

Circuit Court for Cecil County
Case Nos. C-07-CR-21-000375 & C-07-CR-22-000689

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

Nos. 450 & 451

September Term, 2023

LEE ROY DUNSMORE

v.

STATE OF MARYLAND

Friedman,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 5, 2024

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

Lee Roy Dunsmore, appellant, appeals from the denial, by the Circuit Court for Baltimore County, of a motion to correct illegal sentence in each of two cases. For the reasons that follow, we shall remand the cases with instructions to make additional findings and, if appropriate, award Mr. Dunsmore additional credit for time served in one or both cases. We shall otherwise affirm the judgments of the circuit court.

On March 31, 2021, Mr. Dunsmore was charged by indictment in the circuit court, case number C-07-CR-21-000375 (hereinafter “21-375”), with, among other offenses, possession of methamphetamine with intent to distribute. On April 27, 2022, the court ordered that Mr. Dunsmore be “released to home detention with electronic monitoring through the ASAP program.” On August 3, 2022, Mr. Dunsmore was charged by indictment in the circuit court, case number C-07-CR-22-000689 (hereinafter “22-689”), with, among other offenses, possession of methamphetamine with intent to distribute.

On February 6, 2023, Mr. Dunsmore submitted an *Alford* plea in case number 21-375 to possession of methamphetamine with intent to distribute, and to the same offense in case number 22-689. At a subsequent sentencing hearing, the court sentenced Mr. Dunsmore in case number 21-375 to a term of imprisonment of four years, and awarded him 234 days’ credit for time served. In case number 22-689, the court sentenced Mr. Dunsmore to a term of imprisonment of four years, to run consecutive to the sentence imposed in case number 21-375, and awarded him 66 days’ credit for time served.

On April 18, 2023, Mr. Dunsmore filed in each case an identical motion to correct illegal sentence, in which he contended that the court had sentenced him “outside of the . . . sentencing guidelines” range of two months to two years, and that “[t]here were no

extraordinary circumstances to warrant the execution of [such] a sentence.” Mr. Dunsmore also contended that he “participated in the home detention monitoring program from April 29, 2022 until September 20, 2022, for a total of 172 days,” and requested that the court award him, in each of his cases, additional credit for time served in that amount. The court denied the motions.

Mr. Dunsmore contends that for two reasons, the court erred in denying the motions. Mr. Dunsmore first contends that, for numerous reasons, the sentencing court erred in “exceeding [the] sentencing guid[e]lines.” We note that there is no evidence in the record, such as a sentencing guidelines worksheet or transcript of the sentencing hearing, confirming Mr. Dunsmore’s contention that the sentencing guidelines range in his cases was calculated to be from two months to two years. Nevertheless, the Supreme Court of Maryland has long held that “[n]othing in the law requires that Guidelines sentences or principles be applied; they complement rather than replace the exercise of discretion by the trial judge.” *Teasley v. State*, 298 Md. 364, 370 (1984). The sentencing court was not required to impose upon Mr. Dunsmore a sentence within any particular range, and hence, the terms of imprisonment are not illegal.

Mr. Dunsmore next contends that the sentencing court erred in failing to award him “credit for participat[ing] in home detention,” and requests that we “[o]rder the lower court to award all credit(s) while on home detention.” The State agrees that the court erred in failing to award Ms. Dunsmore this credit, and appears to concede that “the detention was ‘sufficiently incarcerative’ to qualify as custody.” *Dedo v. State*, 343 Md. 2, 12 (1996).

The State requests that we “remand for the circuit court to determine the appropriate amount of credit, to the extent [that Mr.] Dunsmore has not already been awarded credit.”

We shall remand the case for four reasons. First, it is not clear from the record whether the “ASAP program” was sufficiently incarcerative so as to require the court to award Mr. Dunsmore credit for the time that he participated in the program. Second, it is not clear from the record when Mr. Dunsmore was discharged from the program. Third, it is not clear from the record as to whether the credit that Mr. Dunsmore was awarded in case number 21-675 for time served includes credit for the time that he participated in the program. Finally, it is not clear from the record why Mr. Dunsmore believes that, if he is owed additional credit, it must be applied toward each of the four-year terms of imprisonment. Accordingly, we remand with instructions to the circuit court to make these findings and, if appropriate, award Mr. Dunsmore additional credit for time served toward one or both of the terms of imprisonment.

CASE REMANDED FOR ADDITIONAL PROCEEDINGS CONSISTENT WITH THIS OPINION. JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE-HALF BY CECIL COUNTY AND ONE-HALF BY APPELLANT.