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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0431-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KENDALE T. ARMSTRONG, a/k/a
TALIV DAVIS,

Defendant-Appellant.

Submitted December 4, 2017 – Decided January 29, 2018

Before Judges O'Connor and Vernoia.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, Indictment
No. 99-05-1941.

Kendale T. Armstrong, appellant pro se.

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Stephen
A. Pogany, Special Deputy Attorney General/
Acting Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant appeals from an order denying his motion for an
award of jail credits. We affirm.

The facts are not disputed. Defendant was arrested on December 29, 1998, on charges that led to his indictment by an Essex County grand jury. Twenty-five days later, he was released on bail on January 22, 1999.

On June 21, 1999, a bench warrant was issued for his arrest because he failed to appear for his arraignment. On July 5, 1999, defendant was arrested in Virginia on a kidnapping charge and held in custody. New Jersey subsequently lodged a detainer against defendant in Virginia. On October 26, 2000, defendant was sentenced to a fifteen-year custodial term in Virginia on the kidnapping charge.

On March 13, 2001, defendant returned to New Jersey pursuant to the Interstate Agreement on Detainers (IAD), N.J.S.A. 2A:159A-1 to -15. On June 25, 2001, defendant pleaded guilty to three counts of the Essex County indictment. On November 2, 2001, defendant was sentenced in accordance with his plea agreement to an aggregate ten-year custodial sentence subject to the requirements of the No Early Release Act, N.J.S.A. 2C:43-7.2, consecutive to his Virginia sentence. The court awarded defendant twenty-five days of jail credit for the time following his arrest and prior to his release on bail. We heard defendant's appeal of his sentence on the sentencing calendar, R. 2:9-11, and affirmed.

State v. Armstrong, A-3106-01 (App. Div. June 5, 2002) (slip op. at 1).

In June 2016, defendant moved for an award of jail credits under Rule 3:21-8. Defendant sought additional credits for two time periods: (1) from July 5, 1999, when New Jersey lodged the detainer in Virginia, until October 26, 1999, when defendant was sentenced in Virginia; and (2) from March 13, 2001, when he returned to New Jersey pursuant to the IAD, until November 28, 2001, when he was returned to Virginia.¹ The court denied defendant's motion in a written opinion. This appeal followed.

On appeal, defendant presents the following argument:

POINT I

THE TRIAL COURT ERRED BY DENYING DEFENDANT'S MOTION FOR JAIL CREDITS PURSUANT TO R. 3:21-8.

We have carefully reviewed the record and find defendant's argument is without sufficient merit to warrant discussion in a

¹ Defendant also sought jail credits for the period from December 28, 1998, when he was first arrested, until January 22, 1999, when he was released on bail. Credit for those twenty-five days was awarded by the sentencing court and is reflected in defendant's judgment of conviction.

written opinion. R. 2:11-3(e)(2). We add only the following brief comments.²

Defendant's contention he is entitled to jail credit for the period he was incarcerated in Virginia on the Virginia kidnapping charge, and after New Jersey lodged a detainer, finds no support in the law. In State v. Joe, 228 N.J. 125, 135 (2017), our Supreme Court rejected the identical contention, holding that "if a defendant is incarcerated out of state and the confinement is not due solely to New Jersey charges, jail credit does not apply."

Similarly, we find no merit to defendant's claim he is entitled to jail credit for the period he was in New Jersey pursuant to the IAD while serving his Virginia custodial sentence. Defendant is not entitled to jail credit for that period because although he was in temporary custody in New Jersey, he "remain[ed] in the custody of" Virginia under the IAD, N.J.S.A. 2A:159A-5(g), and continued to serve his Virginia custodial sentence, N.J.S.A. 2A:159A-5(f). See State v. Carreker, 172 N.J. 100, 115 (2002) (finding no entitlement to jail credits where a defendant is temporarily in New Jersey custody in accordance with the IAD while serving an out-of-state custodial sentence); see also State v.

² The State does not argue, and we therefore do not address, whether defendant's challenge to the jail credit award is barred by our decision on defendant's direct appeal of his sentence.

Hernandez, 208 N.J. 24, 47 (2011) (finding jail credits do not accrue while a defendant serves a custodial sentence); accord State v. Adams, 436 N.J. Super. 106, 115 (App. Div. 2014).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION