UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0234

September Term, 2015

NATHAN C. ROGERS

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: January 26, 2016

When the Circuit Court for Prince George's County revoked the probation of Nathan C. Rogers, appellant, and ordered him to serve a previously suspended ten-year sentence, it denied his request for credit for the time he had spent on home detention. Thereafter, appellant filed a motion to correct an illegal sentence, which the circuit court denied. Appellant appealed and presents the following question for our review:

> Did the circuit court err in denying the motion to correct an illegal sentence and [in failing to] give Appellant credit for the entire time he served on home detention?

Section 6-225(e) of the Criminal Procedure Article of the Maryland Code (2008 Repl. Vol.) provides that, where home detention is a condition of probation, time served on home detention "shall be credited against any sentence of incarceration imposed by the court" upon revocation of that probation. Accordingly, we reverse the judgment of the circuit court and remand with instructions to modify appellant's commitment record to reflect credit for the time he spent on home detention.

BACKGROUND

On March 11, 2011, appellant pleaded guilty to first-degree assault and on July 8, 2011, he was sentenced to a term of ten years' imprisonment, with all but eighteen months suspended, and to a period of three years supervised probation upon release. As a condition of probation, appellant was ordered to pay restitution in the amount of $917.75 to the assault victim. The court ordered that the eighteen months of active time was to be served at the county detention center, with the understanding that, after nineteen days in jail, appellant

would be placed on home detention "through the county" to enable him "to keep his job" and "pay the restitution."

After sentencing, it was learned that the local detention center deemed appellant ineligible for its home detention program because he had an outstanding charge in Charles County. The court then granted appellant's motion for reconsideration of his sentence. At a re-sentencing hearing held on July 29, 2011, the court imposed a ten-year term of imprisonment, all suspended, and placed appellant on supervised probation for four years. As a condition of probation, appellant was required to spend the first eighteen months of the probationary term on "private home detention." While on home detention, appellant was authorized to go "to work" and to "all court-required attendances."

On or about April 27, 2012, appellant stabbed a woman to death in his backyard. After he was convicted of second-degree murder, the State moved to revoke his probation in this case.

At a violation of probation hearing held on December 20, 2013, the court terminated appellant's probation and ordered him to serve the previously suspended ten-year sentence for assault, to run consecutive to the sentence imposed for second-degree murder. Appellant requested 303 days credit against his ten-year sentence, which included the time he had spent on home detention. The State, however, asserted that appellant was not entitled to the "credit for the home detention because it was a condition of his probation" and not "home detention through the jail." The court awarded appellant credit for 31 days – apparently the time he

had previously spent incarcerated for this offense – but did not award any credit for the time he had spent on home detention.

On February 13, 2015, appellant filed a motion to correct an illegal sentence in which he asserted that his sentence was illegal because he was not given credit for the "270 days" he was on home detention.[1] The court denied the motion, prompting this appeal.

DISCUSSION

Both appellant and the State rely on Crim. Proc., § 6-218 (and case law interpreting that statute) to support their respective positions for and against the award of credit for appellant's time spent on home detention. That statute governs credit against a sentence "for time spent in custody."[2]

[1] In another section of his motion, appellant asserted that he was on home detention from "August 2, 2011 through April 26, 2012 (269 days)."

[2] In pertinent part, Crim. Proc., § 6-218 provides:

> A defendant who is convicted and sentenced shall receive credit against and a reduction of the term of a definite or life sentence, or the minimum and maximum terms of an indeterminate sentence, for all time spent in the custody of a correctional facility, hospital, facility for persons with mental disorders, or other unit because of:
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> (i) the charge for which the sentence is imposed; or
>
> (ii) the conduct on which the charge is based.

Crim. Proc., § 6-218(b)(1).

In our view, however, Crim. Proc., § 6-225 is the applicable statute and is dispositive of the issue before us. That statute provides that, "[a]s a condition of probation, the court may order a defendant to a term of custodial confinement." Crim. Proc., § 6-225(b)(1)(v).

"Custodial confinement," as it is used in Crim. Proc., § 6-225, means:

> (i) **home detention**;
> (ii) a corrections options program established under law which requires the individual to participate in home detention, inpatient treatment, or other similar program involving terms and conditions that constitute the equivalent of confinement; **or**
> (iii) inpatient drug or alcohol treatment.

Crim. Proc., § 6-225(a)(1) (emphasis added).[3]

"Home detention" is not defined in the statute, but there is no dispute that appellant, as a condition of his probation, was required to spend the first eighteen months of his four-year term of probation on "private home detention," with authorization only to go to work and "court-required" appointments. There is also no dispute that appellant, in fact, was on home detention at the outset of his probationary term. At the violation of probation hearing, the State informed the court that, until his arrest for murder, appellant had been "on private home detention" that "was monitored by Alternative Sentencing." The fact that appellant was on "private" home detention, rather than a home detention program through a correctional facility, is irrelevant. *See Spriggs v. State*, 152 Md. App. 62, 69 (2003) (holding that the trial court erred in refusing to credit the defendant's sentence for the pre-trial time

[3] "'Custodial confinement' does not include imprisonment." Crim. Proc., § 6-225(a)(2).

he had spent on home detention because it was monitored by a private entity and not through the county correctional center).

Upon revocation of probation, the statute expressly provides for credit for time spent on home detention. Specifically, Crim. Proc., § 6-225(e) states: "If an individual violates the terms of probation, any time served by the individual in custodial confinement **shall** be credited against any sentence of incarceration imposed by the court." [4] (Emphasis added.) Again, for the purposes of this statute,"custodial confinement" includes "home detention." Accordingly, we conclude that, when the court terminated appellant's probation and ordered him to serve his previously suspended sentence, the court was bound by law to give appellant credit against his sentence for the time he had spent on home detention. Because the court failed to award such credit, the sentence exceeded the maximum permitted by law and, thus was the proper subject of a Rule 4-345(a) motion to correct an illegal sentence.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED WITH INSTRUCTIONS TO MODIFY THE APPELLANT'S COMMITMENT RECORD TO REFLECT CREDIT FOR TIME SERVED ON HOME DETENTION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

[4] The legislature added this provision to the statute in 2001. *See* Laws of Maryland, 2001, Chapter 356.