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ATTORNEY FOR APPELLANT:

BRYAN LEE CIYOU
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN GACHETT,)
)
Appellant/Respondent,)
)
vs.) No. 49A02-0801-CR-47
)
STATE OF INDIANA,)
)
Appellee/Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Nancy Broyles, Master Commissioner
Cause No. 49G05-0006-CF-112708

October 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent Steven Gachett appeals from the trial court's order revoking his probation. Gachett contends that the trial court erred in denying him credit time to which he is entitled. We affirm.

FACTS

On December 28, 2001, Gachett pled guilty to Class D felony criminal confinement and Class D felony sexual battery. That day, the trial court sentenced Gachett to three years of incarceration for each conviction, to be served concurrently, and ordered both sentences suspended to probation. On February 13, 2002, the State filed a notice of probation violation, and the trial court ordered that an arrest warrant be issued for Gachett. On April 11, 2002, the State filed an amended notice of probation violation.

On July 12, 2003, Gachett was arrested in Kentucky on an assault charge. On July 15, 2003, the State placed a detainer on Gachett, presumably pursuant to the arrest warrant of February 13, 2002. On February 8, 2005, after having been incarcerated in Kentucky since his arrest, Gachett pled guilty to the assault charge. Gachett was sentenced to seven years of incarceration and received credit for 566 days of presentence incarceration. In November of 2007, Gachett was returned to Indiana after completing his Kentucky sentence. On December 12, 2007, Gachett admitted that he had violated the terms of his probation, and the trial court ordered that he serve his suspended sentence and receive credit for twenty-two days previously served related to the charges.

DISCUSSION AND DECISION

Whether the Trial Court Erred in Calculating Credit Time

Gachett contends that the trial court erroneously failed to award him credit time toward his sentence in this case for time that he served in Kentucky pursuant to his assault conviction there.

Indiana Code Section 35-50-6-3 provides that a person imprisoned for a crime or confined awaiting trial or sentencing earns one day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing. Determination of a defendant's ... credit is dependent upon (1) ... confinement, and (2) the ... confinement being a result of the criminal charge for which sentence is being imposed.

Payne v. State, 838 N.E.2d 503, 510 (Ind. Ct. App. 2005) (citations and quotation marks omitted), *trans. denied*.

Here, although Gachett was subject to an Indiana detainer while serving his assault sentence in Kentucky, the incarceration was not in any way a result of his Indiana convictions. As such, Gachett fails to satisfy the second part of the test outlined in *Payne* and is not entitled to receive credit toward his Indiana sentence resulting from his Kentucky incarceration. Under the circumstances, awarding Gachett Indiana credit for his Kentucky incarceration would be to award him “double” credit to which he is not entitled. *See id.* (“It has been observed on several occasions that we should avoid construing the credit time statutes as permitting a defendant to claim ‘double or extra credit’ for pre-sentencing confinement.”).

Gachett's reliance on *Nutt v. State*, 451 N.E.2d 342 (Ind. Ct. App. 1983), is misplaced. In that case, Nutt was held by Texas authorities (after unrelated Texas charges were dropped) pursuant to an Indiana “hold.” *Id.* at 346. Because the incarceration in question was therefore due solely to an Indiana charge, Nutt was entitled

to receive Indiana credit for that time. *Id.* As previously mentioned, however, Gachett's Kentucky incarceration was due to a Kentucky charge that resulted in a Kentucky conviction. The trial court did not err in calculating Gachett's credit time.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.