

[Cite as *State v. Wilson*, 2017-Ohio-8068.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105535

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JOMO K. WILSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-09-521422-B

BEFORE: Celebrezze, J., Laster Mays, P.J., and Jones, J.

RELEASED AND JOURNALIZED: October 5, 2017

FOR APPELLANT

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Defendant-appellant, Jomo Wilson (“Wilson”), brings this appeal challenging the trial court’s decision denying his motion to correct jail-time credit. Specifically, Wilson argues that he is entitled to receive jail-time credit for his five-year sentence in federal prison and that the trial court should modify his six-year burglary sentences from consecutive to concurrent terms. After a thorough review of the record and law, this court affirms the trial court’s judgment and remands the matter for a nunc pro tunc journal entry.

I. Factual and Procedural History

{¶2} In Cuyahoga C.P. No. CR-09-521422-B, Wilson pled guilty to burglary, a second-degree felony in violation of R.C. 2911.12(A)(1). On July 22, 2009, the trial court imposed a prison sentence of six years. The trial court ordered Wilson to serve the six-year sentence consecutively to his sentence in Cuyahoga C.P. No. CR-08-518793-B.¹ The trial court ordered Wilson’s consecutive six-year prison sentences to run concurrently to Wilson’s sentence in a federal case. The trial court granted Wilson 116 days of jail-time credit.

{¶3} In September 2009, Wilson filed an appeal challenging the trial court’s imposition of consecutive sentences. *State v. Wilson*, 8th Dist. Cuyahoga Nos. 93859 and 93860, 2010-Ohio-5585. This court affirmed the trial court’s sentence.

¹ There, appellant pled guilty in May 2009 to burglary, a second-degree felony in violation of R.C. 2911.12(A)(1). The trial court imposed a prison sentence of six years.

{¶4} In September 2013, Wilson filed a motion to correct jail-time credit. Therein, he requested that the trial court grant him 1,534 days of jail-time credit. On April 11, 2014, the trial court granted Wilson's motion, and granted Wilson an additional 37 days of jail-time credit in addition to the 116 days Wilson had been granted in July 2009. Accordingly, Wilson was granted a total of 153 days of jail-time credit.

{¶5} On November 28, 2016, Wilson filed a second motion to correct jail-time credit. Therein, he requested that the trial court (1) modify his six-year sentences in the burglary cases from consecutive to concurrent terms and (2) grant him five years of jail-time credit for the time he spent in federal prison. The state filed a response to Wilson's motion for jail-time credit, indicating that it would not be opposed to the trial court granting Wilson a total of 164 days of jail-time credit.

{¶6} On February 6, 2017, the trial court granted the state's motion in response to Wilson's motion for jail-time credit. The trial court granted Wilson an additional 48 days of jail-time credit in addition to the 116 days of jail-time credit that Wilson was granted in July 2009.

{¶7} On March 6, 2017, Wilson filed the instant appeal challenging the trial court's judgment granting him 48 days of additional jail-time credit. He assigns one error for review:

I. The trial court erred when it abused its discretion when it denied the appellant's motion for additional jail-time credit pursuant to *State v. Fugate*[, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440,] and *State v. Caccamo*[, 11th Dist. Lake No. 2015-L-048, 2016-Ohio-3006].

II. Law and Analysis

A. Jail-Time Credit

{¶8} In his sole assignment of error, Wilson argues that the trial court abused its discretion by denying his motion to correct jail-time credit.

{¶9} R.C. 2967.191, governing reduction of prison term for related days of confinement, provides,

The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term, as determined by the sentencing court under division (B)(2)(g)(I) of section 2929.19 of the Revised Code, and confinement in a juvenile facility. The department of rehabilitation and correction also shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner by the total number of days, if any, that the prisoner previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.

{¶10} In his November 28, 2016 motion to correct jail-time credit, Wilson argued that he was entitled to receive five years of jail-time credit for the time he served in federal prison, and that this credit should be applied to both of his six-year burglary sentences. Likewise, in the instant appeal, Wilson requests that he be granted five years of jail-time credit for the time he served in federal prison.

{¶11} Initially, we note that Wilson's request to be granted five years of jail-time

credit is barred by res judicata. Res judicata bars the relitigation of an issue already decided. *Russell v. Mitchell*, 84 Ohio St.3d 328, 329, 703 N.E.2d 1249 (1999).

{¶12} Pursuant to R.C. 2929.19(B)(2)(g)(i), if the trial court determines at sentencing that a prison term is necessary or required, it is the court's duty at the time of sentencing to

[d]etermine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the stated prison term under section 2967.191 of the Revised Code.

Furthermore, R.C. 2929.19(B)(2)(g)(iii) provides, in relevant part:

The sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing in making a determination under [R.C. 2929.19(B)(2)(g)(i)]. The offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under [R.C. 2929.19(B)(2)(g)(i)], and the court may in its discretion grant or deny that motion. If the court changes the number of days in its determination or redetermination, the court shall cause the entry granting that change to be delivered to the department of rehabilitation and correction without delay.

{¶13} Pursuant to R.C. 2929.19(B)(2)(g)(iii), the doctrine of res judicata does not

bar motions to correct jail-time credit filed after the time for appeal has expired. *See State v. Thompson*, 8th Dist. Cuyahoga No. 102326, 2015-Ohio-3882, ¶ 22, citing *State v. Inboden*, 10th Dist. Franklin Nos. 14AP-312 and 14AP-317, 2014-Ohio-5762, ¶ 8. However, “[s]imply because res judicata does not operate to bar an initial, post-sentence motion for jail-time credit, does not imply the doctrine is inapplicable to *successive* motions.” (Emphasis sic.) *State v. Smith*, 11th Dist. Lake No. 2016-L-107, 2017-Ohio-4124, ¶ 12.

{¶14} In the instant matter, Wilson requested that the trial court grant him 1,534 days of jail-time credit in his September 2013 motion. The trial court’s April 16, 2014 judgment entry provides, in relevant part, “[Wilson’s] motion to correct jail time credit is granted. [Wilson] granted an additional 37 days of jail time credit, 116 days jail credit was granted at the time of sentencing on 7/22/09 for a total of 153 days jail credit.” Wilson could have, but failed to file a direct appeal challenging the trial court’s judgment.

Rather than filing a direct appeal, Wilson filed the second motion for jail-time credit in November 2016, requesting that he be granted five years — or 1,825 days — of jail-time credit. Res judicata bars Wilson’s attempted use of a second motion to correct jail-time credit as a substitute for a timely appeal.

{¶15} Assuming, arguendo, that Wilson’s request was not barred by res judicata, the trial court did not err in denying Wilson’s request that he be granted jail-time credit for the time he served in federal prison.

{¶16} Wilson relies on *Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d

440. In *Fugate*, the defendant committed burglary and theft offenses while on community control. While the defendant was awaiting disposition of the community control violation and burglary and theft offenses, he was held in jail. The trial court imposed a 12-month sentence for the community control violation and credited the defendant with the time he spent in jail. The trial court also imposed a two-year sentence for the defendant's burglary conviction, to run concurrently to the sentence for the community control violation. The trial court did not, however, apply any jail-time credit in that case.

{¶17} The Ohio Supreme Court reversed the trial court's judgment, holding:

[W]hen concurrent prison terms are imposed, courts do not have the discretion to select only one term from those that are run concurrently against which to apply jail-time credit. R.C. 2967.191 requires that jail-time credit be applied to all prison terms imposed for charges on which the offender has been held. If courts were permitted to apply jail-time credit to only one of the concurrent terms, the practical result would be * * * to deny credit for time that an offender was confined while being held on pending charges. So long as an offender is held on a charge while awaiting trial or sentencing, the offender is entitled to jail-time credit for that sentence; a court cannot choose one of several concurrent terms against which to apply the credit.

Fugate at ¶ 12. However, “*Fugate* did not negate the basic principle that ‘a defendant is not entitled to jail-time credit for time incarcerated in another county for unrelated offenses.’” *State v. McKinney*, 7th Dist. Mahoning No. 12 MA 163, 2013-Ohio-4357, ¶ 12, quoting *State v. Daughenbaugh*, 3d Dist. Wyandot No. 16-09-05, 2009-Ohio-3823, ¶ 19.

{¶18} The instant matter is distinguishable from *Fugate*, primarily because Wilson

was not sentenced to concurrent sentences for his burglary convictions. *See State v. Holley*, 8th Dist. Cuyahoga No. 104955, 2017-Ohio-1559, ¶ 13.

{¶19} Wilson further directs this court to *State v. Caccamo*, 11th Dist. Lake No. 2015-L-048, 2016-Ohio-3006. In *Caccamo*, the defendant was confined in Cuyahoga County on a new offense and a resulting community control violation in Lake County because of the new offense. The Eleventh District held that the defendant was entitled to the same jail credit on his Lake County sentence as on the Cuyahoga County sentence because he was subject to a detainer filed by the Lake County Probation Department while he was in the Cuyahoga County jail on an unrelated matter.

{¶20} In *Holley*, this court declined to follow the *Caccamo* rationale:

We disagree with *Caccamo* and instead rely on the cases from our district that hold that *there is no jail-time credit for time served on unrelated offenses*, even if that time runs concurrently during the pre-detention phase of another matter. *See, e.g., State v. Smiley*, 8th Dist. Cuyahoga No. 99486, 2013-Ohio-4495, *State v. Maddox*, 8th Dist. Cuyahoga No. 99120, 2013-Ohio-3140; *State v. DeMarco*, 8th Dist. Cuyahoga No. 96605, 2011-Ohio-5187 (offender not entitled to jail-time credit for any period of incarceration that arose from facts that are separate and apart from those on which his current sentence is based); *see also State v. Smith*, 71 Ohio App.3d 302, 304, 593 N.E.2d 402 (10th Dist.1992), *Struble*, 11th Dist. Lake No. 2005-L-115, 2006-Ohio-3417, *State v. Marini*, 5th Dist. Tuscarawas No. 09-CA-06, 2009-Ohio-4633.

(Emphasis added.) *Holley* at ¶ 15.

{¶21} In *State ex rel. Carter v. Wilkinson*, 10th Dist. Franklin No. 03AP-737, 2004-Ohio-3386, the inmate argued that he was entitled to receive jail-time credit for his state sentence for the time he spent in federal prison. *Id.* at ¶ 6. The Tenth District rejected this argument:

The 1974 Committee Comment to H.B. 511, which amended R.C. 2967.191 to the form in which it exists today, notes that the statute mandates reduction of stated felony prison terms “by the number of days during which the prisoner was confined awaiting trial, sentence, transportation to the penitentiary or reformatory, or for any other reason *arising out of the case for which he was sentenced*, including confinement during an examination to determine his sanity.”

(Emphasis sic.) *Id.* at ¶ 7. The court went on to note,

Ohio courts have consistently held that jail time credit is to be applied to an inmate’s sentence *only for confinement related to the specific case in which that sentence was imposed*. See *State v. McWilliams* (1998), 126 Ohio App.3d 398, 710 N.E.2d 729 (jail time credit may not be applied for time served in Florida on Florida offenses; *State ex rel. Gillen v. Ohio Adult Parole Auth.* (1995), 72 Ohio St.3d 381, 1995 Ohio 57, 650 N.E.2d 454 (an inmate is not entitled to jail time credit for time served in New York while he was a parole violator). Clearly, R.C. 2967.191 pertains only to credit for time spent in jail awaiting disposition of the particular case out of which the inmate’s sentence arises, and does not pertain to time spent serving a sentence pursuant to a case from another jurisdiction, *including the federal courts*.

(Emphasis added.) *Wilkinson* at ¶ 8.

{¶22} Because Wilson’s federal offense and sentence were unrelated to his burglary convictions, and because his burglary sentences were not run concurrently, he is not entitled to jail-time credit for the time he served in federal prison.

B. Authority to Modify Sentences

{¶23} Additionally, in Wilson’s motion to correct jail-time credit, he requested that the trial court modify his six-year burglary sentences from consecutive to concurrent terms. Wilson contended that the consecutive nature of his six-year burglary sentences “caus[ed] a manifest injustice in calculating [his] earned jail-time credit within [the two burglary cases and the federal case].” Wilson further asserted that the only way to “achieve a fair legal objective” is to run the six-year burglary sentences concurrently to one another and concurrently to his federal prison sentence. In other words, Wilson was asking the trial court to (1) reconsider the consecutive nature of the burglary sentences imposed in July 2009 and (2) modify the burglary sentences from consecutive to concurrent terms.

{¶24} A trial court has no authority to reconsider its own final determinations. *State v. Carlisle*, 131 Ohio St.3d 127, 2011-Ohio-6553, 961 N.E.2d 671. A criminal sentence is final upon issuance of a final order. *Id.* at ¶ 11. An entry constitutes a final order of sentence when “the judgment entry sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge’s signature, and (4) the time stamp indicating the entry upon the journal by the clerk.” *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 14; Crim.R. 32.

{¶25} In the instant matter, the trial court’s August 7, 2009 sentencing entry complied with the aforementioned requirements and, thus, was a final order. Accordingly, the trial court was without jurisdiction to grant the relief Wilson requested

by modifying his sentence.

{¶26} Based on the foregoing analysis, Wilson's sole assignment of error is overruled.

III. Conclusion

{¶27} After thoroughly reviewing the record, we find that Wilson was not entitled to jail-time credit for the time he served in federal prison; the trial court is without jurisdiction to grant Wilson's request to modify his burglary sentences to concurrent terms.

{¶28} The trial court's February 6, 2017 journal entry, provides that Wilson "is granted 48 days of additional jail time credit." The journal entry does not, however, indicate the total calculation of jail-time credit. Accordingly, this matter is remanded to the trial court for the limited purpose of issuing a nunc pro tunc journal entry reflecting that the court granted Wilson a total of 164 days of jail-time credit.

{¶29} Judgment affirmed; case remanded for the issuance of a nunc pro tunc journal entry.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

ANITA LASTER MAYS, P.J., and
LARRY A. JONES, SR., J., CONCUR