

In the Circuit Court of Brooke County, West Virginia

State of West Virginia,  
Plaintiff,

vs.)

JOSHUA SPONAUGLE,  
Defendant

Case No. CC-05-2020-F-59

MEMORANDUM ORDER VOIDING INDICTMENT

The Defendant filed a motion challenging the constitutionality of the West Virginia escape statute W.Va. Code §61-5-10. Because of the undisputed facts bearing on this issue, the court finds it unnecessary to address the constitutionality of the escape statute. The state contends that the Defendant was lawfully confined by an order of the magistrate court which required the defendant to appear at the Brooke County Home Confinement Office to be hooked up for home confinement as a condition of a bond on a charge of a felony offense. The Defendant admits that he failed to report to the home confinement office.

The key language used in the indictment in this case says that the Defendant “on or about the 14<sup>th</sup> day of April, 2020, did commit the felony offense of “Escape” when he did intentionally, unlawfully, and feloniously, escape from an alternative sentence of confinement by which he was lawfully confined, said confinement by virtue of charge for a felony offense, to wit: On the 14<sup>th</sup> day for April, 2020, Joshua Sponaugle was to appear at the Brooke County Home Confinement Office at 1 PM to be confined as a specific bond term for the felony charge of “Possession with Intent to Deliver a Controlled Substance,” with Joshua Sponaugle never appearing at the Brooke County Home Confinement Office and instead did abscond... .”

The criminal complaint in this case states that the Defendant was to appear at the Brooke County Home Confinement office at 1:00 PM on April 14, 2020 to be hooked up on home confinement as a part of the bond for a felony charge of possession with intent to deliver Methamphetamine.

The next morning, after the defendant failed to report to the Home Confinement office, April 15, 2020, and before any criminal complaint was issued, he came into contact with law enforcement in Wellsburg, West Virginia on another matter. This occurred in a grocery store in the same city where the Home

Confinement office is located. The Defendant was not detained by the law enforcement. The criminal complaint was later filed on April 15, 2021, as a result of law enforcement being contacted on April 15, 2020 at 12:15 PM and informed that the Defendant had not timely called or stopped at the Brooke County Home Confinement Office.

Therefore, what the Defendant did was violate a condition of the bond set by the magistrate. He was not a prisoner at the time he violated that condition, but he still enjoyed the presumption of innocence on the felony charge he was facing. The Defendant was not an "offender," within the meaning of Home Incarceration Act because the act defines an offender as "any adult convicted of a crime" and crime obviously meaning the crime charged that required the bond to be posted. W. Va. Code Ann. §62-11B-3.

The house arrest officer was not without a remedy based upon the Defendant's failure to obey the court order. He could have brought that violation to the attention of the prosecuting attorney, who could have brought the matter to the attention of the judge, who could then increase the amount of the bond and not given the Defendant the opportunity to have house arrest.

When a person who has been arrested, but not yet convicted of a crime, is admitted to pre-trial bail with the condition that he be restricted to home confinement, the home confinement restriction is not considered the same as actual confinement in a jail, nor is it considered the same as home confinement under the Home Incarceration Act.

Lawful custody is an essential element of the crime of escape. Based upon the uncontested facts in this case, the State cannot prove that the Defendant escaped from lawful custody. Pursuant to the uncontested facts in this case, the State cannot prove that the defendant escaped from lawful custody. Syllabus Pt. 2 State v. Jedediah C., 2018, 814 S.E.2d 197, 240 W.Va. 534, certiorari denied 139 S.Ct. 822, 202 L.Ed.2d 599.

The "specific bond term" used in the Indictment is not a crime. The indictment is void and the Defendant was not lawfully confined but was on a bond. He did have a specific bond term for a felony charge, and he didn't appear as he was ordered. But his appearance was a bond condition. He was never in lawful custody so he could not escape from lawful custody. An essential element of the crime of escape is that the defendant escaped from "lawful custody." When the defendant was arrested but not yet convicted of a crime, and was then admitted to pretrial bail with the condition that he be restricted to home confinement, that home confinement restriction as a condition in a bond is not considered the same as actual confinement in a jail, nor is it considered the same as home incarceration

under The Home Incarceration Act. That is the reason that time spent in home confinement when it is a condition of bail does not count as credit toward a sentence subsequently imposed. See State v. Hughes, 197 W.Va. 518, 476 S.E.2d 189 (1996), syllabus point four.

Because the issues discussed are dispositive of the instant case, the court does not address the other points raised by defendant.

Accordingly, for the foregoing reasons, it is ADJUDGED and ORDERED that the Indictment charging Joshua Sponaule with the felony offense of Escape, found in Case No. 20-F-59, is **VOID** and this Case is **ORDERED DISMISSED** and removed from the docket.

IT IS SO ORDERED.

/s/ Ronald E. Wilson  
Circuit Court Judge  
1st Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtsww.gov/e-file/](http://www.courtsww.gov/e-file/) for more details.