

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

State of Ohio

Court of Appeals Nos. L-11-1255
L-11-1256

Appellee

Trial Court Nos. CR0200803493
CR0200901507

v.

Marc A. Cotton

DECISION AND JUDGMENT

Appellant

Decided: August 3, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Marc Cotton, pro se.

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SINGER, P.J.

{¶ 1} Appellant pro se appeals from a judgment issued by the Lucas County Court of Common Pleas, which denied his postconviction motion to correct credit awarded for jail time served while awaiting trial in two separate cases. Because we conclude that the trial court did not err, we affirm.

{¶ 2} Appellant, Marc A. Cotton, was indicted on various charges in several cases beginning in 2006. In early 2009, he was convicted and sentenced in two of the cases, one for robbery and the second for evidence tampering. He was given jail time credit in the judgment entries for each of those cases: 263 days for the robbery case and 320 days for the evidence tampering case. Appellant appealed the robbery conviction, which was affirmed. *See State v. Cotton*, 6th Dist. No. L-09-1050, 2010-Ohio-804. He did not appeal the judgment in the evidence tampering case.

{¶ 3} In July 2010, appellant filed a motion for additional jail time credit related to the robbery conviction. On November 3, 2010, the court denied appellant's motion, but instead reduced the number of credited days, determining that his jail time credit had been miscalculated and that he was only entitled to 103 days, instead of 263 days, of credit. Appellant did not appeal from that judgment.

{¶ 4} In June 2011, appellant again filed a motion for additional jail time credit relating to both the robbery conviction and evidence tampering conviction. Appellant claimed that he was entitled to a total of an additional 167 days jail time credit. The trial court denied appellant's motion on September 14, 2011, finding that its initial calculations were correct as to the evidence tampering case. The court further noted that the November 3, 2010 order had already corrected jail time calculations as to the robbery conviction. The court found that appellant was granted the correct jail time in each case at the time of sentencing.

{¶ 5} Appellant appeals from that judgment, arguing the following sole assignment of error:

Defendant is entitled to the full amount of JTC.

{¶ 6} 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. Szeftcyk*, 77 Ohio St.3d 93, 96, 671 N.E.2d 233 (1996); *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967). The doctrine of res judicata has also been held to apply to a jail-time credit motion that alleges an erroneous legal determination on jail time credit. *See State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840; *State v. Lomack*, 10th Dist. No. 04AP-648, 2005-Ohio-2716, ¶ 12.

{¶ 7} Thus, “the proper vehicle for challenging legal errors in the imposition of jail-time credit is via a direct appeal from the sentencing entry.” *State v. Mason*, 7th Dist. No. 10 CO 20, 2011-Ohio-3167, ¶ 13, citing *State v. Parsons*, 10th Dist. No. 03AP1176, 2005-Ohio-457, ¶ 7-8. While a motion to correct jail-time credit is an alternative to raising the issue on direct appeal or in postconviction relief, such device “is limited to scenarios involving a clerical mistake rather than a substantive claim.” *State v. Newman*, 6th Dist. No. WD-07-083, 2009-Ohio-2935, ¶ 10.

{¶ 8} In this case, appellant argues that the jail time credit was improperly calculated, relying on *State v. Fugate*, 117 Ohio St.3d 216, 2008-Ohio-856, 883 N.E.2d 440. Appellant's initial judgment entry for the robbery conviction, including the jail time credit, was issued in 2009, well after *Fugate* was decided. Consequently, any *Fugate* claim regarding the issue of jail time credit could have and should have been included in his direct appeal. Nevertheless, in 2010, the trial court considered appellant's postconviction motion request for additional jail time credit days. In checking the mathematical calculations, however, the court determined that appellant had actually been credited incorrectly, and reduced the jail time credit in its November 2010 judgment entry. Appellant failed to appeal that judgment.

{¶ 9} In 2011, appellant again sought to have the trial court recalculate his jail time credit, not regarding a clerical or math calculation error, but rather on a substantive claim regarding how jail time is to be credited while a defendant is incarcerated and awaiting trial in two separate cases. The trial court again reviewed the calculations, finding that its previous determinations were correct.

{¶ 10} In this case, appellant's failure to raise the alleged error as to jail time credit on direct appeal from the initial 2009 judgment entry and then again from the 2010 recalculation judgment entry waives his right to further challenge the jail time credit. Appellant's claims are res judicata since he is not alleging mere clerical or math calculations. Moreover, upon review of the record, we conclude that the trial court

correctly calculated appellant's jail time credit as to each case. Appellant's sole assignment of error is found not well-taken.

{¶ 11} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Arlene Singer, P.J.
CONCUR.

JUDGE

JUDGE

JUDGE

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| <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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p> |
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