Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-159

JANUARY TERM, 2003

State of Vermont v. James A. Forcier	}	APPEALED FROM: District Court of Vermont, Unit No. 2, Chittenden Circuit DOCKET NO. 3762-7-01 Cncr Trial Judge: Michael S. Kupersmith

In the above-entitled cause, the Clerk will enter:

Defendant appeals the district court' s decision to deny him credit for time served in connection with his detention on a parole violation and his arrest and prosecution for driving while intoxicated (DWI) and driving with a suspended license (DLS). We affirm.

In August 1998, defendant was convicted of DWI, fourth offense, and given a prison sentence of one-to-five years to serve. He was released on parole in January 2000, re-incarcerated in June 2000 for violating parole, and released again on parole in January 2001. On July 2, 2001, defendant was arrested and charged with DWI, fifth offense, and DLS. Bail was set, and defendant was also detained at the correctional facility on a parole violation. The next day, at arraignment on the new charges, conditions of release were imposed, and bail was set at $2500. Defendant pled guilty to the new charges on December 26, 2001 and was sentenced on March 22, 2002. He remained incarcerated throughout this period. At the sentencing hearing, the court imposed a two-to-five-year term of incarceration for the new DWI conviction to run consecutive to the prior DWI sentence. The court also imposed a partially-suspended concurrent sentence for the DLS conviction.

At the hearing, defense counsel stated to the court, without offering any evidence, that defendant would have been furlough eligible on the parole violation if he had not been incarcerated for lack of bail. Defense counsel suggested that State v. Blondin, 164 Vt. 55 (1995) contained language that might allow defendant to receive credit against his sentence on the new charges for the time he spent in jail following his arrest. The court declined to give defendant credit against the sentence on the new charges, ruling that he was not entitled to receive credit against a subsequent consecutive sentence, and that doing so would undermine the minimum term of imprisonment it intended to impose. Defendant appeals from that decision, arguing for the first time that Blondin should be reconsidered.

In Blondin, 164 Vt. at 61, this Court held that " when a defendant is incarcerated based on conduct that leads both to revocation of probation or parole and to conviction on new charges, the time spent in jail before the second sentence is imposed should be credited toward only the first sentence if the second sentence is imposed consecutively . . . ." The general rule adopted in Blondin was reaffirmed by this Court in Martel v. Lanman, 171 Vt. 547 (2000) (mem.), and has been uniformly accepted by both the federal courts, see Blondin, 164 Vt. at 58, and other state courts, see id. at 59-60; State v. Price, 50 P.3d 530, 535 (Mont. 2002) (citing other jurisdictions). In his brief argument, defendant provides no good reason to overturn our established precedent disallowing double credit for pretrial time served on new charges that also resulted in a violation of parole or probation.

Defendant argues that our holding in Blondin as applied in this case violates 13 V.S.A. § 7032(c)(1), which provides that " [i]n all cases where multiple or additional sentences have been or are imposed . . . . [w]hen terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms." He states that he " may" have been able to return to a furlough or parole status following his parole violation had he been able to make bail on the new charges, but he proffered no evidence on this point at the sentencing hearing. In any event, his arguments are unavailing. Defendant may have been past his minimum release date on the prior sentence, but he still received credit for time served against that sentence; he is not entitled to double credit for time served against both the prior and new sentences. As we stated in Martel, 171 Vt. at 548-49, defendant' s " ' longer sentence' was the result of his convictions for multiple offenses, not pretrial incarceration for failure to make bail."

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice