

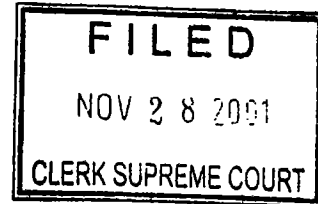
IN THE COURT OF APPEALS OF IOWA

No. 1-510 / 99-2003
Filed November 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIE LEE DUNSON,
Defendant-Appellant.



Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Willie Lee Dunson appeals from the district court's denial of his application to determine jail credits. **AFFIRMED.**

Patrick E. Ingram of Mears Law Firm, Iowa City, for appellant.

Thomas J. Miller, Attorney General. Kristin Mueller and William A. Hill, Assistant Attorneys General, Thomas J. Ferguson, County Attorney, and Susan Swan and Danielle Davis, Assistant County Attorneys, for appellee.

Heard by Huitink, P.J., Zimmer, J., and Habhab, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2001).

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HUITINK, P.J.

I. Background Facts and Proceedings.

Willie Dunson pled guilty to seven charges of third-degree theft in violation of Iowa Code section 714.2(3) (1997) and one charge of possession of a controlled substance in violation of section 124.401(5). In August 1998 the court sentenced Dunson to an indeterminate two-year term of incarceration for each of the theft charges and to a one-year term for the possession charge, with all of the sentences to run consecutively. The sentences were suspended, and Dunson was placed on probation. The sentencing orders specified that Dunson was to receive credit for time served.

Shortly after sentencing the State filed a report alleging Dunson had violated the terms of his probation. In exchange for his admission to the probation violation, the State agreed not to prosecute three pending charges, to let Dunson's one-year possession charge run concurrent with his theft convictions, and to allow Dunson to receive credit for time served. An order revoking Dunson's probation and imposing sentence was filed in January 1999.

In February 1999 Dunson wrote the court asking to receive his credit for time served. The court filed an order stating that Dunson "shall be given credit for any time previously served with regard to any of the above-numbered cases." The records administrator at the Fort Dodge Correctional Facility sought clarification from the court asking if Dunson was to receive credit for time served just once or if he was to receive it seven times since he had seven consecutive sentences. In a letter dated June 4, 1999, District Associate Judge Johnson

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indicated he had reviewed the file and it appeared to him that Dunson should receive credit for time served against each of his sentences for a total of 1082 days. Judge Johnson's letter also indicated the issue of Dunson's credit for time served should be set for hearing.

On August 19, 1999, following a hearing, the court entered an order determining Dunson was entitled to a total of 287 days of credit. Dunson did not appeal from that order. He instead filed an application for postconviction relief claiming he had previously been given credit for time served against each of his consecutive sentences and the department of corrections had improperly taken it away.

In a ruling filed November 3, 1999, the district court dismissed Dunson's postconviction relief petition stating:

The Defendant's Application for Postconviction Relief came on for hearing on regular motion day and in accordance with the rules of the court. Because Defendant's application does not assert grounds for which postconviction relief may be granted under Iowa Code § 822.2, the court is treating said application as an Application for Determination of Jail Credits, as that is the relief requested.

In alleging that jail credits have been "taken away," it is apparent that Defendant mistakes the June 4, 1999, correspondence of The Honorable J. G. Johnson as a final determination of the issue of jail credits for the consecutive sentences imposed. The matter was considered extensively and adjudicated on July 27, 1999 following a hearing at which Defendant's interests were represented by counsel. That decision resulted in the calculation of 287 days credited.

IT IS ORDERED THAT said application is DENIED.

On appeal Dunson claims his "sentence was final and could not be reopened." He argues the "State . . . waived any problems with the sentence by

failing to appeal.” Dunson also contends any credit for time served must be applied toward each of his seven consecutive sentences for a total of 1178 days rather than 287 days as determined by the district court.

II. Scope of Review.

We review the trial court's application of statutory sentencing provisions for correction of errors at law. *State v. Hawk*, 616 N.W.2d 527, 528 (Iowa 2000) (citing *State v. Edgington*, 601 N.W.2d 31, 32 (Iowa 1999)).

III. The Merits.

Iowa Rule of Criminal Procedure 23(5)(a) authorizes the correction of an illegal sentence at any time. *State v. Heinze*, 465 N.W.2d 863, 864 (Iowa 1991). Because the issues raised in this appeal implicate the legality of the trial court's sentencing orders, there is no merit in Dunson's waiver argument.

Iowa Code section 901.8 provides:

If a person is sentenced for two or more separate offenses, the sentencing judge may order the second or further sentence to begin at the expiration of the first or succeeding sentence. . . . Except as otherwise provided . . . , if consecutive sentences are specified in the order of commitment, the several terms shall be construed as one continuous term of imprisonment.

Iowa Code § 901.8.

Iowa Code section 903A.5 provides:

If an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, *the inmate shall be given credit for the days already served upon the term of the sentence.*

Iowa Code § 903A.5 (emphasis added).

According to Dunson, the plain meaning of the emphasized language requires he receive credit for time served in the county jail upon each one of the seven consecutive sentences imposed. We disagree.

In construing statutes the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said. Iowa R. App. P. 14(f)(13). We consider the applicable statute in its entirety and *in pari materia* with other statutes. *Hawk*, 616 N.W.2d at 529 (citing *State v. Byers*, 456 N.W.2d 917, 919 (Iowa 1990)).

Dunson's multiple credit theory is irreconcilable with the plain meaning of the foregoing statutes. Under section 903A.5, Dunson is entitled to credit for time served against "the term" of his sentence. In the context of consecutive sentences, Dunson's sentences are construed as one continuous term. Iowa Code § 901.8. We, like the trial court, conclude that when these statutes are read together, Dunson is only entitled to credit for time served against the aggregate of his consecutive sentence.

This conclusion appears to be consistent with the generally understood public policy underlying credit for time served statutes. There is substantial authority holding that the legislative intent of these statutes is to place a defendant who is unable to post bond on equal footing with one who is able to do so. Under a contrary interpretation of the statute, the defendant who is unable to post bail or who is sentenced to a nonbailable offense would be placed in a better position by receiving multiple credit for time served. See *State v. Taullili*, 29 P.3d 914, 918 (Haw. 2001); *Commonwealth v. Carter*, 411 N.E.2d 184, 185-

86 (Mass. App. Ct. 1980); *People v. Cantu*, 323 N.W.2d 719, 720-21 (Mich. Ct. App. 1982); *State v. Sanchez*, 520 N.W.2d 33, 36-37 (Neb. Ct. App. 1994); *Nissel v. Pearce*, 764 P.2d 224, 227-28 (Or. 1988); *Wilson v. State*, 264 N.W.2d 234, 235 (Wis. 1978). Lastly, we note our construction of 903A.5 is consistent with prior case law addressing the same issue prior to the enactment of 903A.5. See *State v. Johnson*, 167 N.W.2d 696, 701 (Iowa 1969) (holding the defendant was not entitled to have credit applied to two cases because the sentences were consecutive).

The judgment of the district court is affirmed.

AFFIRMED.

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