VIRGINIA:

IN THE FAIRFAX CIRCUIT COURT

COMMONWEALTH OF VIRGINIA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. FE-2019-0000084
	)	
KARAN BATRA,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER CAME BEFORE THE COURT on Friday, November 13, 2020 upon the Defendants' Emergency Motion for Credit for Time Served in the Fairfax County Adult Detention Center. Petitioner, Karan Batra ("Batra") asserts that he should receive jail credit as mandated by Va. Code § 53.1-187 for the time he spent in confinement prior to being sentenced. After considering the arguments presented and the applicable authorities, this court concludes that the plain terms of the statute at issue does not grant this court the authority to apply credit for unrelated offenses. Moreover, the court is without jurisdiction to grant the requested relief, as the authority to apply credits rests within the discretion of the executive branch of government, namely, here, the Virginia Department of Corrections ("VDOC").

BACKGROUND

On July 7, 2018, Batra was arrested and charged with Attempted False Pretenses, in violation of Va. Code § 18.2-178, and Identity Theft Second or Subsequent Offense, in violation of Va. Code § 18.2-186.3. The General District Court of Fairfax County heard a bond motion on July 13, 2018. The General District Court's ruling was appealed to the Circuit Court, and bond was granted on July 27, 2018.

On October 9, 2018, Batra was arrested and charged with four (4) counts of Grand Larceny, in violation of Va. Code § 18.2-95, one count of Stolen Property with Intent to Sell, in violation of Va. Code § 18.2-108.01, and one count of Failure to Appear on a felony Offense, in violation of Va. Code § 19.2-128. Batra was held without bond on these charges. All pending charges were to be heard at the same hearing.

On January 29, 2019, a preliminary hearing was held on just one count of Grand Larceny, with the charge certified to the Grand Jury. The remaining pending charges were all *nolle prossed.*

On May 1, 2019, Batra was found guilty of Grand Larceny and was later sentenced to six (6) years and three (3) month of incarceration, five (5) years suspended. Batra now requests that his time served while awaiting bond between July 7, 2018 and July 27, 2018 be credited toward his 2019 Grand Larceny sentence.

STANDARDS FOR CREDIT GIVEN

Va. Code § 53.1-187 states that "[a]ny person who is sentenced to a term of confinement in a correctional facility shall have deducted from any such term all time actually spent by the person . . . in a state or local correctional facility awaiting trial . . . ."

Va. Code § 53.1-116 requires a "jailer . . . keep a . . . written policy stating the criteria for any conditions of earned credit in the facility and the revocation of such credit."

Va. Code § 53.1-202.4 specifies that the VDOC Director shall "1. Establish the criteria upon which a person shall be deemed to have earned sentence credits; 2. Establish the bases upon which earned sentence credits may be forfeited; 3. Establish the number of earned sentence credits which will be forfeited for violations of . . . ; and, 4. Establish such additional requirements for the earning of sentence credits as may be deemed advisable and as are consistent with the purposes of this article."

These statutory standards must be interpreted strictly under Virginia law because "[u]nder basic rules of statutory construction, [the Supreme Court of Virginia] consider[s] the language of a statute to determine the General Assembly's intent from the plain and natural meaning of the words used." *Alcoy v. Valley Nursing Homes, Inc.* 272 Va. 37, 41 (2006). "[W]hen the General Assembly has used words of a plain and definite import, courts cannot assign them a construction that would amount to holding that the General Assembly meant something other than that which it actually expressed." *Id.*

DISCUSSION

The question presented is whether the phrase under § 53.1-187 that allows for credit for time spent in confinement awaiting trial should be interpreted broadly enough to include all reasons for a defendant's pre-trial confinement, even including confinement under a separate offense. Exercising a strict reading of § 53.1-187, jail credit should only apply to "the offenses for which the defendant is 'awaiting trial'." *Commonwealth v. Carter*, 93 Va. Cir. 129 (Fairfax 2016) (Bellows, J.). Therefore, time served for one matter cannot apply to sentences for any potential future trials, nor any past convictions. Credit can only be applied to sentences for convictions directly stemming from charges the defendant is awaiting trial for. "A logical commonsense reading supports the interpretation that this section applies to time spend in pretrial detention on charges that result in conviction." *Wallace v. Jarvis*, 726 F.Supp.2d 642 (W.D. Va. 2010).

Virginia precedent confirms that the General Assembly intentionally chooses statutes' wording. This court cannot add or ignore terms when analyzing a statute, even if a party believes the statute is unfair as written. Here, the statute did not include the word "any," for example, when it specified that credit should be applied for time served while "awaiting trial." We must conclude

that if the General Assembly intended for credit to be given for time served awaiting *any* trial, it would have specified such.

Conversely, this court cannot overanalyze the absence of a term, such as that the General Assembly did not write that credit may be applied for time served awaiting "just this" or "only this" trial. Other judicial opinions confirm that a person who is sentenced to confinement shall have time deducted from "such term" from time spent in a "correctional facility awaiting trial" where such term would be imposed – allowing the logical conclusion that time spent awaiting a specific trial should be deducted from the term imposed at that ultimate trial. § 53.1-187; *see also Commonwealth v. Bertini*, 68 Va. Cir. 255 (Fairfax 2005) (Klein, J.); *Carter*, 93 Va. Cir. at *7.

Further, the plain understanding of the terms in § 53.1-116 and § 53.1-202.4 confirm the role of the judicial branch in relation to the executive, whereby "both Virginia statutes and case law support the conclusion that the authority to impose such credits lies exclusively within the discretion of the Department of Corrections." *Bertini*, 68 Va. Cir. at *1. § 53.1-116 specifies that if a judge applies credits when not authorized by the statute, "an order of any court contrary to the provisions of this section shall be deemed null and void."

The General Assembly gave the judiciary the ability to hear cases and apply statutes, but, here, the General Assembly specifically gave the VDOC governing authority to determine when credit should be applied. With that power given to the executive branch of government, the judiciary is excluded from exercising such power. Judge Klein, formerly of this court, effectively articulated how the application of these statutes by the executive and judicial branches demonstrate the role of the separation of powers:

> Agents of the executive branch of government prosecute individuals who, if convicted, are sentenced by members of the judicial branch, within the parameters established by the legislature . . . . As the executive branch bears the responsibility for the proper execution of a sentence imposed on an

> individual, it is entirely reasonable for the personnel of that governmental branch to be the initial arbiter of the existence and scope of all credits to be applied to [a] sentence. The power of the executive branch in making those decisions is not unchecked, however [is checked by the judiciary].

Bertini, 68 Va. Cir. at *3.

While this court must apply statutes to each unique case it is presented with, it cannot mandate credit be given when the statute states otherwise. Here, Batra served 20 days for an offence wholly separate, both temporally and substantively, from the charge he was convicted of. Even though he may believe that any time served is a period of incarceration that should be deducted from time he still must serve, no matter the reason for confinement, the General Assembly does not yet agree.

Defense counsel argues that credit should be applied because there was "no break in the timeline of cases," as Batra was arrested in July 2018, posted bond, was arrested in October 2018, and then both cases were presented to the General District Court in January 2019. Defendant bases his "relatedness" claim on the temporal relationship of the charges and court appearances yet fails to recognize that closeness in timeline does not translated to the charges being related for statutory interpretation purposes.

§ 53.1-187 concludes that time served must be related to the trial that one is awaiting based on the substance of the charges, not because court appearances occurred simultaneously. In its memorandum, the defense confirms that Batra posted bond on one charge then was arrested again on separate offenses four months later. Four purposes of judicial economy the matters were both presented on January 29, 2019, but consolidating dates do not dictate whether charges are related for purposes of applying credit.

A lack of relatedness is further emphasized by the July 2018 charges being *nolle prossed*, while Batra was convicted of the October 2018 Grand Larceny charge. The court in *Wallace v.*

Jarvis confirmed that a separate charge, occurring in a separate jurisdiction or at a different time, being *nolle prossed* confirms that it is wholly separate from whatever sentence may be imposed for a different conviction.

In *Jarvis*, an individual spent 31 days in jail for a charge that was ultimately *nolle prossed.* He was later sentenced to jail time for another charge and requested the 31 days served be applied to the existing conviction. The court confirmed that "[a]lthough some of the underlying conduct supporting the charges in Tazewell . . . might have supported the . . . sentence in Russell County, he was not in the Tazewell County jail awaiting trial based on [those] conditions . . . . He was awaiting trial on the Tazewell charges that were nolle prossed. Accordingly, he would not have been entitled to credit . . . ." *Jarvis*, 726 F.Supp.2d at 647.

Jarvis confirms this court's conclusion that both temporal relation of court appearances and the status of whether a charge is *nolle prossed* do not justify the application of credit for time served. Nor is it of weight that Batra was awaiting charges only in Fairfax and not elsewhere.

Defense counsel cites *Carter* when emphasizing that because Batra was "awaiting" two trials in the same jurisdiction, Fairfax County, he should receive credit on his Grand Larceny sentence for time served for previous arrests also in Fairfax. However, in *Carter*, while the defendant had charges in Fairfax and Loudoun, the Loudoun probation was violated due to an arrest in Fairfax, thereby sentences in both jurisdictions stemmed from the same event.

The undersigned judge agrees with Judge Bellow's analysis in *Carter* that, "[a] jail credit is not some fungible commodity that can be banked by an inmate against the day when the inmate might commit a new crime or be sentenced for an old one, and there is nothing in Virginia Code § 53.1-187 to suggest otherwise." *Carter*, 93 Va. Cir. at *7. The facts surrounding Batra's request are distinguished from those in *Carter* because Carter's probation violation in Loudoun was related

to the underlying charges in Fairfax. Here, Batra was arrested twice, months apart and for separate offenses. There was no single event that allowed arrest in both July 2018 and October 2018. Because the time Batra served was for a separate, *nolle prossed* matter wholly unrelated to his conviction of Grand Larceny, credit cannot be given for time served under the statutory requirement that one must have been awaiting trial for "such term" to be sentenced.

Accepting *Carter*, Batra's 20 days of incarceration in July 2018 cannot be stored then triggered once a new offense is committed. Nowhere in the statute, nor the surrounding statutes in the chapter, is there notice that the General Assembly intended for credit for time served to effectively become a Get Out of Jail Free card. Logic and equity allow the application of time served while awaiting trial and sentencing for that very same offense. Fairness justifies a deduction for that time, but not for the ability to apply any time served to disparate sentences.

CONCLUSION

For the reasons stated above, this court concludes that Va. Code § 53.1-187 denies the ability to apply credit for Batra's time served in a *nolle prossed*, wholly unrelated matter to the charge for which he was sentenced here. Moreover, the General Assembly has confirmed via statute that the VDOC has controlling authority to determine when credit should be given for time served. Accordingly, Batra's Motion is DENIED.

AND IT IS SO ORDERED.

Entered this 25th day of November, 2020.

JUDGE, Fairfax Circuit Court

Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Court dispenses with the endorsement of this Order