

[Cite as *State v. Francis*, 2011-Ohio-1384.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 10AP-500
v.	:	(C.P.C. No. 08CR07-5414)
	:	
Richard L. Francis,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 24, 2011

Ron O'Brien, Prosecuting Attorney, and *Kimberly M. Bond*,
for appellee.

Richard L. Francis, pro se.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Richard L. Francis ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas denying his motion for jail-time credit. For the following reasons, we affirm.

{¶2} Appellant, represented by counsel, pleaded guilty to aggravated trafficking in drugs and multiple counts of receiving stolen property. The trial court sentenced

appellant to three years and six months imprisonment with no jail-time credit. The court journalized the conviction and sentence on February 20, 2009, and appellant filed no direct appeal.

{¶3} On April 5, 2010, appellant filed a motion for jail-time credit for the days he was incarcerated between when he was arrested and sentenced for receiving stolen property and drug trafficking. The trial court denied the motion, stating that appellant "was on probation in earlier cases, and all jail-time credit was applied to those cases which were then terminated." The court also said that appellant "agreed at sentencing to that resolution."

{¶4} Appellant appeals, raising the following assignments of error:

I. The trial court erred when it denied defendant credit for time spent in jail awaiting trial and sentencing in case number 08-CR-07-5414.

II. The trial court erred when it rendered a sentence that failed to comply with statutory requirements and was, therefore, void.

{¶5} Because they concern similar issues, we address appellant's two assignments of error together. In those assignments of error, appellant argues that the trial court erred by denying his motion for jail-time credit. We disagree.

{¶6} Pursuant to R.C. 2967.191, a defendant is entitled to jail-time credit for the number of days he was in confinement in lieu of bail. Appellant contends that the trial court disregarded that statute when it denied his motion seeking jail-time credit for the days he was incarcerated between his arrest and sentencing for receiving stolen property and drug trafficking. The trial court indicated, however, that it applied the jail-

time credit to the sentence it imposed for appellant violating the probation he was on in other cases.

{¶7} Appellant does not dispute that his jail-time credit was applied to the probation cases, but he contends that the trial court was instead required to apply the credit to his sentence for receiving stolen property and drug trafficking. In *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840, ¶9, this court held that, "[g]enerally speaking, days served following [a defendant's] arrest on a probation violation can only be credited toward the sentence on the original charge-i.e., the one for which he was sentenced to probation"—and not for the sentence on the offense he committed after being placed on probation. Given *Chafin*, in order for us to review appellant's claim that jail-time credit was to be applied to his sentence for drug trafficking and receiving stolen property, we must know if, after his arrest for those offenses, he was also being detained in lieu of bail for the institution of proceedings related to his probation violation. This information about appellant's probation cases is not part of the certified record, which only pertains to proceedings on the drug trafficking and receiving stolen property offenses. To be sure, appellant attached to his merit brief copies of the docket sheets for his probation cases. But we cannot consider those documents because they were not formally admitted into the certified record. See *State v. Ishmail* (1978), 54 Ohio St.2d 402, paragraph one of the syllabus. Consequently, we are unable to reach the merits of appellant's jail-time credit challenge because it rests on matters outside the record. See *State v. Cook*, 10th Dist. No. 05AP-515, 2006-Ohio-3443, ¶35.

{¶8} Appellant's motion for jail-time credit also fails because it is barred by res judicata. Under the doctrine of res judicata, a defendant who was represented by counsel is barred from litigating an issue that could have been raised at trial or on direct appeal. *State v. Reynolds*, 79 Ohio St.3d 158, 161, 1997-Ohio-304. This court has held that res judicata applies to a jail-time credit motion requiring a legal determination that could have been resolved at sentencing or on direct appeal. *Chafin* at ¶11-15.

{¶9} In his motion for jail-time credit, appellant asserts that, when he was sentenced for receiving stolen property and drug trafficking, he was denied credit for a category of time to which he believed he was entitled. This issue requires a legal determination that appellant, who was represented by counsel, should have raised at sentencing or on direct appeal from his conviction and sentence, but he did neither. See *Chafin* at ¶12, 15. In fact, during sentencing, appellant agreed to the trial court's allocation of jail-time credit. Consequently, res judicata bars appellant's motion for jail-time credit.

{¶10} Appellant argues that it would be improper to apply res judicata, based on his contention that the trial court erred in its allocation of jail-time credit. Aside from the fact that appellant failed to prove that error, we have previously determined that it is not unjust to apply res judicata to a motion for jail-time credit given the opportunity for a defendant to have "availed 'himself of all available grounds for relief' through the first available instance." *State v. Spillan*, 10th Dist. No. 06AP-50, 2006-Ohio-4788, ¶13, quoting *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 383, 1995-Ohio-331.

{¶11} For all these reasons, we hold that the trial court did not err by denying appellant's motion for jail-time credit. Therefore, we overrule appellant's first and second assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and CONNOR, J., concur.
