

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-729
 : (C.P.C. No. 08CR-07-5057)
 Michael L. Roberts, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on April 12, 2011

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Michael L. Roberts, pro se.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Defendant-appellant, Michael L. Roberts, appeals from the judgment of the Franklin County Court of Common Pleas denying his motion for custody credit filed on June 1, 2010.

{¶2} Appellant was indicted by a Franklin County Grand Jury on July 11, 2008 for one count of forgery and one count of possessing criminal tools. On November 6,

2008, appellant entered a plea of guilty to one count of forgery, a felony of the fifth degree, in violation of R.C. 2913.31, and a sentencing hearing was held on December 2, 2008. By entry filed December 4, 2008, appellant was sentenced to five years of community control and ordered to pay restitution in the amount of \$461.27. A probation revocation request was filed in February 2009, and on March 26, 2009, though finding a probation violation occurred, the trial court declined to revoke appellant's probation and instead re-sentenced appellant to two years of community control.

{¶3} On July 6, 2009, another probation revocation request was filed, which prompted the trial court on July 31, 2009 to revoke appellant's probation and sentence him to 12 months incarceration with an award of 61 days of jail-time credit. On November 18, 2009, appellant filed a motion for jail-time credit asserting he was entitled to 189 days of jail-time credit rather than the 61 days awarded by the court. The trial court denied this motion, as well as the motion for reconsideration that followed. On June 1, 2010, appellant filed a motion for custody credit asserting he was entitled to 191 days of jail-time credit. The trial court denied appellant's motion on July 19, 2010.

{¶4} This appeal followed and appellant brings the following four assignments of error for our review:

[1.] The Trial Court's sentence does not comport to statutory mandates of **O.R.C. §2967.191** and as such, renders it's [sic] judgment void.

[2.] The Trial Court committed plain error that has prejudiced the Appellant, and deprived him of his XIV Amend. US Constitutional right of equal protection of the law, in pursuant to statutory mandates of **O.R.C. §2967.191**, and **Ohio Administrative Code 5120-2-04(B)**.

[3.] The Trial Court abused its [sic] discretion in denying Appellant's motion for Jail Time Custody Credit in pursuant to ***Crim R. 36***.

[4.] The Doctrine of res judicata does not rise above Constitutional and Statutory mandates, acting as a bar to deprive Appellant in seeking relief from an illegal judgment.

{¶5} In his first, second, and fourth assignments of error, appellant contends the trial court's failure to comply with R.C. 2967.191 not only renders his sentence void, but also constitutes a deprivation of his constitutional rights. Pursuant to R.C. 2967.191, a defendant is entitled to jail-time credit for the number of days spent in confinement in lieu of bail. In the July 31, 2009 entry revoking appellant's probation and sentencing him to 12 months incarceration, the trial court awarded appellant 61 days of jail-time credit. Appellant was represented by counsel during this proceeding, as he was during the prior sentencings held on December 2, 2008 and March 24, 2009.

{¶6} Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding, except an appeal from that judgment, any defense or claimed lack of due process that was raised or could have been raised by the defendant at trial, which resulted in that judgment of conviction or on an appeal from that judgment. *State v. Spillan*, 10th Dist. No. 06AP-50, 2006-Ohio-4788, ¶9, citing *State v. Szefcyk*, 77 Ohio St.3d 93, 96, 1996-Ohio-337; *State v. Perry* (1967), 10 Ohio St.2d 175, 180. This court has held that the doctrine of res judicata applies to a jail-time credit motion that alleges an erroneous legal determination on jail-time credit. *Id.*, citing *State v. Lomack*, 10th Dist. No. 04AP-648, 2005-Ohio-2716, ¶12; *State v. Eble*, 10th Dist. No. 04AP-334, 2004-Ohio-6721, ¶10. "[A] defendant may only contest a trial court's calculation of jail-time credit in

an appeal from the judgment entry containing the allegedly incorrect calculation." *Lomack* at ¶11. However, "if the trial court makes a mathematical mistake, rather than an erroneous legal determination, in calculating the jail-time credit, then a defendant may seek judicial review via a motion for correction before the trial court." *Id.*; *Eble* at ¶10.

{¶7} Appellant was represented by counsel during the probation revocation proceedings, as well as the July 31, 2009 sentencing hearing. The record does not reflect appellant filed a direct appeal, but rather chose to challenge the calculation of jail-time credit by way of a subsequent motion. In *Spillan*, this court was presented with a defendant who, like appellant, failed to file a direct appeal of his sentences and, instead, filed a jail-time credit motion alleging an erroneous legal determination of jail-time credit. We concluded that *res judicata* barred the defendant from raising the jail-time credit issue through the jail-time credit motions because he was represented by counsel during the proceedings and could have raised the issue on direct appeal from his sentences. *Id.* at ¶12; see also *State v. Parsons*, 10th Dist. No. 03AP-1176, 2005-Ohio-457, ¶8 (because the issue of jail-time credit could have been raised had the defendant filed a direct appeal, the issue was barred by the doctrine of *res judicata*); *State v. Boggs* (Mar. 29, 2000), 9th Dist. No. 99CA007358 (*res judicata* barred the defendant from asserting jail-time credit issues via motion because the defendant could have raised the matter on direct appeal).

{¶8} In the case before us, the trial court's sentencing entry provides that appellant was awarded 61 days of jail-time credit. Therefore, jail-time credit is an issue that could have been raised on direct appeal. Additionally, the trial court denied appellant's November 18, 2009 motion for jail-time credit, which was nearly identical to

the motion for custody credit filed on June 1, 2010. Hence, the issue has been previously litigated in a prior proceeding.

{¶9} Accordingly, pursuant to *Spillan* and the cases upon which it relied, we conclude res judicata precludes appellant from raising the jail-time credit issue by way of the jail-time credit motion, and overrule his first, second, and fourth assignments of error.

{¶10} Appellant argues in his third assignment of error that he seeks only the correction of a "mathematical mistake," rather than a legal determination, regarding the number of days of jail-time credit such that his claims are not barred by the doctrine of res judicata. Though appellant terms it a mathematical mistake, it is clear that with respect to jail-time credit, appellant is seeking a legal determination.

{¶11} In his first motion for jail-time credit, appellant alleged the trial court failed to award him jail-time credit for days he spent in "continuous confinement" between August 17, 2008 and March 26, 2009. In the motion for custody credit currently before us, appellant alleges the trial court failed to award him credit for days of continuous confinement between September 15, 2008 and March 26, 2009. This requires a legal determination, rather than the correction of a mathematical error, because appellant is claiming jail-time credit is due for a category of time, not simply the correction of the number of days within that category. *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840, ¶15 (seeking jail-time credit for a category of time constitutes a substantive claim rather than an alleged mathematical error).

{¶12} Moreover, a legal determination is required in this instance because the record reflects appellant was before the court on multiple cases as the December 4, 2008 judgment entry states, "[t]he court further indicated that if the community control is

revoked defendant will be sentenced to a prison term of 12 months consecutive to 08-CR-717." (Dec. 4, 2008 Entry at 2.) It is well-settled that, "[t]here is no jail-time credit for time served on unrelated offenses, even if that time served runs concurrently during the pre-detention phase of another matter." *State v. Hunter*, 10th Dist. No. 08AP-183, 2008-Ohio-6962, ¶20, citing *State v. Kesler*, 11th Dist. No. 2007-P-0107, 2008-Ohio-4668, ¶42, citing *State v. Struble*, 11th Dist. No. 2005-L-115, 2006-Ohio-3417, ¶11.

{¶13} Because appellant seeks a legal determination regarding jail-time credit as opposed to a mathematical correction, we conclude the principles of res judicata are applicable and overrule appellant's third assignment of error.

{¶14} For the foregoing reasons, appellant's four assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.
