IN THE COURT OF APPEALS OF IOWA

No. 1-093 / 10-1162
Filed February 23, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NATHAN ALLEN MOORE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, Judge.

Defendant appeals the district court ruling denying jail credit for time spent in residential group homes prior to revocation of probation. **AFFIRMED.**

Jesse A. Macro Jr. of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant.

Nathan A. Moore, Rockwell City, pro se.

Thomas J. Miller, Attorney General, William A. Hill, Assistant Attorney General, and John P. Sarcone, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

DANILSON, J.

Nathan Allen Moore appeals the district court ruling denying jail credit for time spent at residential group homes prior to the revocation of his probation.[1] Moore alleges he is entitled to jail credit for seventeen months at Harbor of Hope and eighteen months at Farrell House that he "served" prior to being sentenced to prison. Moore contends the court erred in determining that his stays at these facilities did not qualify as time he "was confined in a county jail or other correctional or mental facility" as required by Iowa Code section 903A.5 (2009). In its order, the court interpreted section 903A.5 and stated in part:

> The Harbor of Hope and Farrell House do not qualify as correctional or mental health facilities. Further, the Court did not order the Defendant to be confined at these locations. These were conditions of release under the Drug Court program to facilitate the drug treatment which the Defendant was receiving as part of the program. For this reason, the Defendant is not entitled to credit for the time he spent at either facility.

Issues of statutory interpretation are reviewed for errors at law. *See* Iowa R. Civ. P. 6.907. "The primary rule of statutory interpretation is to give effect to the intention of the legislature." *State v. Sluyter*, 763 N.W.2d 575, 581 (Iowa 2009). A statute is not ambiguous unless reasonable minds could differ or be uncertain as to its meaning. *State v. McCullah*, 787 N.W.2d 90, 94 (Iowa 2010).

Our supreme court has previously been asked to adopt a "fluid" interpretation of section 903A.5, but declined, stating:

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[1] In February 2006, Moore was charged by trial information for possession of a controlled substance with intent to deliver, a class B felony, and carrying weapons, a serious misdemeanor. The district court admitted Moore to the Polk County Drug Court program in April 2006. Moore participated in the drug court program until his status as a participant was revoked in September 2009.

> [The defendant]'s attempt to attach a more "fluid concept" to "jail," "detention facility," and "correctional facility" (*see* sections 321J.2(2)(a) and 903A.5) ignores the legal maxim that when statutory language is not ambiguous, or when a statute is plain and its meaning is clear, this court need not search for legislative intent or a meaning beyond the expressed language. The statutory words here are plain and unambiguous and clearly only allow credit for time served in state correctional institutions or detention facilities. (This is not to be confused with situations under section 321J.3 where a defendant may receive credit for time spent in a substance abuse treatment facility under court order. *See State v. Wiese*, 342 N.W.2d 858, 860 (Iowa 1984).)

State v. Rodenburg, 562 N.W.2d 186, 189 (Iowa 1997). Here, Harbor of Hope and Farrell House are independently-run, privately-funded, residential group homes and are not correctional or mental health facilities affiliated with the Iowa department of corrections or the Iowa department of public health. *Cf. State v. Capper*, 539 N.W.2d 361, 367 (Iowa 1995), *abrogated on other grounds by State v. Hawk*, 616 N.W.2d 527 (Iowa 2000).

We acknowledge the strong argument that credit should be afforded for participation in inpatient programs prior to sentencing where the failure to comply with program requirements may give rise to a contempt adjudication.[2] Under such circumstances, it is difficult to describe a defendant's participation in such a program as voluntary. However, we must defer to our supreme court's interpretation as well as the legislature's authority to amend the statute.

Accordingly, we conclude the district court properly denied Moore's motion for correction of illegal sentence and/or credit for confinement.

AFFIRMED.

[2] The record reflects Moore was adjudicated in contempt on more than one occasion for violations of the program's requirements.