

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CRIMINAL DIVISION W
CASE NO. 502010CF005829AXXXMB

STATE OF FLORIDA,

v.

JOHN GOODMAN,
Defendant.

FILED
15 NOV 24 PM 2:31
CLERK
PALM BEACH COUNTY, FL
CRIMINAL

**ORDER DENYING DEFENDANT'S MOTION TO CORRECT SENTENCING ERROR
FOR CREDIT FOR TIME SERVED IN CUSTODY AND CONTROL OF THE PBSO**

THIS CAUSE came before the Court on Defendant's Motion to Correct Sentencing Error for Credit for Time Served in Custody and Control of the PBSO, filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) on October 25, 2015. The Court has carefully reviewed the Motion, heard argument from the parties, reviewed the case file, and is otherwise fully advised in the premises.

STATEMENT OF FACTS

Defendant John Goodman was initially convicted of DUI Manslaughter on March 23, 2012, and was sentenced to sixteen (16) years in the custody of the Department of Corrections. After filing his Notice of Appeal, this Court signed an Agreed Order Admitting Defendant to Post-Conviction Bail Pending Appeal on May 16, 2012, pursuant to which Defendant was placed on house arrest under the supervision of the Palm Beach County Sheriff's Office. On May 3, 2013, this Court granted Defendant's Motion for New Trial and/or to Vacate His Conviction Based on Jury Misconduct, and on May 22, 2013, this Court issued an Order Modifying Bond,

pursuant to which certain conditions of Defendant's release were modified to reinstate his pre-trial release status and conditions.

On October 28, 2014, following Defendant's second trial, Defendant was again convicted of DUI Manslaughter. At the sentencing hearing on November 19, 2014, Defendant argued that he was entitled to 810 days of credit for time served. Defendant's calculation included the time that he spent on house arrest, arguing that he was entitled to credit for that time because the restrictions imposed constituted the functional equivalent of jail. On November 21, 2014, this Court again sentenced Defendant to sixteen years in the custody of the Department of Corrections. The Court awarded Defendant 154 days of credit for time served, which the parties agreed was the amount of time that Defendant actually spent in jail. In its Sentencing Order, the Court found that it did not have the discretion to allow credit for time spent on house arrest pursuant to *Fernandez v. State*, 627 So. 2d 1 (Fla. 3d DCA 1993), but added that "[i]f the Court had the discretion to do so, it would decline to exercise it in favor of granting credit for the time spent on house arrest." Defendant filed his Notice of Appeal on November 21, 2014.

On October 25, 2015, Defendant filed the instant Motion to Correct Sentencing Error for Credit for Time Served in Custody and Control of the PBSO pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), claiming that the Court erred in its failure to award Defendant the full amount of jail credit to which he was entitled.

LEGAL ANALYSIS

It is well-established that a defendant is entitled to credit for the time he or she serves in jail while awaiting final sentencing. *See e.g., State v. Mancino*, 714 So. 2d 429, 433 (Fla. 1998). Section 921.161, Florida Statutes (2012), explicitly provides that a "court imposing a sentence shall allow a defendant credit for all of the time she or he spent in the county jail before

sentence.” Until the Florida Supreme Court’s decision in *Tal-Mason v. State*, 515 So. 2d 738 (Fla. 1987), section 921.161 was strictly construed to allow a defendant jail credit only for time that he or she spent in an actual jail. In *Pennington v. State*, 398 So. 2d 815, 817 (Fla. 1981), for example, the defendant was denied jail credit for the time she spent in a drug rehabilitation center as one of the conditions of her probation because “[h]alfway houses, rehabilitation centers, and state hospitals are not jails.”

In *Tal-Mason*, the Florida Supreme Court expanded its interpretation of the statute to allow jail credit for other forms of coercive confinement that can be considered the “functional equivalent of a county jail.” 515 So. 2d at 740. There, the defendant had been found incompetent to stand trial and was involuntarily committed to a state-run mental institution where he remained confined for a period of more than five years. *Id.* at 738-39. The Florida Supreme Court subsequently upheld the trial court’s decision to award jail credit for the time Tal-Mason spent in the mental institution, finding that his involuntary commitment was a “coercive deprivation of liberty” that “was indistinguishable from pretrial detention in a jail.” *Id.* at 739.

The *Tal-Mason* Court, however, clearly distinguished the involuntary confinement at issue there from the other forms of confinement discussed in *Pennington* that are often made conditions of a defendant’s probation:

[W]e find that commitment for incompetence, unlike probationary rehabilitation, infringes upon significant liberty interests in a particularly coercive manner. Probationary conditions are more in the nature of a contract between the probationer and the state. The defendant clearly has a choice to reject those conditions, albeit at the risk of continued detention in jail or prison. Thus, rather than restricting liberty, probationary rehabilitation usually serves to increase it by allowing the probationer an escape from involuntary confinement already lawfully imposed, in favor of a freer environment such as a community-based halfway house. For this reason, participation in such a rehabilitation program does not

constitute a *coercive* deprivation of liberty

Id. at 739.

The rule announced in *Tal-Mason* is thus very limited, and generally only applies to involuntary confinement in hospitals and mental institutions. Indeed, in *State v. Cregan*, 908 So. 2d 387, 389 (Fla. 2005), the Florida Supreme Court stated that it narrowly interprets what it has called “the functional equivalent of a county jail,” and reaffirmed that time spent in a control release program or in a drug rehabilitation facility as a condition of probation “is not the functional equivalent of time spent in a county jail.” (*citing Gay v. Singletary*, 700 So. 2d 1220, 1222 (Fla. 1997); *Pennington*, 398 So. 2d at 816 (Fla. 1981)).

The District Courts of Appeal have adhered to these limitations, consistently holding that jail credit is not available for time spent in facilities as conditions of probation or community control. *See, e.g., Clark v. State*, 28 So. 3d 135, 136 (Fla. 2d DCA 2010) (reversing denial of credit for time spent in “secure lockdown unit of psychiatric hospital,” but affirming denial of credit for time spent in nonsecure drug treatment facility); *Shmuel v. State*, 691 So. 2d 1149, 1150 (Fla. 3d DCA 1997) (holding defendant entitled to credit for time spent in Jackson Memorial Hospital’s medical unit for Dade County Jail, but not entitled to credit for time served on house arrest or in private mental hospital arranged and paid for by defendant). This rule holds true despite the significant restrictions on liberty some facilities impose. In *Carrier v. State*, 925 So. 2d 386, 388 (Fla. 4th DCA 2006), for example, the Fourth District Court of Appeal held that the defendant was not entitled to credit for time served in the sheriff’s drug farm program because she voluntarily entered the program as part of her probation and, thus, there was no *coercive* deprivation of liberty. Significantly, the court found this to be so even though the program was housed in a minimum security jail, participants were required to wear uniforms,

and various restrictions were imposed on participants concerning visitors and other privileges. *Id.* (Klein, J., concurring specially).

Of particular note to the instant case, in *McCarthy v. State*, 689 So. 2d 1095, 1096 (Fla. 5th DCA 1997), the Fifth District Court of Appeal held that a defendant is not entitled to jail credit for time spent on house arrest. The court reasoned that while a “house arrest program in which the defendant wears an electronic bracelet used for monitoring his whereabouts, and checks with a supervisor daily by telephone and weekly in person, imposes restraints on the defendant’s liberty prior to trial,” it cannot be said that such a program imposes “restraints which are so onerous as to be equivalent to incarceration in the county jail or forensic ward of a mental hospital.” Upon denying the defendant’s motion for rehearing, the Fifth District issued a “clarifying explanation” addressing whether trial courts even have the *discretion* to award credit for time served on house arrest, stating that there “is simply no authority for crediting such time.” *Id.* at 1097 (internal quotations omitted).

The Fourth District Court of Appeal adopted the rule in *McCarthy* in *Licata v. State*, 788 So. 2d 1063, 1063-64 (Fla. 4th DCA 2001) (mem.), reversing the trial court’s award of credit for time spent on house arrest and directing the lower court on remand to only award credit for the time the defendant actually spent in jail. *See also Bailey v. State*, 126 So. 3d 1170, 1171 (Fla. 4th DCA 2012) (mem.) (defendant not entitled to credit for time served on house arrest); *Myers v. State*, 761 So. 2d 485, 486 (Fla. 5th DCA 2000) (same); *Williamson v. State*, 765 So. 2d 89, 90 (Fla. 1st DCA 2000) (same); *Shmuel*, 691 So. 2d at 1150 (same); *Fernandez v. State*, 627 So. 2d 1 (Fla. 3d DCA 1993) (restraints associated with house arrest not equivalent to those in jail or mental hospital).

Defendant in this case claims that the Court erred at sentencing because he was not awarded the full amount of jail credit to which he was entitled. Specifically, Defendant is seeking jail credit for three different periods of time totaling 368 days:

- 1) The time Defendant spent under house arrest during the pendency of his first appeal, from May 18, 2012 until May 22, 2013 (299 days)¹;
- 2) The time during which he was permitted to visit his terminally ill mother in Texas, from August 16, 2013 until August 19, 2013 (4 days); and
- 3) The time he spent at or in transport to court hearings, trial, and doctor's visits while under the May 22, 2013, Order of this Court in 2013 and 2014 (totaling 65 days).

Defendant claims that he is entitled to credit for this time because he was “under the custody and control of law enforcement” and the conditions imposed on him during each of these periods constituted a coercive deprivation of liberty that was the “functional equivalent of jail.”

The Court recognizes that during the relevant periods, the Defendant experienced certain deprivations of liberty that carry the indicia of coercive confinement. When Defendant was granted post-conviction bail pending his appeal, this Court ordered that Palm Beach County law enforcement officers must remain within 100 feet of Defendant at all times while he was under house arrest. Defendant was required to wear an electronic monitoring device (GPS ankle bracelet) and submit to drug and alcohol testing, and when Defendant traveled to Texas to visit his mother, he was required to be accompanied by Palm Beach County law enforcement officers for the entirety of the trip.

¹ While in his Motion Defendant states that he is seeking credit for 370 days spent on house arrest, Defendant's Motion also notes that 71 of those days were actually spent in jail due to a failed ankle monitor. As the Court awarded Defendant 154 days of credit for the time he spent in jail (which included credit for these 71 days), the Court assumes Defendant intended to request credit for the 299-day balance of time he actually spent on house arrest, bringing the overall total amount of credit sought to 368 days.

Nonetheless, the Court finds that the restrictions imposed during Defendant's conditional release were not so onerous as to rise to the level of coercive confinement constituting the functional equivalent of jail or a mental institution. Rather, the Court finds the conditions imposed here to be "more in the nature of a contract" between the Defendant and the State akin to the restrictions imposed in a conditional term of probation. *See Tal-Mason*, 515 So. 2d at 739. As Defendant concedes in his Motion, Defendant voluntarily agreed to all conditions imposed by this Court, the effect of which was to avoid the far more significant deprivation of liberty he would have experienced were he instead confined in jail or prison. While Defendant's liberty was certainly still restricted during this period, he was able to live in his own house, wear his own clothes, and have family and friends over to visit. He was able to continue working in his office as he pleased, and, albeit with notice to and transport by law enforcement, Defendant was able to travel outside of Palm Beach County for doctor's appointments and to meet with his attorneys on a regular basis. Far from coercive, the Court finds that these conditions were voluntarily assumed by Defendant and – particularly with regard to Defendant's trip to Texas – imposed to accommodate him, and further does not find that they were so onerous as to be the functional equivalent of jail. Indeed, if the conditions imposed at the drug farm discussed in *Carrier* did not equate to jail – despite being physically located within one – the Court is hard-pressed to find that the conditions imposed on Defendant's house arrest do. *See Carrier*, 925 So. 2d at 388 (Klein, J., concurring specially).


Finally, and notwithstanding the above analysis, the Court again notes that under current Fourth District Court of Appeal precedent, to which this Court is bound, a criminal defendant is not entitled to jail credit for time spent on house arrest. *Licata*, 788 So. 2d at 1064. Therefore, the Court finds that it did not err when it denied Defendant jail credit for the time he served on

house arrest, and Defendant's Motion must be denied.

Accordingly, it is hereby

ORDERED that Defendant's Motion to Correct Sentencing Error for Credit for Time Served in Custody and Control of the PBSO is **DENIED**. The Defendant has the right to appeal within thirty (30) days of the date of rendition of this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 24 day of November, 2015.



JEFFREY COLBATH
Circuit Judge

Copies furnished to:

Margaret Good-Earnest, Good-Earnest Law, P.A., P.O. Box 1161, Lake Worth, FL, 33460,
cherrygrantlaw@gmail.com, good2300@BellSouth.net

Sherri L. Collins, Assistant State Attorney, 401 N. Dixie Highway, West Palm Beach, FL, 33401,
exceceservice@sa15.org