

SUPREME COURT OF VERMONT

State v. Young

181 Vt. 603 (2007) · Decided April 19, 2007

SUMMARY

The Vermont Supreme Court dismissed a defendant’s appeal challenging the calculation of credit for time served. The court held that the Department of Corrections is generally responsible for calculating such credit, and that a defendant disputing the calculation must first pursue an administrative grievance and then seek review in superior court under V.R.C.P. 75.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	April 19, 2007
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant appealed the district court's sentence, arguing that the court failed to award credit for time served.
PRECEDENTIAL VALUE	published opinion
PARTIES	Young v. State

TOPICS

- sentencing
- exhaustion of remedies
- appellate procedure
- criminal procedure
- administrative law

PRACTICE AREAS

- criminal procedure
- sentencing
- administrative law
- appellate procedure

QUESTIONS PRESENTED

- Whether the district court was required to calculate and award defendant's requested credit for time served.
- Whether defendant could obtain review of the Department of Corrections' time-served calculation through a direct appeal rather than through the administrative grievance process and subsequent V.R.C.P. 75 review.

HOLDINGS

1. Under 13 V.S.A. §§ 7031 and 7044, the statutes do not require the trial court to calculate time-served credit; the court may order the Department of Corrections to make the calculation.
2. A defendant disputing the Department of Corrections' calculation of time-served credit must first file a grievance with the Commissioner of Corrections and then seek superior-court review under V.R.C.P. 75; a direct appeal to the Supreme Court is improper.

KEY QUOTATIONS

“Sections 7031 and 7044, read together, do not require the trial court to calculate time served, but rather allow the court to order the DOC to do so.” (181 Vt. at 604)

“Should a defendant dispute the DOC’s calculation, he or she may file a grievance with the commissioner, and thereafter seek review in the superior court under V.R.C.P. 75.” (181 Vt. at 605)

FACTUAL BACKGROUND

In May 2003, defendant received a two-to-eight-year sentence on four felony charges, suspended except for time served, and was placed on probation. After his February 2004 arrest for probation violations, he was sentenced in July 2004 on new motor vehicle offenses and the violation charges, receiving credit for time served since February 4, 2004. When probation was later revoked in August 2005, defendant requested credit for time served between February 4 and July 9, 2004, but the district court ordered credit according to law and left the computation to the Department of Corrections.

PROCEDURAL HISTORY

Young was sentenced on felony and motor vehicle offenses and later had his probation revoked. The district court ordered credit for time served according to law but left calculation of the credit to the Department of Corrections. Young appealed directly to the Vermont Supreme Court without first pursuing a grievance with the Commissioner of Corrections and review in superior court under V.R.C.P. 75.

DISPOSITION

dismissed

CASES CITED

- Ladd v. Gorczyk, 2004 VT 87, ¶ 3, 177 Vt. 551, 861 A.2d 1094 (mem.)
- In re McPhee, 141 Vt. 4, 6-9, 442 A.2d 1285, 1286-88 (1982)
- In re Zera, 137 Vt. 421, 425, 406 A.2d 396, 398 (1979)
- State v. Blondin, 164 Vt. 55, 64, 665 A.2d 587, 593 (1995)

OPINION

PER CURIAM.

¶ 1. Defendant appeals a sentence imposed by the district court. He contends the court erred in failing to award certain credit for time served. Because defendant failed to pursue an administrative remedy with the Commissioner of Corrections and review by the superior court under V.R.C.P. 75, we conclude that the appeal must be dismissed. *604¶ 2.

The material facts may be briefly summarized. In May 2003, defendant was sentenced on four felony charges to a term of two to eight years, all suspended except for time served, and placed on probation. On February 4, 2004, defendant was arrested and held without bail for several violations of probation (VOPs).

On July 9, 2004, defendant was sentenced on several new motor vehicle offenses and the violation of probation charges. The court imposed a new sentence of four to sixty months on the motor vehicle offenses with credit for time served since February 4, 2004, and ordered that defendant be continued on probation on the underlying felony offenses. ¶ 3. New violation of probation petitions were filed in December 2004 and August 2005.

At the hearing on the VOP charges in late August 2005, defendant requested that, with respect to any sentence imposed, he be awarded credit for time served between February 4 and July 9, 2004. In a written decision dated August 30, 2005, the court ruled that the computation of any credit for time served was for the Department of Corrections, and scheduled a sentencing hearing for September 1, 2005.

At the hearing, the court revoked defendant's probation and imposed the underlying terms with "credit for time served according to law." This appeal followed. ¶ 4. Defendant contends that the court erred in failing to award him the requested credit for time served.

As the trial court observed, however, the DOC is charged with the responsibility to calculate "the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031." 13 V.S.A. § 7044. Section 7031(b) states that the "court shall give the person credit toward service of his sentence for any days spent in custody in connection with the offense." Sections 7031 and 7044, read together, do not require the trial court to calculate time served, but rather allow the court to order the DOC to do so.

In the majority of cases, the DOC is in a far better position than the trial court to make the calculation, as it has the most accurate and timely information concerning the people in its custody, while the trial court may have no information other than that supplied to it by the parties.

In such cases, the district court will typically order the DOC to calculate time served, as the statute expressly contemplates and as the district court did in this case. We find no error in that course of action under the facts before us.* ¶ 5. Should a defendant dispute the DOC's calculation, he or she may file a grievance with the commissioner, and thereafter seek review in the superior court under V.R.C.P.

75. Cf. *Ladd v. *605Gorczyk*, 2004 VT 87, ¶ 3, 177 Vt. 551, 861 A.2d 1094 (mem.) (defendant dissatisfied with calculation of good-time credit filed grievance with commissioner and thereafter appealed denial of grievance in superior court under V.R.C.P. 75).

Accordingly, we agree with the State's assertion that defendant has pursued the incorrect avenue of relief, and that this appeal must therefore be dismissed. Appeal dismissed. Of course, there are cases in which the trial court is in a better position than the DOC to calculate time served, as when the calculation depends on legal determinations the DOC is less equipped to make.

Cf. *In re McPhee*, 141 Vt. 4, 6-9, 442 A.2d 1285, 1286-88 (1982) (affirming trial court's determination that credit for time served would be given, under 13 V.S.A. § 7031(b), for time spent under supervision of director of treatment center as condition of pretrial release order); *In re Zera*, 137 Vt. 421, 425, 406 A.2d 396, 398 (1979) (reversing superior court's determination — in PCR proceeding after district court denied credit for time served — that certain period of incarceration was not "in connection with the offense" for purposes of 13 V.S.A. § 7031(b); granting credit for time served), overruled on other grounds by *State v. Blondin*, 164 Vt. 55, 64, 665 A.2d 587, 593 (1995).

We do not here limit the trial court's discretion, in appropriate cases, to make such determinations.