

[Cite as *State v. Bennett*, 2011-Ohio-4597.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 11AP-225
 : (C.P.C. No. 09CR-04-2543)
 Scott M. Bennett, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 13, 2011

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Scott M. Bennett, pro se.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Scott M. Bennett ("Bennett"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his motion for correction. Having concluded that the trial court did not err, we affirm.

{¶2} On July 22, 2010, the trial court issued a judgment entry, which indicated that Bennett entered a plea of guilty to robbery, in violation of R.C. 2911.02, a felony of the third degree, and the court found Bennett guilty of robbery. The court ordered that three other counts contained within the indictment issued against Bennett be dismissed. The entry stated that Bennett's attorney and the prosecuting attorney "jointly recommended a sentence of 2 years at ODRC with 90 days of jail time credit." The court accepted that recommendation, sentencing Bennett to two years and applying 90 days of jail-time credit to the sentence.

{¶3} On November 10, 2010, Bennett filed a motion for correction. In it, Bennett contended that he was entitled to 271 days of jail-time credit and sought correction of his sentencing to reflect that credit. Plaintiff-appellee, state of Ohio, opposed the motion.

{¶4} On February 1, 2011, the trial court issued a decision and entry, which denied Bennett's motion for correction. Bennett filed a timely appeal, and he raises the following assignment of error:

Assignment of Error No.1: The trial court erred when it denied the defendant's motion for correction pursuant to Crim.R. 36.

{¶5} Under the doctrine of res judicata, a final judgment of conviction precludes a defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense that the defendant could have raised at the trial that resulted in the judgment or on appeal from that judgment. *State v. Szefcyk*, 77 Ohio St.3d 93, 1996-Ohio-337, syllabus. Bennett could have raised the argument he now makes in an

appeal from his conviction. Because he had that opportunity, the doctrine of res judicata bars him from asserting these arguments now.

{¶6} The fact that Bennett asks for correction of jail-time credit does not change that result, at least under the facts of his case. Generally, a defendant may only challenge a trial court's application of jail-time credit in an appeal from the judgment containing the calculation at issue. *State v. Lomack*, 10th Dist. No. 04AP-648, 2005-Ohio-2716, ¶11, citing *State v. Parsons*, 10th Dist. No. 03AP-1176, 2005-Ohio-457, ¶7. This court has held, however, that if the trial court makes a mathematical error, rather than a legal one, in applying the credit, then a defendant may seek judicial review by filing a motion for correction in the trial court. *State v. Spillan*, 10th Dist. No. 06AP-50, 2006-Ohio-4788, ¶9.

{¶7} Here, the trial court did not make a mathematical error. Bennett signed an "ENTRY OF GUILTY PLEA," which stated the following: "I understand that the prosecution and defense jointly recommended" a sentence of "2 years ODRC with 90 days JTC." The trial court accepted the joint recommendation of Bennett's counsel and the prosecuting attorney. That joint recommendation included a credit of 90 days, which may or may not have reflected Bennett's actual time. Because Bennett's motion raised a legal issue, and not a mathematical one, concerning his sentencing, res judicata barred his claim.

{¶8} For these reasons, we overrule Bennett's sole assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.
