

[Cite as *State v. Guilford*, 2010-Ohio-647.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

LARRY GUILFORD, JR.

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00107

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2004 CR 01256

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 22, 2010

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO
PROSECUTING ATTORNEY
KATHLEEN O. TATARSKY
ASSISTANT PROSECUTOR
110 Central Plaza South, Suite 510
Canton, Ohio 44702-1413

For Defendant-Appellant

BARRY T. WAKSER
ASSISTANT PUBLIC DEFENDER
200 West Tuscarawas Street
Suite 200
Canton, Ohio 44702

Wise, J.

{¶1} Appellant Larry Guilford, Jr., appeals the decision of the Stark County Court of Common Pleas denying his motion for jail time credit.

{¶2} Appellee is State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On August 20, 2004, Appellant Larry Guilford, Jr. was indicted on one count of Burglary, in violation of R.C. ¶2911.12(A)(1), a second degree felony.

{¶4} On October 8, 2004, Appellant entered a plea of guilty to the indictment.

{¶5} By Judgment Entry filed October 15, 2004, the trial court sentenced Appellant to a four (4) year prison term. At that time, Appellant was given credit for 85 days of jail time.

{¶6} Appellant did not file a direct appeal of his conviction or sentence.

{¶7} On March 31, 2006, Appellant filed a motion for judicial release.

{¶8} On June 19, 2006, Appellant was granted judicial release and was placed on community control.

{¶9} On January 15, 2008, a motion was filed by Appellant's probation officer to revoke his judicial release based on unemployment and marijuana use.

{¶10} A revocation hearing was held on January 22, 2008, resulting in Appellant's community control being revoked.

{¶11} On February 7, 2008, a Notice of New Calculation of Sentence was prepared by the Ohio Department of Rehabilitation and Correction crediting him for 707 days of incarceration and determining his new release date as February 17, 2010.

{¶12} This Notice was docketed with Stark County Common Pleas Court on February 15, 2008.

{¶13} By Judgment Entry filed February 28, 2008, the trial court specifically found that Appellant was entitled to 139 days of jail time credit for time served in the Stark County Jail as follows:

{¶14} “07/22/04 to 10/14/04

{¶15} “05/19/06 to 06/13/06

{¶16} “01/10/08 to 02/07/08

{¶17} “TOTAL = 139 DAYS.”

{¶18} On March 4, 2009, Appellant filed a motion for jail time credit for time served on electronically monitored house arrest, which had been ordered as a condition of his community control.

{¶19} By Judgment Entry filed March 30, 2009, the trial court denied Appellant’s motion.

{¶20} Appellant now appeals to this Court, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶21} “I. THE TRIAL COURT ERRED IN OVERRULING APPELLANT’S MOTION FOR JAIL TIME CREDIT FOR TIME SERVED ON ELECTRONICALLY MONITORED HOUSE ARREST.”

I.

{¶22} In his sole assignment of error, Appellant claims that the trial court’s denial of his motion for jail time credit was error. We disagree.

{¶23} Under the doctrine of res judicata, a final judgment and 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 appeal from that judgment. *State v. Szefck*, 77 Ohio St.3d 93, 95, 1996-Ohio-337, 671 N.E.2d 233; *State v. Perry* (1967), 10 Ohio St.2d 175, 180, 226 N.E.2d 104. The doctrine of res judicata has also been held to apply to a jail-time credit motion that alleged an erroneous legal determination on jail time credit. See, *State v. Chafin*, Franklin App. No. 06AP-1108, 2007-Ohio-1840; *State v. Lomack*, Frank App. No. 04AP-648, 2005-Ohio-2716, at paragraph 12. Issues regarding jail-time credit are properly addressed on direct appeal. *State ex rel. Rankin v. Ohio Adult Parole Authority*, 98 Ohio St.3d 476, 479, 2003-Ohio-2061, 786 N.E.2d 1286, *State ex rel. Jones v. O'Connor*, 84 Ohio St.3d 426, 1999-Ohio-470, 704 N.E.2d 1223; *State v. Parsons*, Franklin App. No. 03AP-1176, 2005-Ohio-457, at paragraph 8; *State v. Robinson* (Oct. 23, 2000), Scioto App. No. 00CA2698, 2000 WL 1617952, unreported; *State v. Flynn* (Nov. 7, 1997), Ashtabula App. No. 96-A-0079; *State v. Walker*, Muskingum App. No. CT2007-0062, 2007-Ohio-6624.

{¶24} In the case sub judice, Appellant originally entered a plea and was sentenced in October, 2004. Appellant entered a plea in accordance with the terms of a negotiated plea agreement and was presented by counsel.

{¶25} We find that Appellant is barred by the doctrine of res judicata from pursuing his Motion for Jail Time Credit. Appellant had an opportunity to appeal the trial

court's February 28, 2008 determination of jail time credit by means of a timely direct appeal but failed to do so.

{¶26} Accordingly, Appellant's sole assignment of error is not well-taken and is hereby overruled.

{¶27} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

/S/ JOHN W. WISE_____

/S/ WILLIAM B. HOFFMAN_____

/S/ SHEILA G. FARMER_____

JUDGES

JWW/d 0210

