UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2478

September Term, 2014

DUSTIN JOSEPH EID

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: September 23, 2015

In the Circuit Court for Frederick County, Dustin Eid, appellant, admitted to violating probation, after which the court directed that part of his previously suspended sentences be executed. Appellant filed a motion to correct the commitment records generated by the court after the violation of probation hearing, on grounds that they do not accurately reflect his sentence because they do not indicate any credit for the time he served in prison prior to being released on probation. The court denied the motion, ruling that the commitments as prepared were correct, and properly reflected the intent and announced sentence of the court.

Appellant filed this appeal, asserting that the circuit court erred in denying the motion to correct the commitment records. For the reasons that follow, we shall remand the case for further appropriate proceedings in accordance with Md. Rule 8-604(d).

BACKGROUND

In 2012, appellant pleaded guilty to two separate acts of first-degree burglary that were charged in separate cases, which we shall refer to as "Case 46" and "Case 48."[1] In Case 46, appellant was sentenced to 20 years' incarceration, with all but 7 years suspended, and 3 years of supervised probation upon release. In Case 48, appellant was sentenced to a concurrent 20-year term, all suspended, with 3 years probation upon release.

On July 31, 2013, after appellant had served a portion of the unsuspended sentence in Case 46, the court held a hearing on appellant's motion, pursuant to Maryland Code (2009 Repl. Vol). Health General Article ("HG"), § 8-507, for a letter of intent to commit appellant

[1] The full case numbers are 10-K-12-52046 and 10-K-12-52048.

to the Department of Health and Mental Hygiene ("DHMH") for residential treatment for drug dependency. The court granted the motion, and committed appellant to DHMH for inpatient treatment. Concurrent with the commitment, appellant was released on probation, a condition of which was that he successfully complete treatment.

On or about September 3, 2013, appellant was removed from the residential treatment program prior to completion due to his non-compliance with program rules. At the violation of probation hearing in June 2014, appellant stipulated to the violation. Defense counsel requested that the court consider crediting appellant with the time he had served in prison and the time spent in treatment, which totaled two years and two days. The court then directed execution of appellant's previously suspended sentences as follows:

> Case 46 - 10 years and 363 days, all but five years suspended;
>
> Case 48 - 7 years and 363 days, all but five years suspended, to run concurrent to the sentence in Case 46.

The court stated that appellant was given credit for the two years and two days he had served. Both sentences were to be served consecutive to a sentence that appellant was then serving in Carroll County.

The commitment records prepared in both cases following the violation of probation hearing indicate the sentence as follows: "Reimpose Org Remaining Sentence ss a/b 5 years," which we interpret as: "reimpose" the original remaining sentence, suspending all

but five years.[2] The commitment records further indicate that the sentence in Case 46 was consecutive to the sentence appellant was serving in Carroll County; and that the sentence in Case 48 was concurrent with that in Case 46.

DISCUSSION

A sentence imposed against a criminal defendant must credit the defendant with time he or she spent incarcerated or confined for medical reasons because of the charge or conduct for which the sentence was imposed. Maryland Code (2008 Repl. Vol.), Criminal Procedure Article ("CP"), § 6-218(b) provides:

> (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, 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:
>
> (I) the charge for which the sentence is imposed; or
>
> (ii) the conduct on which the charge is based.

[2] The term "reimpose" is misleading in the context of violation of probation, as the Court of Appeals has noted:

> If [a] defendant violates [ ] probation, the court may revoke it and, at that time, *direct execution* of all or any part of the sentence. The court does not, at that time, either impose or reimpose the sentence. The sentence has already been imposed. All that is at issue is how much of the sentence previously imposed the defendant must now serve in prison by reason of the violation of probation.

Benedict v. State, 377 Md. 1, 8 (2003) (emphasis added).

One of the purposes of the sentencing credit statute is to ensure that a convicted defendant receives credit for time spent in custody, thus eliminating "dead time," which is "time spent in custody that will not be credited to any valid sentence." *Fleeger v. State*, 301 Md. 155, 165 (1984).

Appellant argues that the trial court erred in denying the motion to correct the commitment records because the commitment records fail to reflect the time served, in violation of Maryland Rule 4-351(a)(4).[3] The State responds that the record is clear that appellant received the credit he was due, and that his claim is moot because information contained in the commitment record automatically accounts for time served.[4] We conclude that the commitment records are incorrect in that they do not accurately reflect the execution of the sentences as announced by the court. We further conclude that appellant was not

[3] Md. Rule 4-351(a)(4) provides that "[w]hen a person is convicted of an offense and is sentenced to imprisonment, the clerk shall deliver to the officer into whose custody the defendant has been placed a commitment record containing . . . [t]he sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law[.]"

[4] Although we shall hold that appellant was only entitled to credit for the time he spent in residential treatment prior to being removed for non-compliance, we disagree with the State that the commitment records indicate that appellant's sentences are imposed "beginning from the date '2/5/13'" and that therefore, under *Johnson v. State*, 213 Md. App. 582, *cert. denied*, 436 Md. 328 (2013), any time served prior to his violation of probation hearing was automatically accounted for. The commitment record indicates only that the original sentence was *imposed* on 2/5/13, and that the probation "sentence" was *imposed* on 6/20/14. Because the court directed that the suspended sentences be executed consecutive to the sentence appellant was then serving in Carroll County, the commitment record does not reflect the date from which the sentence would run.

entitled to credit for time served in prison before being released and committed to DHMH for residential treatment. He was only entitled to credit for time he spent in residential treatment. We explain.

"When dealing with a split sentence, the court, in revoking probation, may direct execution of all or part of the previously suspended part of the sentence, but not of any part of the sentence that the court initially directed to be served in prison." *Benedict v. State*, 377 Md. 1, 12 (2003). As the Court noted, this serves the purpose of:

> (1) focusing the court on the part of the sentence that it had previously deferred execution of in favor of probation and not the part it had already directed to be served in prison, [and] (2) allowing [CP §] 6-218(b) to operate by giving the defendant credit for all time that he/she served in prison under the sentence[.]

Accordingly, as a result of appellant's violation of probation, the court could have ordered execution of all or part of his previously suspended sentences, which were 13 years in Case 46, and 20 years in Case 48.[5] Any credit for time served prior to the violation of probation would have been applied against the "active" or unsuspended part of the sentence that the court initially directed appellant to serve.

[5] As defense counsel noted during the violation of probation hearing, there is some confusion in the record regarding the sentence on Case 48. Defense counsel apparently relied on a clerical error in the Probation/Supervision Order in misrepresenting to the court that the suspended or "back up" time in Case 48 was 10 years. According to the transcript of the original sentencing, appellant was sentenced in Case 48 to 20 years, all suspended, which is also what is reflected in the sentencing worksheet. "When there is a conflict between the transcript and the [ ] record, unless it is shown that the transcript is in error, the transcript prevails." *Douglas v. State*, 130 Md. App. 666, 673 (2000).

It is clear from the transcript of the violation of probation hearing that in Case 46, the court directed execution of 10 years and 363 days, with all but 5 years suspended. This does not comport with the commitment record, which indicates that the original sentence (13 years) was "reimposed," with all but five years suspended. Similarly, in Case 48, the court directed execution of 7 years and 363 days, with all but 5 years suspended. The commitment record, however, indicates that the court directed execution of the original sentence (20 years), all but five suspended.

In addition to the inconsistency between the commitment records and the execution of sentences announced by the court, the court was mistaken in crediting appellant with the time spent in custody between June 18, 2012, the date of his arrest on the burglary charges, and July 31, 2013, when he was committed to DHMH and placed on probation. That time had already been credited to the valid sentence he received from the original burglary conviction. Appellant did not serve any time on the suspended sentence in Case 46, and served no time at all on the fully suspended sentence in Case 48, and was therefore not entitled to any credit for time served in prison after he violated probation and was then directed to execute the suspended sentences.

Appellant was, however, entitled to receive credit for the time he was committed to the inpatient treatment facility before he was removed because of non-compliance. Pursuant to HG § 8-507(n), "[t]ime during which a defendant is held under this section for inpatient

evaluation or inpatient or residential treatment shall be credited against any sentence imposed by the court that ordered the evaluation or treatment."

CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY FREDERICK COUNTY.