

**MOTION FOR AN ADDITIONAL 240 DAYS CREDIT FOR PRE-TRIAL HOME
DETENTION AND MEMORANDUM IN SUPPORT**

The Defendant,[name]n, respectfully requests the trial court to apply an additional 240 days of credit time to his sentence ordered on June 26, 2018. In support of the Motion, Thompson respectfully states the following:

1. On June 26, 2018, Defendant pled guilty to Operating While Intoxicated, as a Level 6 felony. As part of the plea agreement, the parties agreed he would receive credit time, as the Indiana Code permitted, for the 240 days he served on home detention in Cause Number 764. See, e.g., Purdue v. State, 51 N.E.3d 432 (Ind.Ct.App. 2016) (a defendant is entitled to pretrial credit time earned on causes that are dismissed pursuant to a plea agreement on another cause as long as the charges are not “wholly unrelated”; charges can be considered related if they are scheduled together, are resolved in one plea agreement and were all pending at the time the credit time was earned); Brown v. State, 907 N.E.2d 591 (Ind.Ct.App. 2009) (even if charges are unrelated, the parties can agree to apply credit time from the dismissed case to another).
2. At the sentencing hearing, Thompson requested 300 days credit (60 days good time credit and 240 days accrued time) for the time on home detention. The trial court applied only 60 days credit, but granted Thompson permission to file a memorandum in support of the request for the additional 240 days. The issue centers on the

interpretation of Ind. Code 35-50-6-3.1 and 4, and whether the legislature intended to deny defendant's accrued time.¹

Memorandum

Absent legislative direction, it was within the trial court's discretion to award credit time for pretrial home detention. Purcell v. State, 721 N.E.2d 220 (Ind. 1999). In 2016, the legislature provided direction by creating a new "credit time classification" – Class P for individuals "placed on pretrial home detention awaiting trial." Ind. Code § 35-50-6-4. The legislature then added Class P to its list of credit time applications.

- (a) This section applies to a person who commits an offense after June 30, 2014.
- (b) A person assigned to Class A earns one (1) day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (c) A person assigned to Class B earns one (1) day of good time credit for every three (3) days the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (d) A person assigned to Class C earns one (1) day of good time credit for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (e) A person assigned to Class D earns no good time credit.
- (f) A person assigned to Class P earns one (1) day of good time credit for every four (4) days the person serves on pretrial home detention awaiting trial.

Ind. Code 35-50-6-3.1

By including Class P into the list of credit time applications in Ind. Code 35-50-6-3.1, the legislature intended to give pretrial home detainees good time credit in addition to accrued credit time. Every other credit time classification in the list earns accrued time in addition to good time credit, despite the fact that the statute is silent regarding accrued time. Ind. Code 35-50-6-4

¹ Ind. Code § 35-50-6-0.5 provides the following definitions: (1) "Accrued time" means the amount of time that a person is imprisoned or confined. (2) "Credit time" means the sum of a person's accrued time, good time credit, and educational credit. . . (4) "Good time credit" means a reduction in a person's term of imprisonment or confinement awarded for the person's good behavior while imprisoned or confined.

(individuals imprisoned awaiting trial for level 6 felonies and misdemeanors are Class A; other felonies are Class B; credit restricted felons are Class C). If the legislature intended to treat those on pretrial home detention and those incarcerated awaiting trial differently for purposes of accrued time, the legislature would have specified. In the very least, the legislature would not have included pretrial home detention in its list of credit time classifications with pretrial incarceration.

Rather, the legislature chose to use the same language for pretrial home detention as it used for pretrial incarceration. Just as those incarcerated pretrial in Classes A-C receive accrued time, those on pretrial home detention in Class P should receive it. It was unnecessary for the legislature to specifically state that a person in Class P receives accrued time because like those in the other credit time classes, it is implied.

Thompson's interpretation of Ind. Code 35-50-6-3.1 is also supported by the fact that counsel for Thompson was unable to find any situation in the Indiana Code where a defendant can earn "good time credit" without also earning accrued time. In fact, the legislature clarified in 2014 that a defendant on home detention as a condition of probation receives accrued time and good time credit. Ind. Code 35-58-2.6-6.

Finally, "credit time statutes, as remedial legislation, should be liberally construed in favor of those benefited by the statute." Weaver v. State, 725 N.E.2d 945, 948 (Ind.Ct.App. 2000). Further, "the rule of lenity requires that criminal statutes be strictly construed against the State." Ellis v. State, 736 N.E.2d 731, 737 (Ind. 2000) (quoting Walker v. State, 668 N.E.2d 243, 246 (Ind. 1996)). Here, Ind. Code 35-50-6-3.1 must be construed for the benefit of defendants. If the legislature intended that Class P individuals be treated differently than Class A-C

individuals for purposes of accrued time, it would have stated such. To read the statute to deny accrued time is inconsistent with the rule of lenity.

WHEREFORE, the Defendant, Jeffery Thompson, respectfully requests this Court to credit his sentence with an additional 240 days for the accrued time he earned while on home detention, and for all other relief just and proper in the premises.

Respectfully submitted,

27th day of June, 2018.