

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

HARRY H. KROUSKOU PF III

Defendant-Appellant

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JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. Craig R. Baldwin, J.

Hon. Andrew J. King, J.

Case No. CT2023-0012

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common  
Pleas, Case No. CR2018-0007

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

August 8, 2023

APPEARANCES:

For Plaintiff-Appellee

JOHN CONNOR DEVER  
27 North Fifth Street  
P.O. Box 189  
Zanesville, OH 43702

For Defendant-Appellant

HARRY H. KROUSKOU PF III  
INMATE NO. A742-651  
15708 McConnellsville Road  
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*King, J.*

{¶ 1} Defendant-Appellant Harry H. Krouskoupf III appeals the February 17, 2023 judgment of the Muskingum County Court of Common Pleas. Plaintiff-Appellee is the state of Ohio.

#### Facts and Procedural History

{¶ 2} A recitation of the underlying facts is unnecessary for our resolution of this appeal. Krouskoupf has appealed to this court on four prior occasions. We have previously outlined the procedural history of this matter as follows.

{¶ 3} On January 3, 2018, the Muskingum County Grand Jury returned an indictment charging Krouskoupf with one count of grand theft in violation of R.C. 2913.02(A)(1), a felony of the fifth degree; two counts of petty theft in violation of R.C. 2913.02(A)(1), misdemeanors of the first degree; and two counts of aggravated robbery in violation of R.C. 2911.01(A)(1), felonies of the first degree. The indictment also contained firearm and repeat violent offender (R.V.O.) specifications. Krouskoupf entered pleas of not guilty.

{¶ 4} On February 26, 2018, Krouskoupf withdrew his not guilty pleas and entered a pleas of guilty to one count of theft as a felony of the fifth degree, and two counts of robbery as felonies of the second degree, and a single R.V.O. specification. The remaining counts and specifications were dismissed. Pursuant to a judgment entry filed on March 13, 2018, Krouskoupf was sentenced to an aggregate prison term eleven years.

{¶ 5} Krouskouph was on post-release control at the time he committed the above outlined offenses. The trial court therefore also found that Krouskoupf had violated the terms of his post-release control, terminated Krouskoupf's post-release control, and

ordered him to serve a prison term equal to the time remaining on that sanction. The court ordered Krouskoupf to serve that sentence consecutive to the eleven-year prison sentence.

{¶ 6} Krouskoupf filed a direct appeal of his convictions and sentence, arguing that before accepting his guilty plea to an offense committed while on post-release control, the trial court was required to inform him that a sentence for a post-release control violation must be served consecutively to the sentence for the newly-committed offense pursuant to R.C. 2929.141(A)(1). Krouskoupf argued the trial court failed to properly advise him of the foregoing.

{¶ 7} Pursuant to an opinion filed March 6, 2019 in *State v. Krouskoupf III*, 5th Dist. Muskingum No. CT2018-0020, 2019-Ohio-806 [*Krouskoupf I*], this Court vacated Krouskoupf's plea and remanded the case to the trial court for further proceedings, finding that the trial court had completely failed to inform Krouskoupf that a consecutive prison sentence under R.C. 2929.141(A) was possible.

{¶ 8} The trial court, as memorialized in an Entry filed on April 12, 2019, ordered that Krouskoupf 's previously-entered guilty plea was vacated.

{¶ 9} Thereafter, on July 19, 2019, Krouskoupf withdrew his former not-guilty plea and entered a plea of guilty to the amended count of robbery in violation of R.C. 2911.02(A)(1), a felony of the second degree, and an amended count of robbery in violation of R.C. 2911.02(A)(3), a felony of the third degree. Via an Entry filed on July 23, 2019, the trial court sentenced Krouskoupf to an aggregate prison sentence of eleven years. The trial court terminated Krouskoupf 's post-release control and ordered "that any time left remaining on that must be served consecutively to the sentence you just received

here today ..." In its July 23, 2019 Entry, the trial court stated that it was imposing the "remainder of time left on Post Release Control [to] be served in prison. According to statute, it is mandatory that the remainder of time left on Post Release Control be served consecutively to the eleven (11) year aggregate prison sentence in the instant case." The July 23, 2019 entry further stated: "Pursuant to R.C. 2929.19 and 2967.191 the Court found, and the parties stipulated, that [Krouskoupf] has five-hundred sixty-four (564) days of jail credit, along with future custody days while [Krouskoupf] awaits transportation to the appropriate State institution."

{¶ 10} As memorialized in an Order filed on July 23, 2019, the remaining counts and specifications were dismissed.

{¶ 11} Later, apparently realizing it had miscalculated Krouskoupf's jail credit, on August 27, 2019, the trial court journalized the following Journal Entry:

The conviction in this case having been overturned by the Court of Appeals, 5th District, was remanded back to the Muskingum County Court of Common Pleas. Thereafter, [Krouskoupf] pled guilty and was sentenced on July 19, 2019. The Court at that time ordered all jail credit applicable from origination of this case.

The Court having been advised [Krouskoupf] was never released from the custody of the Ohio Department of Rehabilitation and Correction and has been credited for all days through sentencing on this case hereby amends jail credit to be zero (0) days as of July 19, 2019.

{¶ 12} On September 9, 2019, however, the trial court journalized an Amended Entry stating, "The Court hereby finds [Krouskoupf] is entitled to seventy (70) days of jail credit as of March 12, 2018."

{¶ 13} Krouskoupf appealed from the trial court's July 23, 2019 judgment entry of conviction and sentence, arguing that his plea was not knowing, intelligent and voluntary because the trial court failed to advise him of the maximum penalty for the prison term that it imposed for his post-release control violation. Krouskoupf argued that the trial court was obligated to notify him of the time he would be required to serve as a result of the violation of the terms of post release control.

{¶ 14} We disagreed as follows:

\* \* \* \*. The trial court specifically stated on the record that it was terminating appellant's post-release control and that it would impose the time that appellant "had left on it," which would be the remainder of his post-release control. Transcript at 4. That specific sentence is calculable to a certainty from information within the possession of the Adult Parole Authority, while such information may not be readily available to the sentencing court. Therefore, we find no error in the trial court's failure to advise appellant of the exact sentence and include the exact sentence in the sentencing entry, as the sentence may be administratively determined by the Adult Parole Authority as set forth by R.C. 2929.141(A)(1). See *State v. Clark*, 5th Dist. Muskingum No. CT2017–0032, 2018-Ohio-1155. See also *State v.*

*Dunwoody*, 5th Dist. Muskingum No. CT2017-0050, 2018-Ohio-2386 and *State v. Johnson*, 5th Dist. Muskingum No. CT2017-0058, 2018-Ohio-2387.

{¶ 15} *State v. Krouskoupf*, 5th Dist. Muskingum No. CT2019-0066, 2020-Ohio-1220, ¶ 15 [*Krouskoupf II*].

{¶ 16} We concluded that the trial court properly advised Krouskoupf of the penalty for the post-release control violation and Krouskoupf 's plea was knowing, intelligent and voluntary. *Id.*, at ¶ 16. The trial court's judgment was therefore affirmed. *Id.*

{¶ 17} On May 13, 2020, Krouskoupf filed a motion for jail-time credit, arguing that he was entitled to 564 days of credit.

{¶ 18} The trial court overruled the motion via judgment entry dated May 20, 2020, stating in pertinent part:

The Court's sentencing entry dated July 23, 2019 ordered five hundred sixty-four (564) days of jail credit. The defendant was conveyed to the Ohio Department of Rehabilitation and Corrections wherein it was determined that credit provided for had been calculated and applied to inmate Number A742651 on the above captioned case from the date of his initial incarceration and had not lapsed.

Based on the application of the jail credit toward the overall sentenced (sic) by the Ohio Department of Rehabilitation and

Corrections, the Court found the credit was not to be ordered in addition to the ongoing institutional credit and subsequently amended the order for jail credit on September 9, 2019 to be seventy (70) days originally ordered in the case in the entry filed March 13, 2018.

Finding the credit has been accounted for by the Department of Rehabilitation and Corrections, the Court finds the motion filed May 13, 2020 to be not well taken and denies the same.

{¶ 19} On March 15, 2021, Krouskouph filed a "Motion for Jail Credit" asserting he was entitled to credit for 564 days because that amount was originally ordered in the July 23, 2019 Judgment Entry.

{¶ 20} The trial court overruled the motion via Journal Entry filed on March 19, 2021, and referred back to the Entry filed May 20, 2020.

{¶ 21} On June 1, 2021, Krouskouph filed a motion entitled " 'Reconsideration:' Motion for Jail-Time Credit," again arguing he was entitled to jail-time credit of 564 days.

{¶ 22} On June 23, 2021, the trial court overruled Krouskouph's motion for reconsideration of the motion for jail-time credit.

{¶ 23} Krouskouph appealed the trial court's June 23, 2021 denial of the motion for reconsideration raising two assignments of error. This court overruled both assignments of error finding Krouskouph's motion for reconsideration was of no legal effect and that both assignments of error were barred by the doctrine of res judicata. *State*

*v. Krouskoupf*, 5th Dist. Muskingum No. CT2019-0066, 2020-Ohio-0036, ¶ 36-40 [Krouskoupf III].

{¶ 24} On February 28, 2022 Krouskoupf filed a writ of mandamus, again challenging the calculation of his jail time credit. *State ex rel Krouskouph v. Ohio Department of Rehabilitation and Correction*, 5th Dist. Muskingum No. CT2022-0012, 2022-Ohio-1310 [Krouskouph IV]. As grounds for relief, Krouskouph argued the September 9, 2019 amended Judgment Entry was contrary to law because it was filed without him being present for the change in jail-time credit, and that Judge Fleegle, in effect, extended his sentence by filing the amended Judgment Entry reducing his jail-time credit from 564 days to 70 days. *Id.* ¶ 5.

{¶ 25} Following a discussion of Krouskouph's three previous appeals, this court found Krouskoupf could not state a claim for mandamus relief based on the doctrine of res judicata and the availability of an adequate remedy at law which Krouskouph had failed to pursue. *Id.* ¶¶10, 26.

{¶ 26} On July 21, 2022, Krouskouph filed a Motion to Correct Sentencing Error, again arguing he is entitled to 564 days of jail-time credit. On February 1, 2023, he filed a Motion for Summary Judgment.

{¶ 27} Following a review of this court's previous holdings regarding Krouskouph's multiple attempts to challenge or appeal his sentence, On February 17, 2023 via Judgment Entry, the trial court denied Krouskouph's motions finding them precluded by res judicata.

{¶ 28} Krouskouph filed an appeal and the matter is now before this court for consideration. He raises two assignments of error as follow:

## I

{¶ 29} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IGNORED EVIDENCE THAT IT LACKED JURISDICTION TO AMEND KROUSKOU PF'S SENTENCE TO SOMETHING OTHER THAN WHAT THE TRIAL COURT IMPOSED AT SENTENCE IN VIOLATION OF CRIM.R. 36 AND THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION."

## II

{¶ 30} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IGNORED EVIDENCE THAT DEMONSTRATED THAT IT LACKED JURISDICTION TO AMEND KROUSKOU PF'S SENTENCE WITHOUT ENSURING THAT EITHER KROUSKOU PF OR HIS COUNSEL WERE PRESENT FOR AMENDMENTS IN VIOLATION OF CRIM.R. 43(A) AND THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION. THIS ALSO MADE HIS GUILTY PLEA LESS THAN KNOWINGLY OR VOLUNTARILY MADE. "

## I, II

{¶ 31} As an initial matter, the instant matter is before this court upon the accelerated calendar pursuant to App.R. 11.1(E), which provides in relevant part: "The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form."

{¶ 32} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *State*

*v. Montgomery*, 5th Dist. No. 2017CA00035, 2017-Ohio-4397, 93 N.E.3d 185, ¶ 8, citing *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist. 1983).

{¶ 33} This appeal shall be considered in accordance with the aforementioned rules.

{¶ 34} We elect to address Krouskouph's assignments of error together. Krouskouph again challenges the trial court's August 27, 2019 judgment entry which found Krouskouph was entitled to no jail-time credit, and the September 9, 2021 judgment entry which found he was entitled to 70 days credit. Krouskouph argues the trial court had no jurisdiction to amend his sentence, specifically the jail-time credit, that the amendment constituted a violation of Criminal Rule 36, his Sixth Amendment rights, and further that because neither he nor his counsel were present for the amendment to his sentence, the trial court committed plain error.

{¶ 35} Krouskouph's two assignments of error essentially repackage and repeat the same arguments contained in his first four appeals.

{¶ 36} As we have previously found, the trial court first determined Krouskouph was not entitled to any jail-time credit on August 27, 2019. The trial court then corrected that entry with its September 9, 2019 entry, determining Krouskouph was entitled to 70 days of jail-time credit. Krouskouph did not appeal from either of these judgment entries.

{¶ 37} Under the doctrine of *res judicata*, " \* \* a final judgment of 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 any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which

resulted in that judgment of conviction, or on an appeal from that judgment." *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.

{¶ 38} The instant matter is no different. We find Krouskouph's current assignments of error are barred by res judicata. We therefore overrule both assignments of error.

{¶ 39} The judgment of the Muskingum County Court of Common Pleas is affirmed.

By King, J.,

Delaney, P.J. and

Baldwin, J. concur.