

[Cite as *State v. Payne*, 2011-Ohio-3930.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
Plaintiff-Appellee, : No. 10AP-1188
v. : (C.P.C. No. 07CR-613)
Ryan O. Payne, : (REGULAR CALENDAR)
Defendant-Appellant. :

D E C I S I O N

Rendered on August 9, 2011

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for
appellee.

Ryan O. Payne, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Defendant-appellant, Ryan O. Payne, appeals from a judgment of the Franklin County Court of Common Pleas that denied his motion seeking 161 days of jail-time credit. Defendant assigns a single error:

THE TRIAL COURT ERRED BY FAILING TO AWARD
APPELLANT THE CORRECT NUMBER OF JAIL TIME
CREDIT DAYS.

Because res judicata bars defendant's motion, we affirm.

I. Facts and Procedural History

{¶2} By indictment filed on January 24, 2007, defendant was charged with one count of vandalism, a felony of the fifth degree, in violation of R.C. 2909.05. Although defendant initially entered a not guilty plea, an entry of guilty plea form filed March 9, 2007 reflects defendant's decision to enter a guilty plea to vandalism with a jointly recommended sentence of community control and \$426 in restitution.

{¶3} The trial court accepted defendant's guilty plea, found him guilty and ordered a presentence investigation. Through a sentencing hearing conducted April 24, 2007, the court imposed a period of community control basic supervision for three years, with specified community control sanctions, and ordered defendant to pay restitution in the amount of \$426, all journalized in an entry of the same date.

{¶4} On July 10, 2007, the court declared defendant an absconder whose last reporting date to the probation department was April 27, 2007. The court suspended defendant's period of community control until such time as defendant was taken into custody or presented to the court for further disposition. After defendant was detained, the court restored defendant to probation, with the conditions originally imposed on April 24, 2007 remaining in effect. The court advised defendant his compliance with the terms of probation would result in his release on August 1, 2010.

{¶5} On October 15, 2008, the probation officer filed a request for revocation of probation and a statement of violations. In addition to other violations of the conditions of probation, defendant was indicted on September 23, 2008 for domestic violence, a felony of the third degree. In a judgment entry filed February 24, 2009, the trial court revoked defendant's probation, imposed a prison term of 11 months, and ordered defendant to

serve the days consecutively to the sentence imposed on the domestic violence charge. The court determined defendant was entitled to no days of jail-time credit.

{¶6} On October 19, 2010, defendant filed, pro se, a motion for jail-time credit. Defendant argued he was entitled to an additional 161 days of jail-time credit in the present case, asserting he was confined a total of 170 days prior to sentencing but received only 9 days of jail-time credit. The trial court denied defendant's motion on November 23, 2010. Defendant appeals, contending the trial court failed to properly award the jail-time credit to which he is entitled.

II. Assignment of Error

{¶7} R.C. 2967.191 entitles defendant to jail-time credit for "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." Although the state does not dispute the general principle, the state asserts res judicata bars defendant's motion filed more than a year after his probation revocation and sentencing.

{¶8} "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 conviction or on appeal from that judgment." *State v. McBride*, 10th Dist. No. 10AP-1152, 2011-Ohio-3030, ¶6, citing *State v. Szefcyk*, 77 Ohio St.3d 93, 1996-Ohio-337, syllabus. Due to res judicata, a defendant generally "may only contest a trial court's calculation of jail-time credit in an appeal from the judgment entry containing the allegedly incorrect calculation." *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, and *State ex rel. Rankin v. Ohio Adult parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, ¶10.

{¶9} If, however, the trial court's alleged mistake in calculating the jail-time credit is mathematical error rather than an erroneous legal determination, then a defendant may pursue his or her remedy through a motion before the trial court seeking correction of the alleged mistake. Id., citing *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 573, *State v. Eble*, 10th Dist. No. 04AP-334, 2004-Ohio-6721, ¶10, and *State v. Fincher* (Mar. 31, 1998), 10th Dist. No. 97APA08-1084. "To constitute an error of 'legal determination,' the error claimed must be, essentially, a substantive claim, as opposed to a mistake in simple arithmetic." *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840, ¶12.

{¶10} Here, defendant's motion raised an issue of an erroneous legal determination of jail-time credit. Defendant did not suggest the trial court incorrectly calculated, or made a mistake in arithmetic in determining, the number of days of jail-time credit due to him. Rather, defendant asserts he was "denied credit for a *category of time* to which he believed he was entitled" under R.C. 2967.191. (Emphasis sic.) *Chafin* at ¶12. As a result, "[t]he inclusion or exclusion of that period of time should have been raised during sentencing before the trial court or on direct appeal, not in a motion for correction." Id.

{¶11} Although defendant did not file a direct appeal from the trial court's judgment granting him 0 days of jail-time credit, he could have appealed that issue. Because he could have appealed what he now claims to be an erroneous determination, res judicata bars his raising the issue through either a motion filed in the trial court over a

year after the judgment declaring the days of jail-time credit or in appeal of the judgment denying the motion.

{¶12} Accordingly, defendant's assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
