IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 23-277

STATE OF WEST VIRGINIA,

Respondent,

v.

CORBETT MAURICE CARTER,

Petitioner.

RESPONDENT'S BRIEF

Appeal from the April 19, 2023, Order
Circuit Court of Raleigh County
Case No. 22-F-164

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INTRODUCTION

Respondent, State of West Virginia, responds to Corbett Maurice Carter's ("Petitioner's") Brief filed in the above-styled appeal. Petitioner was lawfully placed on pretrial home confinement as a condition of bail, pursuant to the Home Incarceration Act ("HCA"). This Court's recent jurisprudence establishes that an offender on pretrial home confinement as a condition of bail may be convicted of Escape under West Virginia Code § 61-5-10. As such, Petitioner has failed to meet his burden of establishing his entitlement to relief, and this Court should, therefore, affirm the judgment of the Raleigh County Circuit Court.

ASSIGNMENT OF ERROR

Petitioner advances a single assignment of error: "Did Petitioner 'escape' when 1) his bond released him from custody pending trial and 2) he was not serving an 'alternative sentence confinement[?]'" (Pet'r's Br. 1.)

STATEMENT OF THE CASE

Petitioner was charged with the felony offense of Conspiracy to Commit First–Degree Robbery. (App. 20.) In December 2021, pending trial, the Magistrate Court of Webster County placed Petitioner on home confinement with electronic monitoring as a condition of his bail. (App. 221–23.) Petitioner executed an Agreement to Comply with Rules of Supervision on January 24, 2022. (App. 224–26.) But in February 2022, Petitioner cut the strap of his electronic monitoring bracelet, (App. 130), which was recovered the following day by law enforcement in a dumpster located outside of a Little General convenience store on Johnstown Road in Beckley, (App. 138). Petitioner was subsequently charged in a one-count indictment for Felony Escape in Case Number 22-F-164 in the Circuit Court of Raleigh County. (App.10.) Petitioner pled guilty to the felony

offense of Conspiracy to Commit First–Degree Robbery, in violation of West Virginia Code § 61-10-31. (App. 2–17.)

Petitioner proceeded to trial on the Felony Escape indictment (Case Number 22-F-164) in February 2023. (App. 24–218.) The State first called Kathryn Blankenship, a Raleigh County Magistrate Clerk's Office employee. (App. 122.) She testified that as part of a hearing regarding the resolution of Petitioner's Conspiracy to Commit First-Degree Robbery charge, Magistrate Blume ordered that Petitioner be released on bond with the condition of home confinement. (App. 124.) The State next called Corporal Pat Vance with the Raleigh County Sheriff's Department, who testified that he was assigned to the home confinement division and monitored everyone released on pretrial and post-conviction home confinement. (App. 126–27.) Corporal Vance monitored Petitioner's pretrial release on bond with the condition of home confinement and testified that he went over the Raleigh County Home Confinement with Petitioner on January 24, 2022. (App. 127–29.) He read the entire document to Petitioner and he and Petitioner affixed his signature to the document and initialed each rule or condition. (App. 129.)

Eleven days later, Corporal Vance received an electronic alert in the evening hours indicating that Petitioner "had cut the monitor off." (App. 130.) Corporal Vance recovered the strap and monitor in a dumpster located outside of a Little General convenience store on Johnstown Road in Beckley, West Virginia. (App. 138.) The State rested after Corporal Vance's testimony and Petitioner moved for a judgment of acquittal[1] and argued that the State failed to meet its burden of proof. (App. 145.) The State responded that it met all the elements of Felony Escape and demonstrated that Petitioner was placed on bond with the condition of home

[1] Petitioner phrased this as a motion to dismiss, but it was intended to serve as a motion for judgment of acquittal, and it was treated as a motion for judgment of acquittal by the court.

confinement with electronic monitoring and that he was advised of the rules and regulations governing such placement. (App. 145–46.) Testimony established that Petitioner cut off his bracelet on February 4, 2022, and that the strap and monitor were recovered in a dumpster. (App. 146.) So the trial court denied Petitioner's motion. (App. 146.)

The jury convicted Petitioner of Felony Escape (App. 207) and by order entered April 19, 2023, the trial court sentenced Petitioner to a determinate three-year period of incarceration to run consecutively Petitioner's sentence for his prior Conspiracy to Commit First–Degree Robbery conviction. (App. 216–17.) Petitioner appeals from that order.

SUMMARY OF THE ARGUMENT

Everyone agrees Petitioner was on home incarceration as a condition of pretrial bail for the Conspiracy to Commit First–Degree Robbery charge. The escape statute's "unambiguous" language applies to confinement "by virtue of a charge or conviction." W.Va. Code § 61-5-10; *State v. Allman*, 240 W.Va. 383, 389, 813 S.E.2d 36, 42 (2018); *State v. McGann*, No. 20-0329, 2021 WL 4936282, at *2 (W.Va. Supreme Court, Sept. 27, 2021) (memorandum decision). Therefore, contrary to Petitioner's argument, the offense of escape is committed whether the offender's confinement is pre-conviction or post-conviction. Petitioner's arguments lack legal support, and this Court should affirm the conviction and sentence of the Circuit Court of Raleigh County.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent asserts that oral argument is unnecessary and that this case is suitable for disposition by memorandum decision because the record is fully developed and the arguments of both parties are adequately presented in the briefs. W.Va. R. App. P. 18(a)(3) and (4).

ARGUMENT

A. Standard of Review

This Court "applies a *de novo* standard of review to the denial of a motion for judgment of acquittal based upon the sufficiency of the evidence." *State v. Benny W.*, 242 W.Va. 618, 626, 837 S.E.2d 679, 687 (2019) (quoting *State v. Juntilla*, 227 W.Va. 492, 497, 711 S.E.2d 562, 567 (2011)). In reviewing the evidence to support a conviction, an appellate court must "examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt." *Benny W.*, 242 W.Va. at 626, 837 S.E.2d at 687 (quoting in part, Syl. Pt. 1, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995)). The relevant inquiry for the Court, therefore, "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt." *Id.*

Petitioner takes on a heavy burden in arguing that the trial court erred in denying his motion for judgment of acquittal:

> The defendant fails if the evidence presented, taken in the light most agreeable to the prosecution, is adequate to permit a rational jury to find the essential elements of the offense of conviction beyond a reasonable doubt. Phrased another way, as long as the aggregate evidence justifies a judgment of conviction, other hypotheses more congenial to a finding of innocence need not be ruled out. We reverse only if no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

State v. LaRock, 196 W.Va. 294, 303, 470 S.E.2d 613, 622 (1996). To that end, the evidence "must be viewed from the prosecutor's coign of vantage, and the viewer must accept all reasonable inferences from it that are consistent with the verdict." Syl. Pt. 2, in part, *LaRock*, 196 W.Va. 294, 470 S.E.2d 613. "The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt." Syl. Pt. 3, in part, *Guthrie*, 194 W.Va. 657, 461 S.E.2d 163. "[A] jury verdict should be set aside only when the

record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt." *Id.*

B. Petitioner was in custody for purposes of West Virginia Code § 61-5-10 when he was released on pretrial bond to home confinement.

West Virginia's Escape statute, West Virginia Code § 61-5-10, provides in relevant part:

> Whoever escapes or attempts to escape by any means from the *custody* of a county sheriff, the director of the regional jail authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the division of corrections, court bailiff, or from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully confined, if the custody or confinement is by virtue of *a charge or conviction for a felony*, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not more than five years.

(emphasis added). Petitioner alleges he was not in custody within the meaning of West Virginia Code § 61-5-10 because he was released on pretrial bond to home confinement. (Pet'r's Br. 5.) And pretrial bond is designed to secure his appearance at trial, meaning he was released "from the custody of law enforcement while awaiting trial." (Pet'r's Br. 6.) But he is simply wrong.

The term "custody" is not defined by West Virginia's Escape statute. Absent a statutory definition for a term, this Court defers to the "common, ordinary, and accepted meanings of the terms in the connection in which they are used." *State v. Longerbeam*, 226 W.Va. 535, 545, 703 S.E.2d 307, 317 (2010) (J. Workman, Dissenting) (quoting *State v. Edmond*, 226 W.Va. 464, 469, 702 S.E.2d 408, 413 (2010)). In *Edmond*, the Court acknowledged the Black's Law Dictionary 441 (9th ed. 2009) definition for custody as "[t]he care and control of a thing or person for inspection, preservation, or security." *Edmond*, 226 W.Va. at 469, 702 S.E.2d at 413. "Care" was defined as "[s]erious attention; heed," and "control" meant "[t]o exercise power or influence over." *Id.*

In *Craigo v. Legursky*, it was determined that a petitioner remained in the custody of the Department of Corrections when transferred to a "work and/or study release center[ ]" because such centers were "considered extensions and subsidiaries of [the] correctional institutions." 173 W.Va. 678, 680, 398 S.E.2d 160, 162 (1990). The Court again relied on the common meaning of the term "custody" as "being 'very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession." *Id.* at 680 n.3, 398 S.E.2d at 162 n.3. Under this Court's definition, Petitioner, here, despite his objection, was in the custody of the county sheriff prior to his release on bail, and remained in that custody when placed on home confinement as the Home Confinement Officer or Probation Officer who controlled Petitioner's whereabouts through the electronic monitoring device was an extension of the county sheriff.

Having determined Petitioner was in custody, the next issue is whether he escaped within the meaning of the Escape statute. The Court already settled this issue in *State v. Allman* and *State v. McGann*, where it upheld convictions for escape during pretrial home confinement supervision. Remember that before Petitioner's Conspiracy to Commit First-Degree Robbery trial, he was placed on pretrial bond with the condition of home confinement with electronic monitoring. (App. 221–23.) And while on home confinement, he cut his monitor and left his home. (App. 130, 138.) This is exactly like *Allman*, where a defendant on pretrial home confinement cut his monitoring bracelet strap and was later caught several blocks from his residence. *Allman*, 240 W.Va. at 386, 813 S.E.2d at 39. The Court explicitly held that even though he was on home confinement as a condition of pretrial bond, he could still be convicted of felony escape. 388. *Id.* at 39, 42–43, 813 S.E.2d at 386, 389–90. Our Escape statute therefore is not intended solely for post-conviction home confinement as Petitioner argues. It clearly applies to "one who escapes from lawful

confinement" even where "the custody or confinement from which he or she escapes 'is by virtue of a *charge* or conviction for a felony[.]'" *Id.* at 389, 813 S.E.2d at 42. The Court saw legislative "wisdom" in this decision:

> The offense of escape is clearly designed to serve as deterrent to escape from lawful custody, regardless of the status of the underlying proceedings. Escape statutes are "intended to protect our jails from force and violence, and further to secure a holding of those convicted of crimes until the day of their punishment." . . . That purpose is not lessened by virtue of the nature or timing of the custody, whether it be pre-conviction or post-conviction. Neither guilt nor innocence have been adduced at the "charge" juncture, but one cannot deny the equal necessity of protecting those charged with confining such individuals pending trial and providing a strong disincentive to those in custody to breach that custody. The statute's intended breadth to encompass escape on a pre-conviction charge is made patent by the litany of individuals and facilities from which one may be guilty of escape—many of whom maintain lawful custody *prior to* conviction: "a county sheriff, the director of the regional jail authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the Division of Corrections, court bailiff, or [ ] any institution, facility, or any alternative sentence confinement[.]" W. Va. Code § 61-5-10. Moreover, the ultimate outcome of the charge is immaterial to the fact that the escape in fact occurred while under custody or confinement due to a pending felony charge. *See Com v. Stoppard*, 103 A.3d 120, 124 (Pa. Super. Ct. 2014) (upholding felony escape conviction where "at the time Appellant fled" he had been charged with felonies which were later withdrawn).

Id. at 389–90, 813 S.E.2d at 42–43.

Similarly, in *McGann*, the defendant argued that he was not in the State's custody when he removed his monitoring device during his home incarceration as a condition of pretrial bond. 2021 WL 4936282, at *1. Relying on the declared intent as stated in *Allman*, the Court held that the defendant "was in the custody of the State for purposes of the escape statute when he removed his monitoring device." *Id.* at *2. Just like the defendants in *Allman* and *McGann*, Petitioner was in the State's custody when he cut the bracelet of the electronic monitoring device he was wearing during pretrial home confinement.

Instead of grappling with these dispositive cases, Petitioner tries to distract by arguing that he absconded rather than "escaped," comparing pretrial and post-conviction home confinement under the HCA, and noting a defendant's inability to receive credit for time spent on pretrial home confinement. (Pet'r's Br. 5–10.) In this vein, he argues that under the HCA, he could not have been in custody because he was not an "offender" when he was released on bail before a conviction. (Pet'r's Br. 6–8.) To begin, bail is defined as "security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued." W.Va. Code § 62-1C-2. The HCA authorizes home confinement as a condition of pretrial bail: "As a condition of probation *or bail* or as an alternative sentence to another form of incarceration for any criminal violation of this code over which a circuit court has jurisdiction, a circuit court may order an *offender* confined to the *offender's* home for a period of home incarceration." W.Va. Code § 62-11B-4(a) (emphasis added). By explicitly mentioning "bail" situations, this section allows that sometimes an "offender" will be someone who has only been charged with and not yet convicted of a crime. Any other interpretation of that provision leads to absurd results.

The HCA, however, defines an "offender" in the previous section, in relevant part, as "any adult *convicted* of a crime punishable by imprisonment or detention in a county jail or state penitentiary." W.Va. Code § 62-11B-3(3) (emphasis added). Thus, the HCA makes a distinction between pretrial and post-conviction home confinement. Petitioner, however, is not challenging his initial release on bail with the condition of home confinement. As discussed, the HCA authorized his pretrial release on home confinement. Petitioner's argument is misleading as the determination of offender status under the HCA is not relevant to the analysis as to whether he escaped as it does not even define "custody" or "escape."

Petitioner further attempts to accentuate the HCA's distinction between pretrial and post-conviction home confinement as it relates to granting credit for the time spent on home incarceration. In Syllabus Point Four of *State v. Hughes*, this Court held that "time spent in home confinement when it is a condition of bail under West Virginia Code § 62-1C-2(c) does not count as credit toward a sentence subsequently imposed." 197 W.Va. 518, 476 S.E.2d 189 (1996). This is because "the home confinement restriction is not considered the same as actual confinement in jail, nor is it considered the same as home confinement under the [HCA]." *Id.*; *see also State v. Jedediah C.*, 240 W.Va. 534, 814 S.E.2d 197 (2018).

Neither the HCA nor this Court's jurisprudence discussing credit for time on home incarceration, however, dispel the notion that an offender is in custody when serving either pretrial or post-conviction home confinement. The Escape statute specifies that an offender may be in the custody of one of a myriad of entities, including "a county sheriff, the director of the regional jail authority, an authorized representative of said persons, a law-enforcement officer, probation officer, employee of the division of corrections, court bailiff, or from any institution, facility, or any alternative sentence confinement." W.Va. Code § 61-5-10. This Court has long acknowledged that the statutory scheme of the HCA "is designed to place substantial restrictions on the offender." *Elder v. Scolapia*, 230 W.Va. 422, 427, 738 S.E.2d 924, 929 (2013) (quoting *State v. Long*, 192 W.Va. 109, 111, 450 S.E.2d 806, 808 (1994)). These restrictions persist whether the offender is on home confinement prior to or after conviction. Thus, pursuant to the Escape statute, § 61-5-10, and the holdings in *Allman* and *McGann*, Petitioner was in the custody of the State when he cut the bracelet to his electronic monitoring device. Petitioner was lawfully placed on pretrial home confinement as a condition of his bail in the first instance. The "purpose [of the escape statute as a deterrent to escape from lawful custody] is not lessened by virtue of the

nature or timing of the custody, whether it be pre-conviction or postconviction." *McGann*, 2021 WL 4936282, at *2 (quoting *Allman*, 240 W.Va. 389, 813 S.E.2d at 42). Petitioner's claim is without merit.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm Petitioner's conviction.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Mary Beth Niday, do hereby certify that on the 5th day of October, 2023, I served a true and accurate copy of the foregoing **Respondent's Brief** upon the below-listed individuals via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

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