

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA  
Respondent

NO.: 22-759

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v.

KYLE K. SLAUGHTER  
Defendant

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PETITIONER'S BRIEF ON APPEAL

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**TABLE OF AUTHORITIES**

**CASES**

Martin v. Leverette, 161 W.Va. 547, 244 S.E. 2d 39 (1978).....3,4

State v. McClain, 211 W.Va. 61, 561 S.E. 2d 783 (2002).....3,4,5

State v. Taylor, 243 W.Va. 20, 842 S.E. 2d 224 (2020).....4,5

**STATUTES**

West Virginia Code § 61-11-24

West Virginia Constitution Article III § 10

West Virginia Constitution Article III § 17

### **ASSIGNMENT OF ERROR**

The sentencing court violated the Petitioner's rights under the Double Jeopardy and Equal Protection clauses of the West Virginia Constitution when it awarded the Petitioner 30 days of jail credit when he had been unable to post bond and was continuously incarcerated for 263 as of his sentencing date.

### **STATEMENT OF THE CASE**

The Petitioner was arrested on December 6, 2021, for third offense driving under the influence and other charges and arraigned on December 7, 2021, in Fayette County Magistrate Court. [A.R. 1] The Petitioner was arraigned on additional charged of bribery arising from the same incident on February 7, 2022. [A.R. 2]

The Fayette County Grand Jury indicted the Petitioner on May 11, 2022, for 7 felony counts and 3 misdemeanor counts in Indictment 22-F-109.

On June 29, 2022, the Petitioner entered a plea of guilty to the felony offense of bribery in official and public matters. All remaining counts in Indictment 22-F-109 were dismissed per the plea agreement. [A.R. 3-9]

On August 26, 2022, the court sentenced the Petitioner to a term of not less than one (1), nor more than ten (10) years for the offense of bribery in in official and public matters. The Petitioner questioned the amount of jail credit in the Pre-Sentence Report as it awarded the Defendant only 30 days while he had been continuously incarcerated for 263 days since December 7, 2021. [A.R. 14-15] *[Due to a mathematical error, counsel argued for 290 days.*

*Upon recalculation the correct number of days since the Petitioner's arrest was 263 days as of August 26, 2022.]* The Petitioner had another case pending in Raleigh County. He was out on bond in Raleigh County at the time of his arrest and that Raleigh County bond was revoked and rese in the amount of One hundred thousand dollars (\$100,000.00) on or about January 5, 2022. [A.R. 38] At the time of the Petitioner's sentencing, he had not been convicted or sentenced in Raleigh County. [A.R. 41]

The Petitioner filed a pro se Motion for Reconsideration on December 1, 2022. The court denied that motion without hearing on November 1, 2022. The court stated in the order denying the motion that it had granted the Petitioner 263 days of credit, which is inconsistent with the Sentencing Order. [A.R. 45-47]

#### **SUMMARY OF ARGUMENT**

The Petitioner was granted 30 days jail credit at sentencing despite having been incarcerated on this charge for a period of 263 days. The sentencing court speculated that the Petitioner might receive credit on a Raleigh County case that he was also detained on. The denial of jail credit violated the Petitioner's rights under the Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution.

## STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 18(a)(4) the facts and legal arguments are adequately presented in the brief and the decisions process would not be significantly aided by oral argument.

### ARGUMENT

**ISSUE:** The sole issue on appeal is whether the sentencing court violated the Petitioner's rights under the Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution when it denied jail credit for 233 days served prior to sentencing.

Did the court below violate the Petitioner's rights under the Double Jeopardy and Equal Protection clauses of the West Virginia Constitution when it denied him credit for 233 days served in jail prior to sentencing?

The Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution require that credit for time spent in jail, either pre-trial require that credit for time spent in jail, either pre-sentence or post-trial shall be credited on an indeterminate sentence where the underlying offense is bailable. Syllabus Pt. 1, *Martin v. Leverette*, 161 W.Va. 547, 244 S.E. 2d 39 (1978); Syllabus Pt. 6, *State v. McClain*, 211 W.Va. 61, 561 S.E. 2d 783 (2002).

In *Martin*, a defendant serving a life sentence as a third offense recidivist was resentenced as a second offense recidivist after one of his qualifying convictions was voided by the United States District Court. 161 W.Va. 548-549, 244 S.E. 2d 40-41. The sentencing court denied Martin credit for time served awaiting trial and sentencing granting credit only for time served on the previous life sentence. *Id.*

The Court recognized that West Virginia Code § 61-11-24 empowered a sentencing court to give credit for pretrial confinement but did not require it do so. The Court recognized two principles. The first was that the denial of pretrial jail credit could result in a defendant serving more than the statutory sentence, resulting in a Double Jeopardy violation. The second was that a wealthy defendant, able to post bond, would serve less time than an indigent defendant, unable to post bond, resulting in an Equal Protection violation. The Court ruled that Under the Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution, Article III §§ 10 and 17, time spent in jail either pretrial or post-trial shall be credited to a sentence. 161 W.Va. 550-51, 244 S.E. 2d 41-42.

In *State v. McClain*, a defendant served 299 days prior to his plea for leaving the scene of an accident-causing death. 211 W.Va. 61, 561 S.E. 2d 783 (2002). Following his plea, the Defendant was able to post a post-conviction bond after serving 119 days. At sentencing, he received a 3-year sentence that was suspended; however, the Defendant was required to serve 6 months as a condition of probation. 211 W.Va. 785-96, 561 S.E. 2d 63-64. The court did not require that the 6-month jail term as a condition of probation be reduced by 119 days, however, the Court did reiterate it's holding in *Martin*, that under the Double Jeopardy and Equal Protection Clauses of the West Virginia Constitution that all time spent in jail prior to conviction shall be applied to terms of incarceration in a correctional facility when the underlying offense is bailable. 211 W.Va. 66-67, 561 S.E. 2d 788-89.

In *State v. Taylor*, a defendant was arrested on September 16, 2016, for felony carrying a concealed firearm by a prohibited person, misdemeanor possession of a firearm by a prohibited person, and possession of a controlled substance. 243 W.Va. 20, 842 S.E. 2d 224

(2020). Taylor served 12 days before being released on bond. Taylor was arrested on March 23, 2017, for grand larceny, possession of a controlled substance, and false information/interference with a police officer. Taylor did not post bail on the March 2017 charges. Taylor entered a guilty plea to felony possession of a concealed firearm by a prohibited person (September 2016) and agreed to pay restitution for a July 2016 charges. All remaining charges from three arrests were dismissed. *Id.* at 243 W.Va. 21-22, 842 S.E. 2d 225-226.

*Taylor's* sentencing hearing occurred in October 2017. At the time of his sentencing, *Taylor* had been continuously incarcerated for 208 days (the time since his March 23, 2017, arrest), but his sentencing order reflected only 12 days of jail credit, the 12 days he served on his September 16, 2016, arrest. Because charges from the March 23, 2017, had been dismissed to a universal plea agreement to resolve all pending charges, the sentencing court determined that Taylor was only constitutionally entitled to 12 days of pre-sentence credit. *Id.* at 243 W.Va. 22, 842 S.E. 2d 226.

In affirming the sentencing court's decision, the Court noted that *Taylor* was not convicted of any other crime for which he had been incarcerated and had spent 12 days incarcerated for the offense of which he was convicted prior to posting bond. *Id.* at 243 W.Va. 24, 842 S.E. 2d 228. The Court revisited its decision in *State v. McClain* and noted that a criminal defendant may not be subjected to incarceration that exceeds the statutory limit for that offense, and a criminal defendant who is financially unable to make bond may not be required to spend more time incarcerated than a criminal defendant who is financially able. *Id.* at 243 W.Va. 24-25, 842 S.E. 2d 228-29.



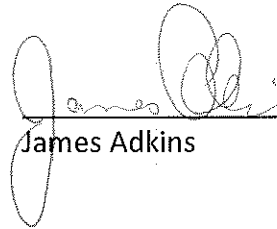
In this case, the Petitioner was financially unable to post two bonds. The Petitioner did have a case pending in Raleigh County, however, at the time of sentencing he was not convicted or sentenced in Raleigh County. He was clearly still incarcerated for his Fayette County case continuously since his arrest on December 7, 2021. The Petitioner's stated sentence is not less than 1 nor more than 10 years. With a denial of 233 days of credit spent at Southern Regional Jail, his effective sentence is not less one (1) year and two hundred and thirty-three (233) days to not more than ten (10) years and two hundred and thirty-three days. A sentencing court has the jurisdiction to rule on the case before it. In a situation where a Defendant has a preexisting sentence, a court can examine what credit a defendant received in the prior case and decide whether to run the sentence in the case before it concurrently or consecutively. However, the Petitioner is unable to locate statutory authority or case law that permits or encourages the sentencing court to deny Petitioner jail credit by speculating what credit a judge in another jurisdiction might award in an unresolved case and allocating days to an unresolved case outside the sentencing court's jurisdiction.

### **CONCLUSION**

For the reasons stated above, the Petitioner, moves the Court for an order remanding this case to the Circuit Court of Fayette County for a corrected sentencing order which grants in credit for all days served prior to sentencing.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Brief on Appeal was served upon Mary Beth Niday, Assistant Attorney General, 1900 Kanawha Blvd. E., State Capitol, Bldg. 6, Ste. 406, Charleston, WV 25305 by regular mail delivery this the 8<sup>th</sup> day of December 2022.



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James Adkins