

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-266 (C.P.C. No. 05CR-01-436)
John W. Smiley,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 11, 2012

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Timothy Young, Public Defender, and *Stephen A. Goldmeier*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} This is an appeal by defendant-appellant, John W. Smiley, from a judgment of the Franklin County Court of Common Pleas denying appellant's motion for jail-time credit.

{¶ 2} On January 20, 2005, appellant was indicted on two counts of corrupting another with drugs, in violation of R.C. 2925.02, and two counts of gross sexual imposition, in violation of R.C. 2907.05. On March 7, 2006, appellant entered a guilty plea to two counts of gross sexual imposition (Counts 3 and 4 of the indictment).

{¶ 3} The trial court conducted a sentencing hearing on February 5, 2007. The state and defense counsel jointly recommended a sentence of four years as to Count 3 and 11 months as to Count 4, with consideration of judicial release after six months. By judgment entry filed February 8, 2007, the trial court sentenced appellant to four years as to Count 3 and 11 months as to Count 4, with the sentences to be served consecutive to each other. The court's entry indicated that appellant was entitled to 441 days of jail-time credit.

{¶ 4} On October 10, 2007, appellant filed a motion for judicial release. By entry filed October 29, 2007, the trial court denied appellant's motion. Appellant filed a second motion for judicial release on January 2, 2008. By entry filed February 15, 2008, the trial court suspended execution of appellant's sentence and placed him on community control for a period of five years.

{¶ 5} On December 23, 2009, a probation holder was placed on appellant, pursuant to R.C. 2951.08, and the trial court subsequently revoked appellant's probation. The court filed a judgment entry on April 8, 2010, imposing a sentence of four years as to Count 3 and 11 months as to Count 4, with the sentences to be served concurrently with each other. The court's entry indicated that appellant had 860 days of jail-time credit.

{¶ 6} On September 23, 2010, appellant filed a pro se motion to correct jail-time credit. In the accompanying memorandum in support, appellant asserted he was entitled to an additional 155 days of jail-time credit that had not been included in the calculation at his original sentencing hearing on February 5, 2007, including dates in which he had been held in jail in Kentucky on two separate occasions (i.e., three days, from March 1 through March 3, 2005, and 146 days from June 29 through November 21, 2005). The state filed a memorandum contra appellant's motion to correct jail-time credit. By decision and entry filed January 26, 2011, the trial court denied appellant's motion for jail-time credit.

{¶ 7} On appeal, appellant sets forth the following two assignments of error for this court's review:

FIRST ASSIGNMENT OF ERROR:

Because Ohio law unambiguously places the burden of correctly calculating jail-time credit on the sentencing court,

the trial court erred in holding that it did not have jurisdiction to review Mr. Smiley's motion for additional jail-time credit, denying him equal protection of the law. Fourteenth Amendment to the U.S. Constitution; Section 2, Article I of the Ohio Constitution.

SECOND ASSIGNMENT OF ERROR:

The trial court abused its discretion in holding that Mr. Smiley failed to show his right to additional credit without addressing the actual evidence presented with the motion, denying him the right to equal protection of the law. Fourteenth Amendment to the U.S. Constitution; Section 2, Article I of the Ohio Constitution.

{¶ 8} Appellant's assignments of error are interrelated and will be considered together. Appellant's primary contention is that the trial court erred in failing to give him jail-time credit for his detention in Kentucky pending trial. Appellant maintains that the trial court erred in finding that his motion for jail-time credit was barred by the doctrine of res judicata and in failing to address evidence presented in support of his motion.

{¶ 9} In response, the state argues that appellant jointly recommended the amount of jail-time credit as part of his plea agreement. Further, noting that the record contains no transcript of the original sentencing hearing, the state contends there is no indication appellant raised any objection to the jail-time calculation. The state also notes that appellant failed to raise the issue of jail-time credit in a timely direct appeal from the trial court's sentencing entry. The state thus argues appellant is barred from raising this issue under the doctrine of res judicata.

{¶ 10} In general, "[t]he doctrine of res judicata bars a litigant from raising on appeal, or re-litigating any issue, claim, or defense that could have been raised at trial." *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840, ¶ 11. This court has held that res judicata applies to appeals from motions for jail-time credit "when the error claimed is one of legal determination, which could have been resolved during sentencing." *Id.* In order "[t]o constitute an error of 'legal determination,' the error claimed must be, essentially, a substantive claim, as opposed to a mistake in simple arithmetic." *Id.* at ¶ 12.

{¶ 11} Other appellate courts have similarly held that res judicata applies to motions for jail-time credit that involve substantive claims. *See State v. Foster*, 6th Dist.

No. L-08-1131, 2008-Ohio-4617, ¶ 12 (where "jail time credit is denied because days were not properly classified, it is a substantive claim that must be brought to the court's attention at sentencing or on direct appeal [and the] [f]ailure to timely raise these concerns results in the issue being barred from further consideration by the doctrine of res judicata"); *State v. Allen*, 5th Dist. No. 12-COA-003, 2012-Ohio-1599, ¶ 15 (while a defendant may appeal a trial court's denial of a motion to correct jail-time credit, an appeal is available only if the trial court refused to correct a clerical mistake or a mathematical error in calculating time; in contrast, a claim that jail-time credit was denied because days were not properly classified is a substantive claim, which is barred by the doctrine of res judicata unless brought to the court's attention before sentencing or raised on direct appeal); *State v. Smith*, 6th Dist. No. L-10-1150, 2011-Ohio-5945, ¶ 5 ("appellant's argument relates to a specific category of time, the time he was incarcerated after his arrest and prior to posting bond; thus, appellant's claim is barred by the doctrine of res judicata").

{¶ 12} In the instant case, appellant was represented by counsel, and he entered a plea in accordance with the terms of a negotiated plea agreement. That plea agreement specifically noted 441 days of jail-time credit, and the trial court's sentencing entry likewise specifically stated that appellant was to receive 441 days of jail-time credit. Appellant did not challenge the issue of jail-time credit by way of a direct appeal, and because his motion for jail-time credit involves a substantive claim, and not merely clerical error, we agree with the state that his motion is barred under the doctrine of res judicata. *See State v. Roberts*, 10th Dist. No. 10AP-729, 2011-Ohio-1760, ¶ 13 (because appellant seeks a legal determination regarding jail-time credit as opposed to a mathematical correction, principles of res judicata are applicable); *State v. Payne*, 10th Dist. No. 10AP-1188, 2011-Ohio-3930, ¶ 11 (because defendant could have appealed what he now claims to be an erroneous legal determination of jail-time credit, "res judicata bars his raising the issue through either a motion filed in the trial court over a year after the judgment declaring the days of jail-time credit or in appeal of the judgment denying the motion"); *State v. Spillan*, 10th Dist. No. 06AP-50, 2006-Ohio-4788, ¶ 12 ("res judicata bars appellant from raising the jail-time credit issue through the jail-time credit motions

[alleging an erroneous legal determination of jail-time credit], given that appellant, represented by counsel, could have raised the issue on direct appeal from his sentences").

{¶ 13} Appellant's claim that application of res judicata amounts to a manifest injustice is not persuasive. In addition to the fact that the amount of jail-time credit was set forth under the jointly recommended plea agreement, this court has recognized "there is no injustice in requiring [an] appellant to have availed 'himself of all available grounds for relief' through the first available instance, i.e., the direct appeal from his sentences." *Id.* at ¶ 13. Rather, "[s]uch recognition 'establishes certainty in legal relations and individual rights, accords stability to judgments and promotes the efficient use of limited judicial or quasi-judicial time and resources.' " *Id.*, quoting *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 383-84 (1995). We also find distinguishable appellant's reliance upon *State v. Coyle*, 2d Dist. No. 23450, 2010-Ohio-2130, ¶ 10, wherein the appellate court found that res judicata did not apply because the trial court "omitted any finding" as to the number of days of jail-time credit in its entry. The reviewing court in that case specifically noted that, "[h]ad the court entered '0' or 'none' before the word 'days,' then Defendant's current claim would be barred by res judicata." *Id.*

{¶ 14} Based upon the foregoing, appellant's first and second assignments of error are not well-taken and are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

SADLER and FRENCH, JJ., concur.
