

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1150

Appellee

Trial Court No. CR0200902420

v.

Clarence Smith, III

**DECISION AND JUDGMENT**

Appellant

Decided: November 18, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Michael E. Narges, Assistant Prosecuting Attorney, for appellee.

Randall Jedlink, for appellant.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Clarence Smith, III, appeals the March 22, 2010 judgment of the Lucas County Court of Common Pleas which denied his request for jail-time credit.

{¶ 2} We first note that appointed counsel has submitted a request to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. In a brief filed on appellant's

behalf, appointed counsel sets forth three proposed assignments of error including issues regarding the knowing and voluntary nature of appellant's plea, the court's review of appellant's rights following the plea, and the length of the sentence. In support of the request to withdraw, counsel for appellant states that based on the trial court record, he was unable to find any meritorious errors for appeal. Appellant was also notified of his right to file a brief in the matter; no pro se brief was filed.

{¶ 3} Reviewing appellant's notice of appeal, we find that appellant's counsel's proposed assignments of error are not properly before the court because the proposed errors do not relate to the judgment on appeal. Appellant was sentenced on October 1, 2009, and no appeal was filed. Thereafter, on March 12, 2010, appellant filed a motion for jail-time credit; the motion was denied on March 22, 2010. On August 5, 2010, this court granted appellant's motion for a delayed appeal of the March 22, 2010 judgment. Accordingly, this court will, pursuant to *Anders*, supra, independently review the record for any meritorious errors stemming from the trial court's March 22, 2010 denial of appellant's motion.

{¶ 4} In his motion for jail-time credit, appellant argued that the trial court failed to add the 32 days he was initially incarcerated when calculating his jail-time credit. The doctrine of res judicata prevents appellants from asserting issues in postconviction proceedings that were raised or could have been raised on direct appeal. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 96; *State v. Perry* (1967), 10 Ohio St.2d 175, paragraphs seven and nine of the syllabus. A motion to correct jail-time credit can be used as an alternative

to filing a direct appeal only where the relief requested is due to a "clerical mistake," or mathematical error of the court. *State v. McLain*, 6th Dist. No. L-07-1164, 2008-Ohio-481, ¶ 11, citing *State v. Weaver*, 1st Dist. No. C-050923, 2006-Ohio-5072. Claims that encompass a specific "category" of time are substantive in nature and barred by the doctrine of res judicata. See *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840.

{¶ 5} Appellant stated in his motion that he was incarcerated on the charges in this case from April 10, 2009, until May 12, 2009, when he posted a "pre-indictment bond." On July 21, 2009, appellant was indicted on three counts: one count of robbery and two counts of theft. Appellant argued that the court "overlooked" his jail-time credit. We find that 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. After review of the record relating to the appeal, we find no meritorious appellate issues. Appellant's counsel's motion to withdraw is granted.

{¶ 6} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal. The clerk is ordered to serve, by regular mail, all parties, including the defendant if he has filed a brief, with notice of this decision.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

\_\_\_\_\_  
JUDGE

Arlene Singer, J.

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

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JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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