



Administrative Office of the Courts

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Supreme Court rules on legal test for calculating credit for presentence confinement

SANTA FE – The state Supreme Court today rejected a challenge to a decades-old legal test for determining whether a defendant serving a sentence in one case should receive a presentence confinement credit in another related case.

In a unanimous opinion written by Chief Justice Julie J. Vargas, the Court concluded that Hezekiah Eaker was entitled to a one-day credit against his sentence for a child sex crime rather than 881 days as he argued he should have received.

Parole officers found child sexual abuse material on Eaker’s phone in March 2019. He was taken into custody for parole violations, which included possession of the sexual images on his phone. Authorities charged him about a week later with a new crime of sexual exploitation of children. A court allowed for his release in the new sex crime case on the same day he was charged, but he remained incarcerated in the previous case because of the parole violations and then the revocation of his parole.

More than two years after his arrest in the new case, Eaker pleaded guilty to sexual exploitation of children. A district court in Otero County sentenced him to 12 years in prison and awarded no presentence confinement credit.

Eaker later challenged his sentence, contending that it should have been reduced by the time he spent in prison while awaiting a resolution of the sexual exploitation charge. He argued that his confinement in prison was based in part on the allegations in the new case.

In today’s opinion, the Court considered a three-factor test to determine Eaker’s eligibility for presentence confinement credit: (1) whether he was confined in either case, (2) did the charges in the new case cause his incarceration in the previous case, and (3) was he confined in the newer case.

The justices rejected arguments by Eaker that the Court should drop the last factor in its test for calculating presentence confinement when two cases are involved.

“Defendant is not entitled to his desired presentence confinement under our three-factor test,” the Court wrote. “Instead, we hold that he is entitled to one day of credit for the only day he was confined, in part, on the basis of” the sexual exploitation of children case.

As part of the challenge to his sentence in the sexual exploitation case, Eaker also argued that the district court wrongly imposed longer terms of parole and probation than permitted under state law. He was sentenced to parole between five years and his natural life, and probation of five to 20 years.

“We agree with Defendant that his probation and parole sentences are illegal,” the Court stated. “The appropriate statutory parole term for Defendant’s fourth-degree felony is one year, and the appropriate probation term is up to five years.”

State law provides for a parole term of not less than five years and up to the life of a person convicted of certain sex crimes, but fourth-degree sexual exploitation of children is not among them, the Court noted. Similarly, Eaker’s offense is not among the crimes specifically designated in law for a probation term of five to 20 years.

The Court ordered Eaker’s case back to the district court for resentencing, including shorter terms of parole and probation.

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To read the decision in *State v. Eaker*, No. S-1-SC-40308, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538175/index.do>