

[Cite as *State v. Bush*, 2009-Ohio-6049.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-04-121
- vs -	:	<u>OPINION</u> 11/16/2009
CRAIG BUSH,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2005-12-2174

Robin N. Piper III, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for plaintiff-appellee

Craig Bush, 3129 Spring Grove Avenue, Cincinnati, OH 45225-1821, defendant-appellant, pro se

POWELL, J.

{¶1} Defendant-appellant, Craig Bush, appeals a judgment of the Butler County Court of Common Pleas awarding him 142 days of jail-time credit following the court's revocation of his probation and imposition of his original prison sentence. For the reasons set forth herein, we affirm the trial court's decision.

{¶2} On February 1, 2006, appellant entered guilty pleas to two felony counts of nonsupport of dependents. The trial court conducted a sentencing hearing on March 8, 2006, at the conclusion of which the court sentenced appellant to two consecutive nine-month prison terms. Appellant was judicially released on May 24, 2006, and subsequently sentenced to five years of community control.

{¶3} On January 29, 2008, a notice of community control violations was filed. On September 3, 2008, a magistrate found probable cause that the violations occurred and scheduled a probation revocation hearing for September 10, 2008. The hearing was continued to September 24, 2008, at which time the trial court found that appellant had violated the conditions of his community control, and revoked appellant's community control accordingly. The court thereafter sentenced appellant to two consecutive nine-month prison terms on his underlying nonsupport offenses, and credited appellant with 56 days of jail time at that time. Appellant did not file a direct appeal of his sentence.

{¶4} On December 1, 2008, appellant filed a motion for jail-time credit, arguing he was entitled to 198 days of credit rather than 130 days as indicated by the Ohio Department of Rehabilitation and Correction. On February 3, 2009, the trial court issued a nunc pro tunc entry supplementing its judgment entry of conviction, crediting appellant with 144 days of jail time. The trial court issued a second nunc pro tunc entry on May 5, 2009, correcting its previous entry to reflect 142 days of jail-time credit. The entry indicates that the trial court credited appellant with all of the time to which he argued he was entitled, save 56 days during which appellant was incarcerated in the Clermont County jail on a separate juvenile contempt matter.

{¶5} Appellant now appeals the trial court's determination of jail-time credit,

advancing two assignments of error for review.

{¶16} Assignment of Error No. 1:

{¶17} "APPELLANT, WHO WAS SENTENCED ON MULTIPLE CHARGES, WAS ENTITLED TO JAIL-TIME CREDIT FOR PRETRIAL DETENTION AGAINST ONE CONSECUTIVE TERM, WHICH INCLUDES HIS SENTENCES FOR HIS CONVICTIONS OF NON-SUPPORT. THE FAILURE TO AWARD JAIL-TIME CREDIT AGAINST ONE CONSECUTIVE TERM VIOLATES [R.C.] 2967.191 AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND SECTION 2, ARTICLE 1 OF THE OHIO CONSTITUTION." [SIC].

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT DENIED THE DEFENDANT-APPELLANT HIS CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW WHEN THEY DENIED HIM THE JAIL-TIME CREDIT HE SERVED PRIOR TO CONVICTION AND SENTENCE AND PRIOR TO TRANSPORTATION TO THE PLACE WHERE HE WAS TO BEGIN SERVING THE SENTENCE IMPOSED BY THE TRIAL COURT." [SIC].

{¶110} In both of his assigned errors, appellant appears to challenge the trial court's denial of his request for 56 days of jail-time credit for the time he was incarcerated in Clermont County on a separate juvenile contempt matter. We find appellant's argument as to this matter without merit.

{¶111} The doctrine of res judicata bars a defendant "from raising on appeal, or re-litigating any issue, claim, or defense that could have been raised at trial." *State v. Chafin*, Franklin App. No. 06AP-1108, 2007-Ohio-1840, ¶11. With respect to

motions for jail-time credit, Ohio courts have held that "res judicata applies to appeals from motions for jail-time credit, when the error claimed is one of legal determination, which could have been resolved during sentencing." *Id.*

{¶12} "To constitute an error of 'legal determination,' the error claimed must be, essentially, a substantive claim, as opposed to a mistake in simple arithmetic." *Id.* at ¶12. A defendant's argument that he was denied credit for a "category of time" to which he claims he is entitled is a substantive claim which should be raised during sentencing or on direct appeal. *Id.* In contrast, a mathematical error in the computation of time to be credited is ministerial, and therefore, properly subject to the remedy of a motion for jail-time credit. *Id.* at ¶13. Indeed, Ohio courts have held that Crim.R. 36 permits a trial court to "enter, nunc pro tunc to the date of the judgment of conviction, a judgment correcting a 'mistake' in the court's calculation of jail-time credit," but "provides no remedy" for errors of law concerning jail-time credit. *State v. Weaver*, Hamilton App. No. C-050923, 2006-Ohio-5072, ¶12, 16.

{¶13} In this case, appellant does not appear to contest the trial court's mathematical computation of jail time. Rather, appellant's central argument is that the trial court erred in failing to grant him credit for the time he was incarcerated in Clermont County on an unrelated juvenile contempt case. Ohio courts have held that "claims that a person was denied jail time credit because days were not properly classified as arising under the instant offense are 'substantive' claims, which must be brought to the trial court's attention before sentencing or raised on direct appeal." ¹

1. R.C. 2969.191 provides that "[t]he department of rehabilitation and correction shall reduce the stated prison term of a 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

State v. McLain, Lucas App. No. L-07-1164, 2008-Ohio-481, ¶12. See, also, *Chafin* at ¶14-15.

{¶14} The record demonstrates that appellant did not appeal the instant jail-time credit issue following his probation revocation and sentencing. Rather, appellant filed a motion for jail-time credit, setting forth the days to which he argued he was entitled credit. The record demonstrates that the trial court considered appellant's motion, and entered a nunc pro tunc entry indicating that appellant was entitled to 142 days of jail-time credit. The record demonstrates, and appellant does not challenge, that the trial court credited appellant with all of his requested jail time except for the 56 days during which he was incarcerated in Clermont County.

{¶15} While appellant argues that the trial court told him he would be credited with the 56 days at issue, and in fact credited appellant with the same in the court's original sentencing entry, it is unclear how or upon what information the trial court arrived at this figure. Moreover, a transcript of the sentencing hearing has not been provided to this court on appeal such that this court is able to review the matter.

{¶16} Notwithstanding appellant's contention, we find appellant's argument regarding his entitlement to jail-time credit for time served in Clermont County is barred by *res judicata*, as appellant failed to raise the argument on direct appeal. Appellant's first and second assignments of error are therefore without merit and are overruled.

{¶17} Judgment affirmed.

BRESSLER, P.J., and RINGLAND, J., concur.

competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term." (Emphasis added.)

