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Furloughs

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Sincerely,

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Reference Number: CTAS-1425

In any case in which a defendant has been sentenced to a local jail or workhouse or is at a local jail or workhouse subject to the provisions of T.C.A. § 40-35-212, the sentencing court shall have jurisdiction to grant a furlough for any medical, penological, rehabilitative or humane reason, upon conditions to be set by the sentencing court. This section applies to convictions under T.C.A. § 55-10-401 (DUI/DWI) after the mandatory minimum sentences have been served. T.C.A. § 40-35-316(a).

The sentencing court shall have no authority to grant a furlough to a defendant pursuant to the authority of T.C.A. § 40-35-316(a) for the purpose of allowing the defendant to work unless the defendant is held to and meets all of the eligibility and supervision requirements, testing standards and other criteria imposed by or pursuant to state law. T.C.A. § 40-35-316(b).

In *State v. Moss*, 2000 WL 246227 (Tenn. Crim. App. 2000) the defendant appealed an order entered by the trial court requiring that he be reincarcerated to serve the remainder of his 120-day jail sentence after the trial court had granted the defendant a medical furlough at the request of the sheriff.

The facts of this case are not in controversy. The defendant reported to the Anderson County Jail on April 17, 1998, to serve his 120-day sentence. Within approximately two weeks, he suffered a severe attack of appendicitis. The sheriff, without prior notice to the State, the defendant, or defense counsel, contacted a judge who granted a furlough based on a medical emergency. The only written record of the granting of a furlough was a notation attached to the jail docket. A guard accompanied the defendant to the hospital where, once the defendant's condition was diagnosed and the need for surgery determined, the guard left the hospital. The defendant successfully underwent an appendectomy and was released approximately one week later. The defendant was not contacted by anyone from the jail or any other official concerning the furlough or any particular date for his return to jail. The defendant went home, continued to recuperate, and started a new job.

Some months later, the defendant told his probation officer that he had served only twelve days of his 120-day sentence. The probation officer relayed this information to the prosecutor. Consequently, a hearing was held to determine the defendant's status. An order to serve sentence was issued by the trial court on November 30, 1998, requiring that the defendant be reincarcerated to serve the remaining days of his sentence. The trial court allowed credit for the seven days the defendant was hospitalized.

Id.

On appeal, the defendant presented the following two issues: (1) whether reincarceration of the defendant was fundamentally unfair; and (2) whether the state of Tennessee was responsible for payment of the defendant's medical bills while on furlough for an emergency appendectomy.

Addressing the first issue, the Court of Criminal Appeals noted that, pursuant to T.C.A. § 40-35-316(a), the trial court has jurisdiction to grant furloughs for "any medical, penological, rehabilitative or humane reason" and that the defendant had been placed on medical furlough because of a life-threatening medical emergency. The defendant argued that the following defects in the validity of the furlough granted by the trial court amounted to a waiver of the government's right to reincarcerate him: (1) He did not request the furlough; (2) no furlough order was ever entered; (3) his attorney was not notified; and (4) the real reason for the furlough was for the county to avoid financial liability.

The court concluded that the sheriff's actions in seeking an emergency furlough for the defendant, even if, as the defendant had alleged, was for the purpose of avoiding financial liability for the defendant's medical expenses, were far from being so affirmatively improper or grossly negligent that it would be an affront to justice to require the defendant to serve a legal sentence in the face of such actions. Accordingly, as to the first issue, the court affirmed the order of the trial court instructing the defendant to return to the Anderson County jail to serve the remainder of his mandatory 120-day sentence.

With respect to the second issue, the court noted that the issue of the county's liability for the defendant's medical expenses was not properly before the court. As to the state's liability, the court found that the state was not liable for the defendant's medical expenses because the defendant was not serving a sentence in the Tennessee Department of Correction but was sentenced to the county jail for a misdemeanor conviction.

Likewise, in *State v. Chapman*, 977 S.W.2d 122 (Tenn. Crim. App. 1997), the Court of Criminal Appeals held that the reincarceration of the defendant to serve the remainder of her 10 day sentence was not fundamentally unfair and thus did not violate the defendant's due process rights where the sheriff had

released her from custody to receive necessary medical attention, unavailable in his county, because of her premature labor and birth of her child.

On December 1, 1995, the defendant reported to the Carroll County Jail and began serving her sentence at 6:00 p.m. On her third day of confinement, December 4, 1995, the defendant began showing signs of labor at approximately 1:00 a.m. The jailer and a deputy transported the defendant to Methodist Hospital in McKenzie, Tennessee, at 3:40 a.m. The hospital determined that the defendant had to be transported to a hospital in Jackson, Tennessee, because the baby was in breech. At 4:55 a.m., the Carroll County Sheriff's Department released the defendant from custody. The defendant was then transported to the hospital in Jackson, apparently by ambulance.

On January 8, 1996, the state made an oral motion to grant the defendant a medical furlough. Over the objection of the defendant's trial counsel, the trial court granted the state's motion, stating that "this was a matter, I think, that was addressed to the Court.... And I said she could be released under these medical conditions. There should have been an order to that effect." Because the defendant was not present at the hearing, the trial court continued the case to February 14, 1996, to determine when the defendant could begin serving the remainder of her sentence. On January 24, 1996, the trial court entered an order granting the defendant a medical furlough as of December 4, 1995, finding that it was necessary to release her from jail at 4:55 a.m. due to premature labor.

Id. at 124.

Affirming the trial court's order denying the defendant's motion to declare her sentence served, the Court of Criminal Appeals held that the "sheriff's actions in releasing the defendant to receive necessary medical attention, unavailable in his county, is not 'so affirmatively wrong ... that it would be unequivocally inconsistent with 'fundamental principles of liberty and justice' to require' the defendant to complete her sentence." *Id.* at 126 (citations omitted).

In addition to her due process argument, the defendant argued that she was entitled to the application of the doctrine of credit for time at liberty so as to have her sentence to confinement deemed completed. The court, however, held that the doctrine does not apply under Tennessee law nor would it under the circumstances in this case. *Id.* at 126-127.

In any event, we do not believe the doctrine would require relief under the circumstances in this case. At the time of sentencing, the trial court stated that a furlough would be granted to the defendant for medical purposes, a furlough authorized by law. See T.C.A. §§ 40-35-316 and 41-2-128.

The defendant's initial hospitalization, necessary for the birth of her child, was under the Carroll County Sheriff's custody. At that time, the parties were notified of the need to send the defendant to a better-equipped hospital in another county because the fetus was in the breech position. Needless to say, this was an emergency medical situation with time being of the essence.

With this medical emergency, the sheriff's legal options were limited. Under T.C.A. § 41-4-121(a), the sheriff has legal authority to convey a prisoner to the nearest sufficient jail, including in another county, if his or her jail is insufficient for the safekeeping of a prisoner. In this sense, the inability of the county to supply immediate medical needs might fall into this category. In reality, though, the defendant was already in, and would remain in, the hands of medical personnel and a physical transfer of the defendant to another jail was impossible. Otherwise, the sheriff was left with the choice of seeking judicial order for a furlough or other release for medical purposes. See, e.g., T.C.A. §§ 40-35-316 and 41-2-128. Obviously, an early morning telephone call by the sheriff's office to the trial court would have resulted in a furlough authorization.

However, we do not believe that the failure to get specific furlough authorization from the trial court at the time of the defendant's "release" from the sheriff's custody reflects "negligence" in the release because of the medical emergency at hand. Rather, it was a release of necessity to save the defendant's and her child's lives. Also, with the defendant being aware that the trial court would grant her a furlough for medical purposes, but not for an extended time with the child, we do not see how she could reasonably expect or consider her time of confinement to continue running after her release.

Thus, she would not be entitled to credit for time at liberty.

Id. at 127. See also *State v. Cardwell*, 1993 WL 231750 (Tenn. Crim. App. 1993) (affirming the trial court finding that appellant had violated the conditions of his probation by leaving the state and county without permission and by exceeding the limitations placed on his medical furlough).

The Tennessee Attorney General has provided an opinion that in the absence of a waiver, the State is

liable for expenses incurred from emergency hospitalization and medical treatment provided to any felon imprisoned in the county jail if the felon is admitted to the hospital while on furlough. In the absence of a waiver, the county is liable for all other medical expenses of county jail prisoners released on furlough either pretrial or after conviction. The county is not liable for payment of the medical expenses of jail prisoners on bond either pretrial or after conviction. Op. Tenn. Atty. Gen. No. 06-084 (May 5, 2006).

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