IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL DAVID HALLA, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11531 Trial Court No. 3PA-09-3282 CR MEMORANDUM OPINION No. 6361 — July 20, 2016

Appeal from the Superior Court, Third Judicial District, Palmer, Vanessa White, Judge.

Appearances: Andrew Steiner, Attorney at Law, Bend, Oregon, for the Appellant. Elizabeth T. Burke, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard, Judge.

Judge ALLARD.

Michael David Halla pled guilty to one count of second-degree controlled substance misconduct, and was sentenced to 11 years' imprisonment with 5 years suspended (6 years to serve).

Halla asked the superior court to award him credit against this sentence for the time he spent in the Salvation Army's residential treatment program as a condition

of his pre-sentencing bail release. Halla was sentenced in 2012. At that time, the governing statute — AS 12.55.027(c) — declared that defendants could not receive credit against their sentences for time spent in residential treatment unless the treatment program required them to "be confined at all times to the grounds of the facility[,] or be in the physical custody of an employee of the facility, except for court appearances, meetings with counsel, and work required by the treatment program and approved in advance by the court[.]"[1]

Moreover, at the time of Halla's sentencing, this Court had already issued our decision in *McKinley v. State*.[2] In *McKinley*, we evaluated the Salvation Army's residential treatment program to see whether it met the statutory test set forth in the 2012 version of AS 12.55.027(c) — and we concluded that the program did not satisfy the test, except for the first phase of treatment (a phase that normally lasts a month), when residents are essentially forbidden from leaving the facility.[3]

According to the testimony presented at Halla's sentencing hearing, during the time when Halla attended the Salvation Army's treatment program, the program was run in essentially the same way we described in *McKinley*. Based on our decision in *McKinley*, the superior court gave Halla credit for the 31 days that he spent in the first phase of the treatment program, but the court denied Halla credit for the other 505 days he spent in the program.

Halla later sought reconsideration of the court's ruling, arguing that AS 12.55.027(c) violated the equal protection clause.

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[1] Former AS 12.55.027(c) (2012). In 2014, the legislature amended AS 12.55.-027(c) to broaden the types of programs that qualify for this kind of credit. *See* ch. 83, § 23, SLA 2014.

[2] 275 P.3d 567 (Alaska App. 2012).

[3] *Id.* at 568, 572-73.

Halla pointed out that defendants who were not released on bail (and who therefore remained in pre-trial custody) can be placed at a community rehabilitation center by the Department of Corrections. Halla further pointed out that pre-trial detainees who are placed at a community rehabilitation center receive credit against their sentences even though they have the freedom to leave the premises unsupervised — the very factor that disqualified Halla from receiving credit for the time he spent on bail release at the Salvation Army treatment program.

The superior court rejected Halla's equal protection claim, and Halla now appeals the superior court's ruling.

We conclude that the superior court properly rejected Halla's equal protection claim. As we stated in *Matthew v. State*, "just because the Commissioner of the Department of Corrections has the authority to designate relatively unstructured ways in which a prisoner may serve a sentence, it does not follow that a person subject to those same conditions as a component of pre-custody release ... must receive credit for time served."[4]

> Even if the Commissioner authorizes the prisoner to be released under minimal supervision [for example, under a medical or family-visit furlough], the prisoner would be entitled to credit ... toward his sentence ... , not because of how closely any restrictions of release approximate actual incarceration, but because this is a period of time during which the prisoner is under the jurisdiction of the Department of Corrections.[5]

As Chief Judge Mannheimer emphasized in his concurring opinion in *Matthew*,

> [T]he Commissioner of Corrections has wide discretion concerning the conditions of a short-duration furlough;

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[4] *Matthew v. State*, 152 P.3d 469, 473 (Alaska App. 2007).

[5] *Id.*

apparently, these conditions might be as minimal as having the prisoner check in with a Corrections officer on a regular basis — a modified form of release on the prisoner's own recognizance. [But the] fact that the Commissioner has the authority to release prisoners under this minimal form of supervision does not mean that defendants [who are released from custody pre-trial] can claim credit for time served if they, too, are released on their own recognizance or under the requirement that they periodically contact their attorney or some other designated officer of the court. *Nygren* credit hinges on a defendant's subjection to restrictions that approximate incarceration.[6]

We accordingly AFFIRM the judgment of the superior court.

[6] *Id.* at 474 (Mannheimer, J., concurring).