IN THE COURT OF APPEALS

STATE OF GEORGIA

DEVON TYREE MERRELL,

APPELLANT,

v.

STATE OF GEORGIA

APPELLEE.

COURT OF APPEALS CASE NO. A26A1182

GLYNN COUNTY SUPERIOR COURT

CASE NUMBER: CR-2400151

BRIEF OF APPELLEE

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Statement Of Jurisdiction

This Court has jurisdiction over the present appeal pursuant to Article VI, Section V, Paragraph III of the Constitution of the State of Georgia and O.C.G.A. § 5-6-33(a), as the appeal arises from a final judgment of the Glynn County Superior Court in a criminal action. The subject matter of this appeal does not involve any issues or charges that fall within the exclusive appellate jurisdiction of the Supreme Court of Georgia as set forth in Article VI, Section VI, Paragraphs II and III of the Georgia Constitution and O.C.G.A. § 15-3-3. Accordingly, jurisdiction is proper in the Georgia Court of Appeals.

Standard Of Review

When this Court reviews solely the interpretation of a statute, questions of law are to be reviewed de novo. *State v. Johnson*, 354 Ga. App. 447, 448 (841 S.E.2d 91)(2020), citing *State v. Walker*, 342 Ga. App. 733 (805 S.E.2d 262)(2017).

Statement Of The Case

After adjudicating the Appellant guilty, Mr. Merrell requested the trial court to grant him credit for time spent in pretrial home confinement with electronic monitoring as a condition of bond against his sentence. The trial court declined to do so. Appellant has filed this appeal challenging that decision (R. 1). The issue preserved for appeal is whether Appellant is entitled to credit toward his custodial sentence for the period spent in home confinement under the terms of the bond order (Tr. 24-25)[1]. Appellant seeks reversal of the trial court's denial of such credit and remand for resentencing with appropriate credit for time served in home confinement.

[1] Tr. refers to the Trial Transcript.

Statement Of Facts

On February 18, 2024, Glynn County Police Officers responded to a report from the hospital concerning a gunshot victim, Maratavious Saintal. He was transported by three individuals following a shooting behind the Country Inn and Suites in Brunswick, Georgia (Tr. 2). Police canvassed the scene, recovered four spent nine-millimeter shell casings, and reviewed surveillance footage from nearby businesses (Tr. 2-3). The footage showed four individuals, each armed with a weapon, exciting from a white vehicle near the scene (Tr. 3). Subsequent investigation led to the identification of Appellant Deveon Tyree Merrell (hereinafter "Mr. Merrell") as one of the armed occupants exciting the vehicle (Tr. 3-4). Mr. Merrell initially denied involvement in the shooting but later provided a detailed statement at the police station, admitting his presence, identifying his co-defendants, and describing the weapons involved (Tr. 3). He stated that the group had attended a party, followed another vehicle, and exited their car behind the hotel, where a co-defendant fired a gun before the group retreated and Mr. Merrell drove them home (Tr. 3). Mr. Merrell also acknowledged his association with members of the M.O.B. gang, while the opposing group was identified as members of the

E.G. gang (Tr. 3-4).The State intended to present evidence of social media posts and expert witness testimony to corroborate gang involvement in this shooting (Tr. 3-4; R. 180).

Mr. Merrell was arrested on February 21, 2024, in connection with the shooting incident above in Glynn County, Georgia (Tr. 2-3; R. 5). He was indicted on May 15, 2024, under Indictment No. CR2400151, on multiple counts including aggravated assault, violation of the Street Gang Terrorism Prevention Act, and possession of a firearm during the commission of a felony (Tr. 2, 4; R. 21).

Following his arrest, Appellant was denied bond and remained in the Glynn County Jail (Tr. 23). On September 13, 2024, the Superior Court granted bond in the amount of $50,000, subject to GPS monitoring, remaining at his home except for court appearances, attorney visits, or medical emergencies. Additionally, he was restricted from contacting his co-defendants and use of social media (Tr. 23-24; R. 112). The bond order also prohibited possession of guns, drugs, or alcohol, banned all forms of social media, and subjected Appellant to warrantless searches of his phone by law enforcement (R. 112).

On April 22, 2025, the parties jointly moved for a temporary modification to allow Mr. Merrell to attend a family reunion at Seldon Park on April 26, 2025, which the court granted (R. 112). There is no evidence in the record of any violations of bond conditions during the period of pretrial release. The trial court later modified the bond conditions in September 2025 to allow Appellant to attend church services, provided he communicated with his probation officer prior to leaving his residence (R. 176).

A plea hearing was held on September 19, 2025, before the Honorable Roger B. Lane. Mr. Merrell, represented by counsel, pled guilty to aggravated assault and violation of the Street Gang Terrorism and Prevention Act (Tr. 11-12; R. 203). The State presented the factual basis for the plea, which Mr. Merrell affirmed as accurate (Tr. 7). The court conducted a thorough colloquy, confirming Mr. Merrell's understanding of the charges, rights waived, and the plea agreement (Tr. 6-12). Mr. Merrell acknowledged his guilt and confirmed that his plea was entered freely and voluntarily (Tr. 12). The State recommended a sentence of ten years to serve in the Department of Corrections for the gang charge, followed by ten years on probation for aggravated assault,

consecutive to the sentence for the gang charge, with special probation conditions related to gang activity (Tr. 4-5; R. 208). The court accepted the plea and imposed the recommended sentence (Tr. 12, 20-21; R. 210).

At sentencing, the court imposed a total sentence of twenty years, with ten years to serve in confinement and the balance on probation, to run consecutively (Tr. 20; R. 210). The court granted Appellant credit for the time spent in the Glynn County Jail prior to release on bond (Tr. 23). Defense counsel requested credit for the 365 days Appellant spent in home confinement with electronic monitoring as a condition of his bond, arguing that this period constituted confinement (Tr. 23-24). The trial court denied the request, stating: "I have to make the decision. I'm not going I'm not going to give credit for that time. He asked for bond and was out. The rest of them had to serve in the jail here. I understand your case and it may apply to this. It's a little bit different case, but it's same statute, probably. But, anyway, I'm not I'm not going to give credit for that time" (Tr. 24-25). The trial court also noted that Mr. Merrell had been released on bond while co-defendants remained in jail (Tr. 25).

Argument And Citation Of Authorities

I. Home Confinement With Electronic Monitoring Is Not "Confinement" In A "Penal Institution" For Sentence Credit; Thus, The Trial Court Should Be Affirmed.

Under Georgia law, home confinement is not equivalent to incarceration or jail. Statutes and case law consistently distinguish between physical custody in a penal institution and restrictions imposed while a defendant remains in the community, such as home confinement. Because O.C.G.A. § 17-10-11 provides sentence credit only for time spent in actual confinement, time spent in home confinement does not qualify toward a custodial sentence. Thus, the trial court properly denied Appellant's request for credit and should be affirmed.

a. The Plain Language of O.C.G.A. § 17-10-11 Limits Sentence Credit to Time Spent in Custodial Confinement.

O.C.G.A. § 17-10-11 provides that, upon conviction, a defendant "shall be given full credit for each day spent in confinement in any penal institution or facility and in any institution or facility for treatment or examination for a disability, infirmity, or other physical condition" (emphasis added). By its plain language, the statute limits sentence

credit to time spent in confinement within a penal institution or facility.[2] The ordinary meaning of these terms refers to places such as jails, prisons, or other secure facilities operated by the State or its political subdivisions.

The statute further provides that credit applies to periods of "pretrial confinement" and "posttrial confinement" while a defendant awaits transfer to the Department of Corrections or another court-ordered institution or facility. O.C.G.A. § 17-10-11. These provisions consistently contemplate physical custody within a custodial institution. Notably absent from the statute is any reference to home confinement, electronic monitoring, or other community-based restrictions. The omission of such alternatives reinforces the trial court's decision that the statute addresses only custodial confinement in institutional settings.

Georgia courts interpreting O.C.G.A. §§ 17-10-9 through 17-10-12 have likewise emphasized that the governing policy is "time spent in incarceration under the authority of the State of Georgia or a political subdivision thereof should count toward the time which a prisoner must

[2] No one has claimed Mr. Merrell's home is an "institution or facility for treatment or examination for a disability, infirmity, or other physical condition." O.C.G.A. § 17-10-11.

serve." *Johnson v. State*, 248 Ga. App. 454, 546 S.E.2d 562 (2001); *Watts v. State*, 321 Ga. App. 289, 739 S.E.2d 129 (2013). The courts' repeated use of the term "incarceration" reflects the requirement of physical custody under the authority of the State, rather than the more limited restraints associated with remaining in one's home.

Consistent with this understanding, Georgia appellate courts have recognized the distinction between custodial confinement and less restrictive forms of supervision such as house arrest or electronic monitoring. In *Brown v. State*, this Court considered arguments regarding electronically monitored house arrest and analyzed the differences between being confined within a secure facility and being required to remain at home under monitoring. 314 Ga. App. 1, 723 S.E.2d 112 (2012). This Court's discussion highlighted that home confinement lacks the direct, continuous supervision and physical restraint which characterize incarceration in a penal institution.

The structure of O.C.G.A. § 17-10-11 further supports this interpretation. Subsection (b) provides specific circumstances in which credit for time served may be excluded, including participation in a work

release program or confinement in a jurisdiction other than where the arrest occurred. O.C.G.A. § 17-10-11. By expressly addressing these situations, the General Assembly demonstrated its awareness of alternative custodial arrangements. The statute's failure to include home confinement or electronic monitoring among those circumstances confirms that the legislature did not intend such arrangements to qualify as "confinement" for purposes of sentence credit.

Accordingly, the statutory text, legislative structure, and judicial interpretation all point to the same conclusion: the term "confinement" in O.C.G.A. § 17-10-11 refers to physical custody within a penal institution or similar custodial facility. Home confinement, even when accompanied by electronic monitoring, does not involve the continuous physical restraint or institutional custody contemplated by the statute. Individuals subject to home confinement remain in their own residences and retain significant personal autonomy. These are conditions fundamentally different from the conditions experienced in a jail or prison.

For these reasons, home confinement does not constitute confinement within the meaning of O.C.G.A. § 17-10-11. The statute's plain language, the policy articulated by Georgia courts, and the structure of the statutory scheme all confirm that sentence credit applies only to time spent in physical custody within a penal institution or facility. Thus, the trial court's denial of sentence credit for time spent in home confinement should be affirmed.

b. Even If The Plain Language Does Not Control, Under O.C.G.A. § 17-10-11 Home Confinement is Not Considered Traditional Confinement.

Under Georgia law, home confinement is not considered "confinement" for the purpose of sentence credit under O.C.G.A. § 17-10-11. This statute mandates credit for time spent in "confinement" prior to sentencing, but Georgia courts have consistently interpreted this to exclude home confinement or electronic monitoring. The distinction between home confinement and incarceration is well-established in both statutory and case law, reflecting the different nature and purpose of these forms of restriction.

The statute is designed to ensure that defendants are not penalized by being deprived of liberty without receiving credit toward their sentence. However, the term "confinement" has been interpreted to mean physical custody in a penal institution or similar facility, not conditions of home confinement or electronic monitoring.

Pierce v. State establishes that home confinement does not constitute incarceration under Georgia law. 278 Ga. App. 162, 628 S.E.2d 235 (2006). This Court held that home confinement is a form of limited confinement that does not meet the statutory definition of incarceration, which requires continuous and uninterrupted custody in a jail or penitentiary. This Court further found that a sentence of home confinement was insufficient to satisfy a statutory requirement for actual incarceration in a DUI case. Incarceration refers to "continuous and uninterrupted custody in a jail or penitentiary," whereas home confinement is a form of limited confinement that does not meet this definition. This Court relied on the definition of “incarceration” found in Black's Law Dictionary, which describes it as “imprisonment or confinement in a jail or penitentiary.” *Id.*

Similarly, in *Pitts v. State*, this Court emphasized that incarceration and probation are mutually exclusive concepts. 206 Ga. App. 635, 637, 426 S.E.2d 257 (1992). Incarceration denotes a continuous period of confinement in a jail or penitentiary, while probation, which may include conditions such as home confinement, represents a limitation of freedom short of imprisonment. "'[C]onditions of probation may be imposed for punitive purposes, such as by restricting a person's liberties *short of total incarceration*. . . .' 'Limited as their freedom undoubtedly is, probationers are still individuals, *not inmates[,] [h]aving been deemed worthy to stay in society*. . .'" *Id.* (Internal citations omitted. Emphasis is a part of quote not added). Probation and home confinement are more synonymous than home confinement is to jail. Additionally, prison and jail are more synonymous than home confinement is to jail. This Court has held that probation and incarceration are mutually exclusive. It would thus follow that home confinement is mutually exclusive and should not count toward Mr. Merrell's prison sentence.

In *Penaherrera v. State*, this Court confirmed that limited confinement in a detention center, diversion center, or one's own home as a condition of probation does not constitute incarceration. 211 Ga. App.

162, 438 S.E.2d 661 (1993). This Court specifically defined incarceration as continuous and uninterrupted custody in a jail or penitentiary, distinguishing it from home confinement or other alternative forms of supervision.

While *Brown v. State*, as discussed above, addressed electronically-monitored house arrest in the context of the escape statute, it supports the distinction between house arrest and traditional incarceration. 314 Ga. App. 1 (2012). This Court recognized that electronic monitoring creates a state of being restricted or detained within one's home, but it did not equate this with incarceration for sentence credit purposes. The argument in *Brown* revolved around confinement and its definition for the purpose of escape. While this case in not about an escape from house arrest under electronic monitoring, the *Brown* decision is helpful.

Home confinement, even with electronic monitoring, allows for a degree of personal freedom and autonomy that is not present in traditional incarceration. Individuals under home confinement can remain in their homes, maintain family relationships, and often have the ability to leave for approved activities such as work or medical appointments. This level of freedom is fundamentally different from the

continuous and uninterrupted custody experienced in a jail or penitentiary.

The policy underlying O.C.G.A. § 17-10-11 is to ensure that defendants are not doubly punished by being deprived of liberty without receiving credit toward their sentence. However, the nature of home confinement does not align with the type of confinement contemplated by the statute. Home confinement serves as an alternative to incarceration, designed to alleviate jail overcrowding and provide a less restrictive means of ensuring compliance with legal obligations.

Georgia law clearly distinguishes between home confinement and incarceration, both in statutory language and judicial interpretation. Home confinement, even with electronic monitoring, does not constitute "confinement" under O.C.G.A. § 17-10-11 for the purpose of sentence credit. The courts have consistently upheld this distinction, recognizing the different nature and purpose of these forms of restriction. Therefore, home confinement should not be credited as time served under the statute.

c. Home Confinement Under O.C.G.A. § 17-6-1.1 is Not Traditional Confinement; Thus, The Trial Court Should Be Affirmed.

O.C.G.A. § 17-6-1.1 provides a framework for courts to impose home confinement as a condition of pretrial release, emphasizing its role as a supervisory tool rather than a form of incarceration. The legislative intent and policy considerations underlying this statute clearly distinguish home confinement from traditional confinement.

Furthermore, the statutory framework of O.C.G.A. § 17-6-1.1 authorizes the use of electronic monitoring, including GPS tracking and home confinement, as conditions of pretrial release. The statute is designed to ensure compliance with legal obligations while allowing defendants to remain outside of jail. This approach reflects a legislative intent to treat home confinement as a distinct and less restrictive alternative to incarceration.

The legislative intent behind O.C.G.A. § 17-6-1.1 is to provide a flexible alternative to traditional confinement. By allowing defendants to remain in their homes under electronic supervision, the statute aims to alleviate jail overcrowding and reduce the costs associated with

incarceration. This intent is evident in the statute's emphasis on alternatives to incarceration, highlighting the rehabilitative rather than punitive nature of home confinement.

There are two clear distinctions from incarceration: (1) the nature of the supervision, and (2) the purpose and function. Home confinement allows defendants to maintain personal freedom and autonomy. Unlike incarceration, individuals under home confinement can remain in their homes, maintain employment, and engage in approved activities, such as a attending a family reunion like Mr. Merrell was allowed to do, in addition to the extensive other privileges one maintains while in their home, such as, access to the internet, ability to go to church, conjugal visits, and numerous other freedoms. This level of freedom is fundamentally different from the continuous and uninterrupted custody experienced in a jail or penitentiary. The purpose of home confinement is to ensure compliance with legal obligations without resorting to incarceration. It serves as a tool for supervision and rehabilitation, not punishment. This aligns with the statute's goal of providing a humane and cost-effective alternative to jail.

The policy underlying O.C.G.A. § 17-6-1.1 is to balance public safety with the rights of the accused. By treating home confinement as an alternative to incarceration, the statute supports a more equitable and efficient criminal justice system. It recognizes the importance of allowing defendants to maintain community ties and employment, which can aid in rehabilitation and reduce recidivism.

O.C.G.A. § 17-6-1.1 clearly establishes home confinement as an alternative to traditional confinement. The statute's design and legislative intent reflect a commitment to treating home confinement as distinct from incarceration. By providing a flexible approach to pretrial release, the statute supports a more balanced and effective criminal justice system. Therefore, home confinement under this statute should not be considered as traditional confinement for purposes of time served for sentencing.

d. Definitions of Penal Institutions Due Not Constitute or Qualify for Home Confinement to be Applied to Sentencing.

Under O.C.G.A. § 42-1-5 (a)(3) and O.C.G.A. § 16-10-56 (a), the definitions of penal institutions do not encompass home confinement.

Therefore, Mr. Merrell's time spent under home confinement should not be applied to his sentence as time served in a penal institution.

First, O.C.G.A. § 42-1-5 (a)(3) defines a penal institution as a facility operated by the state or local government for the confinement of individuals convicted of crimes. It emphasizes physical custody and control within a designated facility. Whereas O.C.G.A. § 16-10-56 (a) similarly refers to penal institutions as places of confinement for individuals under legal custody, highlighting the need for a structured and secure environment.

Both statutes emphasize physical custody within a government-operated facility. Home confinement lacks the physical barriers and security measures inherent in a penal institution, such as guards, cells, and restricted movement. Penal institutions provide continuous supervision and control over inmates. In contrast, home confinement allows individuals to remain in their homes, maintaining a degree of personal freedom and autonomy that is inconsistent with the concept of incarceration in a penal institution.

The legislative intent behind defining penal institutions is to ensure that individuals serving sentences are under strict supervision

and control, which is not the case with home confinement. The statutes aim to differentiate between incarceration and alternative forms of supervision, such as home confinement.

The definitions of penal institutions under O.C.G.A. § 42-1-5 (a)(3) and O.C.G.A. § 16-10-56 (a) clearly exclude home confinement from being considered as time served in a penal institution. Mr. Merrell's home confinement does not meet the statutory criteria for confinement in a penal institution, and therefore, should not be applied to his sentence as such.

II. Conjugal Visits Are Not Permitted In Jail Or Confinement, Thus Home Confinement Is Not Analogous To Confinement In A Penal Institution.

The ability of Mr. Merrell to engage in personal relationships, resulting in his girlfriend's pregnancy during home confinement, underscores the fundamental differences between home confinement and penal institutions (Tr. 15). This situation highlights the level of personal freedom and autonomy afforded under home confinement, which is not possible in a jail setting where conjugal visits are not permitted.

Home confinement allows individuals to remain in their homes, maintain personal relationships, and engage in daily activities that are not possible in a traditional incarceration setting. This level of freedom is a key distinction between home confinement and confinement in a penal institution.

Two key differences arise when a defendant is in home confinement versus traditional confinement, one's personal autonomy and conjugal visits. Incarceration involves continuous and uninterrupted custody, severely restricting personal freedoms. In contrast, home confinement permits individuals to live in their own homes and maintain family relationships, as evidenced by Mr. Merrell's ability to conceive a child with his girlfriend. Traditional confinement does not allow for conjugal visits, further emphasizing the lack of personal autonomy and freedom. Mr. Merrell's situation illustrates that home confinement provides opportunities for personal interactions that are not available in jail. Home confinement for Mr. Merrell lasted 365 days, whereas the gestational period for a pregnancy is 280 days. Thus, conception must have occurred during the period while Mr. Merrell was in his home.

The legislative intent behind home confinement as an alternative to incarceration is to provide a less restrictive means of ensuring compliance with legal obligations. By allowing individuals to maintain personal and family relationships, home confinement supports rehabilitation and reintegration into the community, aligning with the policy goals of reducing recidivism and promoting public safety.

Mr. Merrell's ability to engage in personal relationships and conceive a child during home confinement demonstrates the significant differences between home confinement and penal institutions. This situation highlights the personal freedoms and autonomy inherent in home confinement, reinforcing that it is not equivalent to incarceration. Therefore, home confinement should not be considered confinement under the same terms as traditional jail settings.

Conclusion

WHEREFORE, for the reasons set forth above, Appellee requests this Court AFFIRM the trial court's denial of sentence credit for time spent in home confinement.

Respectfully submitted, this 19th day of March 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the foregoing APPELLEE'S BRIEF via email to opposing counsel at the following address:

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Pursuant to Court of Appeals Rule 6(d), I certify that there is a prior agreement with the Assistant District Attorney to allow documents in a .pdf format to be sent via email to suffice for service. This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted, this 19th day of March 2026.

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