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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-19-0066

Jessie F. Williams

v.

State of Alabama

Appeal from Covington Circuit Court
(CC-12-225.71)

MINOR, Judge.

Jessie F. Williams appeals the Covington Circuit Court's denial of his nunc pro tunc motion. See Rule 26.12, Ala. R. Crim. P. Because no statute or rule authorizes this appeal, we dismiss it.

The factual background and procedural history of this case are convoluted. According to motions that Williams filed

in June 2018 (C. 48) and September 2019 (C. 52), the relevant facts and events are as follows:

- In December 1999, Williams was convicted of second-degree theft of property in case no. CC-99-290 and was sentenced to 18 years' imprisonment. Although Williams was granted parole on this sentence in January 2016, his parole was revoked. Williams reached his end-of-sentence ("EOS") date on that sentence in December 2017.

- In May 2012, Williams pleaded guilty to fraudulent use of a credit card in case no. CC-12-225 and was sentenced to 15 years' imprisonment. The circuit court split that sentence and ordered Williams to serve one year in prison followed by supervised probation. Williams completed the one year of imprisonment on that conviction in May 2013, but he remained incarcerated, still serving the 18-year sentence in CC-99-290.

- In October 2016, the circuit court revoked Williams's probation based on a new charge of possession of a controlled substance in case no. CC-17-68. Williams pleaded guilty to that charge, and the circuit court sentenced him to 40 months' imprisonment.

In December 2016, Williams moved the circuit court to correct its revocation order to reflect that his sentence would run concurrently with his sentences in case no. CC-99-290 and case no. DC-16-1153.¹ (C. 40-41.) The circuit court granted that motion in March 2017. (C. 42-43.)

In June 2017, Williams moved for an order that all of his

¹The record has no information about case no. DC-16-1153.

active sentences would co-terminate on the EOS date of his sentence in case no. CC-99-290. (C. 44-45.) The circuit court denied that motion in August 2017. (C. 47.)

Williams then filed a motion for application of jail credit in June 2018. (C. 48.) In that motion, Williams said he had a right to jail credit for "2 years, 6 months, and 2 days" that he said elapsed from the end of his one-year split in case no. CC-12-225 in May 2013 to the date he was granted parole in case no. CC-99-290 in January 2016. The circuit court granted that motion in August 2018. (C. 51.)

In September 2019, Williams filed a pro se "motion requesting a nunc-pro-tunc order." (C. 52-53.) In that motion, Williams asserted that, although the circuit court in March 2017 had ordered in that Williams serve his sentences concurrently, he was not, in fact, doing so. The circuit court denied that motion in October 2019. Williams appealed.

This Court issued an order for Williams to show cause why his appeal should not be dismissed as being from an unappealable order. In response, Williams asserted that he was not seeking the reversal of the denial of the nunc pro tunc order but is "truly seeking credit for time served [to] which he is entitled." (Williams's response, p. 2.)

Credit for time served is not properly before us because Williams did not raise the issue in the nunc pro tunc motion that is the basis of this appeal.² See, e.g., Eastland v. State, 677 So. 2d 1275, 1276 (Ala. Crim. App. 1996) ("This Court will not consider an argument raised for the first time on appeal; its review is limited to evidence and arguments considered by the trial court." Abbott v. Hurst, 643 So. 2d 589 (Ala. 1994)."). We are aware of no statute or rule authorizing an appeal from an order denying a nunc pro tunc motion under Rule 26.12, Ala. R. Crim. P. See Searcy v. State, 77 So. 3d 174, 177 (Ala. Crim. App. 2011) ("An appeal cannot be taken from an order subsequent to the judgment of conviction unless authorized by statute." Harris v. State, 44 Ala. App. 632, 632, 218 So. 2d 285, 286 (1969)."). Thus, Williams's appeal is due to be dismissed.

APPEAL DISMISSED.

Windom, P.J., and McCool and Cole, JJ., concur. Kellum, J., concurs in the result.

²The State asserts that if the credit issue were properly before us, it is moot because, the State says, the circuit court has given Williams the credit he seeks. If Williams has not, in fact, received the credit to which he thinks he has a right, he should present that claim in a properly filed petition for a writ of habeas corpus. See, e.g., Ex parte Collier, 64 So. 3d 1045, 1049 (Ala. 2010).