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## *Dedo v. State*

### Pre-Sentence Time Spent In Home Detention May Be Credited Against Sentence Imposed

By Steve Luxton

In a case of first impression, the Court of Appeals of Maryland in *Dedo v. State*, 343 Md. 2, 680 A.2d 464 (1996), held that a defendant may be granted credit toward his sentence for time served in home detention, subsequent to conviction, but prior to sentencing. Broadly construing Maryland Annotated Code Article 27, section 638C(a) (1992 & Supp. 1995), the court held that a defendant's commitment to a county detention center's warden, through placement in home detention, constituted constructive custody of that defendant by a public institution. Thus, a defendant in home detention is in custody of an institution within the meaning of the statute, thereby allowing the time spent in home detention to be credited against the sentence eventually imposed.

On August 15, 1993, Robert Dedo ("Dedo") was arrested and charged with possession with intent to distribute a controlled dangerous substance. He was released on bond on October 14, 1993. Dedo was subsequently indicted and convicted in the Circuit Court of Wicomico County. Upon conviction, Dedo requested that his sentence be deferred until the end of August 1994, in order to receive medical treatment. After indicating that he would be inclined to accept any arrangement that would convince the court of his appearance for sentencing, the circuit court placed Dedo in home

detention.

The court ordered Dedo to report to the warden of the county detention center, where he signed a home detention contract. Under the contract, Dedo agreed to be "incarcerated" in his home while being electronically monitored by the Wicomico County Department of Corrections. Dedo also agreed to allow the home detention staff unlimited access to his home to ensure his compliance with the numerous conditions of the contract. Furthermore, the contract provided that if Dedo violated any of these conditions, he would be returned to the detention center for the remainder of his sentence.

Upon sentencing, Dedo asked the court to credit his sentence for the time he spent in home detention. Reasoning that time served in home detention is not the equivalent of time served in jail, the circuit court judge denied Dedo's request. The Court of Special Appeals of Maryland affirmed the judgment of the circuit court. Subsequently, the Court of Appeals of Maryland granted certiorari to consider whether, under section 638C(a), a defendant must be

granted credit toward his sentence for time spent in home detention between conviction and sentencing.

Section 638C(a) provides, in pertinent part, that "[a]ny person . . . shall receive credit against the term . . . for all time spent in the custody of any state, county or city jail, correctional institution, hospital, mental hospital or other agency . . . ." *Dedo*, 343 Md. at 4, 680 A.2d at 465 (quoting MD. ANN. CODE art. 27, § 638C(a) (1992 & Supp. 1995)). Dedo argued that he should be permitted to receive credit against his sentence because he was in the "constructive custody" of the Wicomico County Detention Center, even though he was not physically present at the detention center. *Id.* at 8, 680 A.2d at 467. The State countered that home detention is not "custody" within the meaning of the statute, noting that Dedo was not committed to either a jail or a correctional facility. *Id.* The State perceived Dedo's partaking in the home detention program as "voluntary," because he had requested it, and therefore not the same as incarceration. *Id.*

The Court of Appeals of Maryland began its analysis by setting forth the specific purpose of the statute. The statute "preclude[s] a defendant from 'banking' time before he or she commits a new offense," while likewise crediting a defendant for "dead" time spent in custody. *Id.* at 9, 680

time spent in custody. *Id.* at 9, 680 A.2d at 467-68 (citing *Fleeger v. State*, 301 Md. 155, 163-65, 482 A.2d 490, 494-95 (1984)). The court then stated the general purpose of the statute is to guarantee that a defendant obtain as much credit as possible for time spent in custody. *Id.* at 9, 680 A.2d at 468 (citing *Fleeger*, 301 Md. at 165, 482 A.2d at 495). The court emphasized that in order to come within the reach of the statute, Dedo was required to show that he was both “in custody” and in a jail or other public institution. *Id.*

Next, the court distinguished *Maus v. State*, 311 Md. 85, 532 A.2d 1066 (1987). *Id.* at 9-10, 680 A.2d at 468. In *Maus*, the court of appeals examined the meaning of the words “in the custody of any state, county or city jail, correctional institution, hospital, mental hospital or other agency” and concluded that credit should not be granted for time spent in a residential drug treatment program. *Id.* In contrasting *Maus* with *Dedo*, the court noted that the defendant in *Maus* could not have been punished if he had escaped from the drug treatment program since his participation was voluntary. *Id.* at 10, 680 A.2d at 468. Dedo, on the other hand, was subject to prosecution for any unauthorized absence or escape from his home. Thus, the court of special appeals erred in relying on *Maus*, as it was distinguishable from *Dedo*. *Id.* at 11, 680 A.2d at 469.

Although the court distinguished the facts of *Maus*, it utilized the same analysis em-

ployed in *Maus*. *Id.* The court made clear that “[w]here a defendant is punishable for the crime of escape for an unauthorized departure from the place of confinement, the custody requirement of section 638C(a) is met.” *Id.* A defendant is not “in custody” unless there existed substantial impediments to that individual’s freedom. *Id.* Given the strict conditions of Dedo’s home detention contract, the court found the contract was “sufficiently incarcerative” to fulfill the custody requirement of section 638C(a). *Id.* at 12, 680 A.2d at 469.

In continuing its analysis, the court rejected the State’s contention that Dedo’s time spent in home detention was voluntary, and not sufficiently incarcerative, due to the fact that Dedo had requested an alternative sentencing arrangement. *Id.* at 13, 680 A.2d at 470. To the contrary, the court held that “where an individual [can be punished] for escape for any unexcused absence from the place of confinement, his confinement is necessarily involuntary.” *Id.* Thus, the court held that Dedo was clearly in custody while serving home detention. *Id.*

Reasoning that commitment to the custody of the warden was tantamount to constructive custody by a public institution, the court found that Dedo’s home constituted an “institution” under the statute. *Id.* Reversing the court of special appeals, the court of appeals determined that an individual restrained in home detention was “incarcerated ‘in a local detention

center,’ in the sense that the prisoner’s home can be said to be an extension of the local detention center.” *Id.* at 13-14, 680 A.2d at 470 (quoting 91 Op. Att’y Gen. 189, 192 (1991)).

In *Dedo v. State*, the Court of Appeals of Maryland held that time spent in home detention between conviction and sentencing may be credited against the sentence imposed. Through a broad interpretation of section 638C(a), the court effectuated the General Assembly’s dual purpose of: (1) prohibiting defendants from accumulating time between trial and sentencing that could be used to offset a sentence for a future, yet uncompleted crime; and (2) minimizing time spent in custody not credited toward a future sentence. This interpretation of section 638C(a) can help defense attorneys seek more ideal custody situations for clients that would be amenable to in home detention. Furthermore, in a time when prison overcrowding is a serious problem, this decision may help alleviate further overcrowding by guaranteeing that defendants will receive credit for time spent in custody.