was under guard" at the hospital where he had been taken for treatment. The circuit court found that the arrest warrant was served on August 20th "at Peninsula Regional Medical Center." But it is not clear whether Mr. Ennis remained in the hospital from August 14th to August 20th and, if he did, whether he was "under guard" that entire time. But even if we assume that Mr. Ennis remained hospitalized and "under guard" for the six days at issue, we are not persuaded that being "under guard" at the hospital prior to the execution of the arrest warrant constitutes being "in custody" for Crim. Proc. § 6-218 purposes. As the Court of Appeals observed in *Dedo v. State*, 343 Md. 2, 10 (1996), "mere supervision" is "insufficient to qualify as custody[.]" And as this Court has noted in discussing entitlement to credit, a "key feature of custody . . . is the defendant's exposure to criminal prosecution for escape if he were to leave the site of his detention." *Johnson v. State,* 236 Md. App. 82, 89 (2018). Had Mr. Ennis left the hospital prior to the execution of the arrest warrant, he would not have been subject to prosecution for escape. *See* § 9-405 of the Criminal Law Article of the Md. Code ("A person who has been *lawfully arrested* may not knowingly depart from custody without the authorization of a law enforcement or judicial officer.") (emphasis added)). As such, we perceive no error in the circuit court's denial of his motion.

Next, Mr. Ennis maintains that "Judge Beckstead should have handed this case to another judge as she had a conflict of interest because Judge Beckstead represented me on a legal matter in 1992 before she was a judge." He did not elaborate on the nature of the 1992 proceeding.

The State responds that Mr. Ennis never asked Judge Beckstead to recuse herself and moreover, "she was not required to recuse herself because she allegedly previously represented Ennis in a prior unrelated case." *See Sharp v. Howard County*, 327 Md, 17, 36 (1992) (stating that "judges are not disqualified from an action simply because it involves a former client as a party.")

We agree with the State. There is nothing in the record which reflects that Mr. Ennis asked Judge Beckstead to recuse herself; nor is there anything before us that suggests that she should have in this instance.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.