

Circuit Court for Somerset County
Case No.: C-19-CR-18-000156

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 205

September Term, 2024

WARREN WARD

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 27, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Warren Ward appeals the denial of his “Motion for Award of Pre-Trial Credits,” in which he sought 26 months credit towards his sentence. For the reasons to be discussed we generally affirm, but remand with instructions for the circuit court to amend the Commitment Record to reflect 26 days credit.

BACKGROUND

On May 15, 2019, Ward appeared in the Circuit Court for Somerset County and pleaded guilty to possession of CDS with intent to distribute. The court sentenced him that day to 15 years’ incarceration, suspending all but 18 months, to be served at the local detention center. The court ordered the sentence to begin on May 24, 2019, and awarded Ward credit for 26 days for time served pre-trial. The court imposed a three-year term of supervised probation upon release. (The “Somerset County” case or sentence—case no. C-19-CR-18-000156.)

Ward did not report to begin his sentence in the Somerset County case. Two days prior to his report date, Ward was arrested in Wicomico County and charged with fleeing and eluding police and with possession of CDS with intent to distribute. The Circuit Court for Wicomico County ordered Ward to be held without bond pending trial on the charges. On January 2, 2020, Ward entered an *Alford* plea to possession of CDS with intent to distribute and attempting to flee or elude police and was sentenced that day to a total term of 15 years’ incarceration, all but five years suspended, to be followed by a three-year term of supervised probation. The court committed Ward to the custody of the Division of Correction and directed that this sentence be served consecutively to the last sentence to expire of all outstanding and unserved Maryland sentences. The court awarded Ward 225

days credit for time served pre-trial. (The “Wicomico County” case or sentence—case no. C-22-CR-19-000437).

Less than a week after his conviction in Wicomico County, the Division of Parole and Probation filed a supervision summary in the Somerset County case informing the court of Ward’s Wicomico County conviction and requesting an arrest warrant be issued for Ward charging him with violating the condition of probation in the Somerset County case that he obey all laws. The court issued the warrant, which apparently was never served.

On June 7, 2021, Ward appeared in the Circuit Court for Somerset County and admitted to violating his probation. The court found him in violation, revoked the probation, and ordered him to serve 11 years of his sentence to begin that day and to run concurrent with any other outstanding or unserved sentence. The Commitment Record reflects that Ward was awarded “ZERO credit for time served prior to and not including date of sentence[.]” Ward did not seek leave to appeal. The court then recalled the outstanding warrant.

In December 2021, Ward filed a *pro se* “Motion to Amend Sentence” in the Somerset County case. Specifically, he requested that the sentence be “back dated to start on June 5th 2019[.]” the original start date.¹ He maintained that he was entitled to “all credit for time spent in custody.” The State opposed the motion, noting that he had been given credit for pre-trial custody in the Wicomico County case and that he “was never held on

¹ Ward was originally sentenced in the Somerset County case on May 19, 2019 with a start date of May 24, 2019. His reference to June 5, 2019 appears to be a mistake on his part.

this matter, and is therefore not entitled to any credit for time serve[d].” The court denied the motion.

In February 2024, Ward, again representing himself, filed a second “Motion for Award of Pre-Trial Credits” in the Somerset County case, which he later supplemented. He sought credit from the date of his arrest in the Wicomico County case pending his revocation of probation in the Somerset County case, that is, from May 22, 2019 to June 7, 2021. He also questioned whether his probation could have been revoked given that his probation had not begun. The State opposed the motion, noting that the credit issue had already been decided and asserting that probation may be revoked before it begins based on a defendant’s behavior. The court summarily denied the motion, prompting Ward to note this appeal.

DISCUSSION

On appeal, Ward makes two arguments. First, he maintains that the Somerset County circuit court erred in failing to award him 26 months credit because he “consented for probation to start upon release not before.” He then clarifies that his “argument is not whether or not the court had discretion to violate probation before release but whether the court had or has discretion to restart [his] time 26 months later and not award credit for time served in a correctional facility. . . awaiting a revocation hearing.” His second argument is that the court violated Section 6-218(b) of the Criminal Procedure Article of the Maryland Code by failing to award the credit he seeks, maintaining that the error “create[ed] dead time that consequently increases the duration of confinement.”

The State responds that Ward is not entitled to any credit on the Somerset County case because his confinement, prior to the revocation of probation and order directing the execution of 11 years' incarceration, was related solely to the Wicomico County case. The State points out that the probation violation warrant issued by Somerset County was never served and was ultimately recalled.

Crim. Proc. § 6-218(b) addresses credit against a sentence for time spent in custody, and provides:

- (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 . . . because of:
 - (i) the charge for which the sentence is imposed; or
 - (ii) the conduct on which the charge is based.
- (2) If a defendant is in custody because of a charge that results in a dismissal or acquittal, the time that would have been credited if a sentence had been imposed *shall* be credited against any sentence that is based on a charge for which a warrant or commitment was filed during that custody.
- (3) In a case other than a case described in paragraph (2) of this subsection, the sentencing court *may* apply credit against a sentence for time spent in custody for another charge or crime.

(Emphasis added.)

Thus, awarding credit under Crim. Proc. § 6-218(b)(1) & (2) is mandatory, but under (b)(3) discretionary. In *Wilson v. Simms*, 157 Md. App. 82, 95 (2004), this Court discussed the mandatory provisions of subsections b(1) and b(2):

Subsection (b)(1) addresses those situations where a defendant is in custody before trial and is subsequently convicted on the charge for which he was held. The time spent in custody prior to the imposition of sentence must be credited against the sentence imposed. Subsection (b)(2) addresses those situations where a defendant is in custody and a warrant or commitment

is lodged against him. If the original charge results in a dismissal or acquittal, and the defendant is convicted of the charge for which the warrant or commitment was lodged against him, the time spent in custody must be credited against the sentence imposed for the conviction.

Here, subsections (b)(1) and (b)(2) are not applicable to the Somerset County case because Ward was held on the Wicomico County charges and not on the Somerset County case. Although the Somerset County circuit court had issued an arrest warrant after learning that Ward had failed to report to begin his sentence and had incurred a new conviction, it appears that the warrant was never “lodged” against Ward. In fact, based on the record before us the warrant was never served and ultimately recalled upon the conclusion of the revocation of probation hearing. Moreover, Ward was convicted of the Wicomico County charges and received credit for the time he spent in pre-trial custody on that case.² Thus, we reject any contention that the court was required to award credit on the Somerset County sentence for the time Ward was held on the Wicomico County case.

Although the Somerset County court had the discretion under Crim. Proc. § 6-218(b)(3) to award Ward credit for time he spent in custody on the Wicomico County case, we will not disturb a discretionary decision, such as this, absent a finding that the decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994). The probation revocation and disposition hearing transcript is not in the record before us. But based on what is before us, we are not persuaded that the court abused its

² Consequently, contrary to Ward’s assertion, his confinement pre-trial in the Wicomico County case did not create any “dead time” which increased the duration of his sentence.

discretion in failing to award Ward credit for the time he was held on the Wicomico County charges.

We also find no merit to Ward’s first argument, that is, that, following the revocation of probation hearing, the Somerset County court erred in ordering that the execution of his sentence begins to run on June 7, 2021 (the probation revocation date) rather than back-dating it to May 24, 2019 (the original start date). If Ward had reported, as directed, and had begun serving his sentence on May 24, 2019, he may have had a good point. But he did not report and had not served any of his term of confinement in the Somerset County case. To keep the original start date would have, in essence, given him credit for unserved time in this case.

We do, however, perceive one error related to credit on the Somerset County sentence. The original Commitment Record dated May 19, 2019 reflects that the court awarded 26 *days* credit for time served in that case. The Commitment Record dated June 7, 2021, following the revocation of probation, states that Ward received “ZERO credit” for time served. It seems to us that Ward is entitled to the 26 days credit originally awarded and, therefore, the Commitment Record should be amended to reflect that fact.

**JUDGMENT OF THE CIRCUIT COURT
FOR SOMERSET COUNTY AFFIRMED IN
PART. CASE REMANDED TO AMEND
THE COMMITMENT RECORD TO
REFLECT 26 DAYS CREDIT FOR TIME
SERVED PRE-TRIAL.**

**COSTS TO BE PAID 90% BY APPELLANT
AND 10% BY SOMERSET COUNTY.**