S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
SECOND FLOOR, CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

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Opinion No. 00-051

Sentence Credits pursuant to Tenn. Code Ann. §41-2-111 for inmates in county jails or workhouses

QUESTION

Despite the provisions of Tenn. Code Ann. §41-2-111(b), can a judgment order provide that an inmate sentenced to the county jail or workhouse for any period of time of less than one (1) year serve his sentence day for day?

OPINION

No, except in those instances where the Code specifically so provides, judgment orders cannot require that an inmate sentenced to the county jail or workhouse for any period of time of less than one (1) year serve his sentence day for day.

ANALYSIS

Tenn. Code Ann. §41-2-111(b) provides in pertinent part:

> Each ... prisoner who has been sentenced to the county jail or workhouse for any period of time less than one (1) year on either a misdemeanor or a felony, and who behaves uprightly, *shall* have deducted from the sentence imposed by the court time equal to one quarter (1/4) of such sentence.

(emphasis added). *See also* Tenn. Code Ann. §40-35-211(3).[1] Offenders convicted of offenses which statutorily require mandatory minimum periods of incarceration (i.e., "day for day" service) must serve the mandatory minimum sentence before being eligible to earn sentence credits pursuant to Tenn. Code Ann. §41-2-111. *See, e.g.*, Tenn. A.G. Op. 98-237 (December 28, 1998) (DUI). The question presented is whether other types of offenders can be ordered to serve all or a portion of their

[1]Alternatively, certain prisoners in local facilities are eligible to earn two days' sentence credit for every day of participation in a work program pursuant to Tenn. Code Ann. §41-2-147. *See* Tenn. Code Ann. §§40-35-302(b) and 40-35-211(c).

sentence "day for day" such that they would be unable to earn sentence credits.

When imposing a misdemeanor sentence, the court is required to fix a percentage of the sentence which the defendant is to serve. Tenn. Code Ann. §40-35-302(d). When imposing a felony sentence, the presumptive sentence is to be within the range of years. Tenn. Code Ann. §40-35-210(c). The Code does not contemplate imposition of day for day sentences in these circumstances in derogation of Tenn. Code Ann. §§§40-35-211(3) and 41-2-111(b).

When placing a defendant on probation, the court must sentence the defendant to a specific sentence but suspend the execution of all or part thereof and place the defendant on probation either immediately or after a "period of confinement for a period of time no less than the minimum sentence allowed under the classification and up to and including the statutory maximum time for the class of the conviction offense." Tenn. Code Ann. §40-35-303(c). *See also* Tenn. Code Ann. §§40-35-302(e)(1), 40-35-306(a) and 40-35-307(a). The Code does not provide for the imposition of a day for day sentence as a condition of probation.

In *Trout v. State*, 685 S.W.2d 297 (Tenn. Crim. App. 1984), the Court held that a defendant can waive the right to receive sentence credits pursuant to Tenn. Code Ann. §41-2-111 by accepting a day for day sentence as a condition of probation. In that case, the defendant had served four months of pretrial time. In imposing sentence, the judge gave him credit for this time, leaving him to serve two additional months, with the balance of the sentence to be served on probation. "The trial judge made it clear in granting probation that it was his intent defendant to serve the full six months of the sentence imposed, less [pretrial] jail time. Appellant accepted the conditions of the probation. In so doing he waived any right to any further deductions from the sentence imposed by the court." *Id*. at 297-98.

Trout was overruled by implication, however, by *State v. Estep*, 854 S.W.2d 124 (Tenn. Crim. App. 1992). In *Estep* the Court held that a "defendant has no right to reject probation or any other means of alternative sentencing in order to accept the imposition of a Department of Correction sentence." *Id*. at 127. In that case the defendant had a severe drinking problem. He preferred to serve a prison sentence rather than take a chance that alternative sentencing might be revoked by virtue of his inability to comply with the restrictions of a Community Corrections program. *Id*. "The assessment of the appropriate sentence, alternative or otherwise, is the responsibility of the trial judge." *Id*. Since a defendant cannot reject probation and the conditions imposed thereon, he cannot waive his right to receive sentence credits as a condition of probation.

In a probation revocation proceeding the trial court has the authority pursuant to Tenn. Code Ann. §§ 40-35-308 and 310 to impose a penalty less than the sentence originally imposed rather than imposing service of the entire sentence in custody. *State v. Phillips*, 1997 Tenn. Crim. App. Lexis 462; *State v. Wallace*, 1993 Tenn. Crim. App. Lexis 816. There is no authority, however, for the court to impose the requirement of day for day service.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KIMBERLY J. DEAN
Deputy Attorney General

Requested by:

Honorable Dan T. Bryant
District Public Defender
31st Judicial District
118 N. College Street
McMinnville, TN 37110