

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 15AP-678
	:	(C.P.C. No. 09CR-5784)
v.	:	
	:	
Marquze Jacobs,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 8, 2015

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

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

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Marquze Jacobs ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for recalculation of his jail-time credit. For the following reasons, we reverse.

{¶ 2} In the present case, common pleas case No. 09CR-5784, appellant pled guilty to one count of burglary and one count of receiving stolen property. Pursuant to appellant's guilty plea, the trial court sentenced appellant to three years in prison with respect to the burglary charge and twelve months in prison with respect to the receiving stolen property charge. At the same sentencing hearing, conducted on March 8, 2010, the trial court also imposed a sentence pursuant to appellant's guilty plea in another case, common pleas case No. 09CR-4264. In that case, appellant pled guilty to aggravated robbery with a specification; the trial court imposed a total sentence of six years'

imprisonment. The trial court ordered the sentences in case No. 09CR-5784 to be served concurrently with each other and concurrently with the sentence in case No. 09CR-4264. The trial court found that appellant was entitled to 231 days of jail-time credit in case No. 09CR-4264, and zero days of jail-time credit in case No. 09CR-5784.

{¶ 3} On September 28, 2010, appellant, acting pro se, filed a motion for jail-time credit, asserting that he was entitled to an additional 38 days of jail-time credit. The trial court denied appellant's motion on October 8, 2010, finding that he was obligated to advise the trial court at his sentencing hearing of the claimed additional days and that he waived his right to seek additional jail-time credit by failing to raise it at the sentencing hearing.

{¶ 4} Subsequently, on April 16, 2015, appellant, now represented by counsel, filed another motion for recalculation of his jail-time credit. Appellant asserted that he was entitled to a total of 263 days of jail-time credit in case No. 09CR-5784, composed of 32 days of confinement in the Franklin County Juvenile Detention Center and 231 days of confinement in the Franklin County Jail. The state filed a memorandum in opposition, arguing that appellant's request was barred by res judicata because he did not raise the error at sentencing or on direct appeal. The trial court denied appellant's motion, finding that the motion was "not well taken." (June 16, 2015 Journal Entry.)

{¶ 5} Appellant appeals from the trial court's judgment, assigning one error for this court's review:

The trial court erred when it denied Mr. Jacobs's motion for 263 days of jail-time credit.

{¶ 6} In 2012, the General Assembly amended R.C. 2929.19, governing the process of conducting a sentencing hearing. Under R.C. 2929.19(B)(2)(g)(iii), as amended, a sentencing court "retains continuing jurisdiction to correct any error not previously raised at sentencing in making a determination [of jail-time credit]." The statute further provides that an offender "may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination [of jail-time credit], and the court may in its discretion grant or deny that motion." This court previously held that motions for jail-time credit were subject to res judicata except where the alleged error was clerical or mathematical. *State v. Inboden*, 10th Dist. No. 14AP-312,

2014-Ohio-5762, ¶ 7. The enactment of R.C. 2929.19(B)(2)(g)(iii), however, had the effect of "abating the application of the doctrine of res judicata as it relates to issues that could have been raised at sentencing but were not." *Id.* at ¶ 8.

{¶ 7} Appellant's first motion for jail-time credit was filed in 2010, prior to the adoption of R.C. 2929.19(B)(2)(g)(iii). Therefore, the trial court did not consider the applicability of that provision to appellant's motion for jail-time credit. Appellant's second motion for jail-time credit was filed in 2015, after the enactment of R.C. 2929.19(B)(2)(g)(iii). However, the trial court's decision fails to indicate whether the court considered the applicability of the statute to appellant's motion. In a series of decisions issued after the amendment of R.C. 2929.19, this court remanded orders denying motions for jail-time credit and instructed the trial court to consider and apply R.C. 2929.19(B)(2)(g)(iii). *See State v. Lovings*, 10th Dist. No. 13AP-303, 2013-Ohio-5328, ¶ 12; *State v. Price*, 10th Dist. No. 13AP-344, 2013-Ohio-5329, ¶ 9; *State v. Cline*, 10th Dist. No. 13AP-548, 2013-Ohio-5399, ¶ 8. Here, the trial court's entry denying appellant's motion simply states that the court found the motion "not well taken" without providing any other reasoning or explaining whether the court considered the applicability of R.C. 2929.19(B)(2)(g)(iii). Under these circumstances, we find it appropriate to remand the issue for the trial court to interpret R.C. 2929.19(B)(2)(g)(iii) and determine its applicability to appellant's motion. *See Lovings* at ¶ 12; *Price* at ¶ 9; *Cline* at ¶ 8.

{¶ 8} Accordingly, we sustain appellant's sole assignment of error and reverse the judgment of the Franklin County Court of Common Pleas. This matter is remanded to that court for further proceedings in accordance with law and consistent with this decision.

Judgment reversed; cause remanded.

KLATT and BRUNNER, JJ., concur.
