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Opinion No. 02-125

Day-for-day service of sentence following probation revocation

QUESTION

Despite the provisions of Tennessee Code Annotated § 41-2-111(b), can a judgment order resulting from a probation violation provide that an inmate sentenced to the county jail or workhouse for less than one (1) year serve his sentence day-for-day?

OPINION

No. There is no authority for a court to impose a day-for-day sentence following probation revocation.

ANALYSIS

Tennessee Code Annotated § 41-2-111(b) provides in pertinent part:

> Each such 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). In addition, Tennessee Code Annotated § 40-35-211(3) provides:

> If a defendant is convicted of an offense designated as a felony but the court imposes a sentence of less than one (1) year in the local jail or workhouse, such defendant shall be considered a felon but shall be sentenced as in the case of a misdemeanor, and, therefore, *shall be entitled* to sentence credits under § 41-2-111.

(emphasis added). As the Tennessee Court of Criminal Appeals and this Office have previously determined, a court may not order a defendant to serve his or her sentence "day-for-day" so as to deprive the defendant of good conduct credits pursuant to these statutes. *See State v. Clark*, 67 S.W.3d 73, 78-79 (Tenn. Crim. App. 2001); Tenn. Atty. Gen. Op. No. 00-051 (Mar. 20, 2000).

Upon revocation of probation, a trial court may (1) order the defendant to serve his or her sentence in confinement; (2) order the original probation period to commence anew; or (3) extend the remaining period of probation for up to two additional years. *See State v. Hunter*, 1 S.W.3d 643, 644-47 (Tenn. 1999); Tenn. Code Ann. §§ 40-35-308(c), -310, 311(e). If a trial court orders the defendant to serve his or her sentence in confinement, the court may not increase the sentence originally imposed; rather, the court "can only 'cause the defendant *to commence the execution of the judgment as originally entered . . . .*'" *State v. Samuels*, 44 S.W.3d 489, 495 (Tenn. 2001) (quoting Tenn. Code Ann. § 40-35-311(d) (1997)). Thus, a trial court lacks the authority to order a sentence to be served "day-for-day" upon probation revocation.

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