

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs October 30, 2007

**STATE OF TENNESSEE v. STEVEN CHRISTOPHER HIXON, ALIAS**

**Appeal from the Criminal Court for Knox County  
No. 82978 Richard Baumgartner, Judge**

**No. E2007-00221-CCA-R3-CD - Filed December 19, 2007**

The Appellant, Steven Christopher Hixon (alias), appeals from the Knox County Criminal Court's order denying his motion to receive pretrial jail credit. The Appellant contends that, pursuant to Tennessee Code Annotated section 40-23-101, the trial court erred by not applying pretrial jail credit to his sentences for aggravated burglary and theft. Following our review of the record and the parties' briefs, we conclude that the trial court did not have jurisdiction to rule on the Appellant's motion because the proper avenue for relief regarding the application of his pretrial jail credit is through the Uniform Administrative Procedures Act, Tennessee Code Annotated sections 4-5-101 to -325. Consequently, we vacate the trial court's order denying the Appellant's motion. We dismiss the appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Vacated;  
Appeal Dismissed**

DAVID H. WELLES, J., delivered the opinion of the court, in which DAVID G. HAYES and D. KELLY THOMAS, JR., JJ., joined.

Steven Christopher Hixon (Alias), Pro Se.

Robert E. Cooper, Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Del Holley, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual Background**

The Appellant pled guilty in case number 82978 to one count of aggravated burglary, a Class C felony, and to one count of theft over \$1,000 but under \$10,000, a Class D felony. The trial court entered judgments of convictions on the Appellant's guilty pleas on January 18, 2006, and sentenced him as a Range I, standard offender to three years in the Department of Correction

for the aggravated burglary conviction, ordering that the sentence be served consecutively to a sentence previously imposed in case number 80524. The trial court sentenced him to two years in the Department of Correction for the theft conviction and ordered that it be served concurrently to the sentence imposed in the same case for aggravated burglary. The trial court also suspended both sentences in case number 82978 and placed the Appellant on enhanced probation. On March 28, 2006, the trial court revoked the Appellant's probation and ordered that the January 18, 2006 judgment be put into full force and effect. The Appellant was then placed in the custody of the Department of Correction.

Over six months later, on October 10, 2006, the Appellant filed a motion in the trial court requesting that it grant pretrial jail credit served "prior to the imposition of his sentence on January 18, 2006." As relief, the Appellant requested that the trial court issue "an order to the Central Records Office of the Tennessee Department of Correction[] granting" him the pretrial jail credit. The trial court denied the motion, ruling that the pretrial jail credit requested by the Appellant "was credited to the lead case, [number] 80524."

The Appellant filed a motion to reconsider. The trial court entered another order denying the motion to reconsider, again finding that the pretrial jail credit was applied to case number 80524:

After further review of the [c]ourt file number 80524 including the revocation of probation order filed March 28, 2006, the [Appellant] was credited 370 days of jail credit. The revocation of probation order reflects incustody [sic] dates as follows (09-10-04 to 03-28-05; 08-21-05 to 01-19-06; 02-17-06 to 02-19-06; and 03-10-06 to 03-27-06). According to the judgment in case number 82978 the 3 year sentence shall run consecutive to case number 80524. The credit requested by the [Appellant] (08-21-05 to 01-18-16) was given to him on the lead case number 80524. Therefore, [the Appellant's] motion is hereby denied.

This appeal followed.

### **Analysis**

On appeal, the Appellant argues that the trial court erred in failing to grant him pretrial jail credit "for time spent in the Knox County Jail prior to the imposition of sentence on both counts of case [number] 82978 when both counts were ordered to be served concurrent." The State counters that the trial court lacked jurisdiction to hear the Appellant's motion for pretrial jail credit.<sup>1</sup> We agree with the State.

The Appellant is correct that pursuant to Tennessee Code Annotated section 40-23-101(c), a trial court must allow for pretrial jail credit when sentencing a criminal defendant. Tenn. Code Ann. § 40-23-101(c); see also Stubbs v. State 393 S.W.2d 150, 154 (Tenn. 1965) (holding that it is mandatory under this provision that pretrial jail credit be awarded). However, a trial court's judgment generally becomes final thirty days after entry unless a defendant files a

---

<sup>1</sup> The State further asserts that in any event, the trial court properly found that the jail credits were applied to a separate, previous conviction.

timely notice of appeal or a specified post-trial motion. State v. Moore, 814 S.W.2d 381, 382 (Tenn. Crim. App. 1991)); see also Tenn. R. App. P. 4(a).

Moreover, after a judgment has become final, the trial court retains jurisdiction to modify a sentence only while a defendant is being held in the local jail or workhouse or is waiting to be transferred to the Department of Correction. Barabbas A. Brown v. State, No. E2004-01487-CCA-R3-CD, 2005 WL 74095, at \*1 (Tenn. Crim. App., Knoxville, Jan. 13, 2005) (citing Tenn. Code Ann. §§ 40-35-212(c), -314(c)). Accordingly, this Court has repeatedly stated that once a trial court's judgment has become final and an inmate "is in the custody of [the Department of Correction], the proper avenue to address sentence reduction credits is through the Administrative Procedures Act (APA), [Tenn. Code Ann.] § 4-5-101 et seq." State v. Henry, 946 S.W.2d 833, 834 (Tenn. Crim. App. 1997) (citations omitted); see also Brown, 2005 WL 74095, at \*2; State v. Stephen Mullican, No. M2000-207-CCA-R3-CD, 2000 WL 1278170, at \*1 (Tenn. Crim. App., Nashville, Sept. 8, 2000); State v. Frederick Cavitt, No. E1999-00304-CCA-R3-CD, 2000 WL 964941, at \*2 (Tenn. Crim. App., Knoxville, July 13, 2000); Paul G. Hull v. State, No. 02C01-9605-CC-00183, 1997 WL 346215, at \*1 n.4 (Tenn. Crim. App., Jackson, June 24, 1997); Larry Ray Fuller v. State, No. 02C01-9603-CR-00075, 1997 WL 206772, at \*1-2 (Tenn. Crim. App., Jackson, Apr. 28, 1997).

In this case, the Appellant's motion for an award of pretrial jail credit was filed well after the trial court's judgment had become final and he had been placed in the custody of the Department of Correction. As such, the trial court did not have jurisdiction to adjudicate the Appellant's motion. See Mullican, 2000 WL 1278170, at \*1.

### **Conclusion**

Based on the foregoing authorities and reasoning, we vacate the order of the trial court denying the Appellant's motions for pretrial jail credit. We dismiss this appeal.

---

DAVID H. WELLES, JUDGE