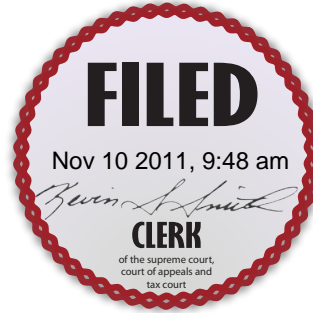


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DALE D. WING, JR., )

Appellant-Defendant, )

vs. )

No. 20A04-1103-CR-164

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE ELKHART CIRCUIT COURT

The Honorable Terry C. Shewmaker, Judge

Cause No. 20C01-0406-FB-80

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**November 10, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Dale D. Wing, Jr., appeals the trial court's denial of his petition for jail time credit. The State concedes that the trial court erroneously denied Wing's petition, but the State contends that the amount of credit time to which Wing is entitled is less than Wing asserts. As such, the only issue we consider in this appeal is the amount of credit time to which Wing is entitled. We reverse and remand with instructions for the court to credit 455 days against Wing's sentence.

## **FACTS AND PROCEDURAL HISTORY**

On May 16, 2004, Wing was arrested in LaGrange County on outstanding charges of armed robbery and fleeing law enforcement. On June 25, 2004, the State filed additional charges against Wing in Elkhart County for wholly unrelated offenses. On December 8, the Elkhart County Sheriff served a bench warrant on Wing while he was incarcerated in LaGrange County.

On June 28, 2005, the LaGrange Superior Court sentenced Wing to an aggregate term of twenty years. The court awarded Wing 408 days of jail time credit for his incarceration between May 16, 2004, and his date of sentencing.

On September 22, 2005, the Elkhart Circuit Court sentenced Wing to twenty years for his crimes in that county. The court ordered that sentence to run concurrent with his sentence in LaGrange County. However, the Elkhart Circuit Court did not award Wing credit for time served for his incarceration before the date of his sentence.

On March 3, 2011, Wing filed a motion for jail time credit. The court denied his request. This appeal ensued.

## DISCUSSION AND DECISION

The State concedes that Wing “is entitled to credit time, but not to the amount of days he claims.” Appellee’s Br. at 3. The dispute in this appeal, then, is only over the number of days to which Wing is entitled.<sup>1</sup> The State asserts that the proper starting point for the calculation of credit is December 8, 2004, the date the Elkhart County Sheriff served Wing with the bench warrant, and, thus, that Wing is entitled to 293 days credit time. Id.

Wing first contends that the proper starting point for his Elkhart County credit time is the date of his arrest in LaGrange County, May 16, 2004, but, in his reply brief, Wing amends his argument and avers that the proper starting date is June 25, 2004, the date on which he was charged for his crimes in Elkhart County. We agree with Wing’s amended argument that he is entitled to 455 days of credit time.

The proper starting point in Wing’s credit-time calculation is the date he began his pretrial incarceration on the Elkhart charges.<sup>2</sup> It has long been the law in Indiana that “[a] defendant who is awaiting trials on different crimes during the same period of time and who is convicted and sentenced separately on each should have full credit applied on each sentence.” Dolan v. State, 420 N.E.2d 1364, 1372 (Ind. Ct. App. 1981). “That is, a

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<sup>1</sup> We note that “where consecutive sentences are required, credit time cannot be earned against each of the . . . sentences.” Brown v. State, 907 N.E.2d 591, 595 (Ind. Ct. App. 2009). That rule is “to prevent the award of double credit time.” Id. (quotation omitted). Because Wing’s sentences were ordered to run concurrently, however, that rule does not apply here.

<sup>2</sup> In his initial brief, Wing asserted that he attempted to bail out of the LaGrange County jail following his May 16 arrest but was prevented from doing so because of a hold placed against him by Elkhart County officials. Wing does not support that assertion with citations to the record and, therefore, we do not consider it. See Ind. Appellate Rule 46(A)(8)(a).

defendant in jail on multiple charges accrues credit time towards the sentence imposed for each charge.” Brown v. State, 907 N.E.2d 591, 596 (Ind. Ct. App. 2009).

Here, Wing was arrested in LaGrange County on May 16, 2004, on allegations of crimes he had committed in that county. But there is no contention, and no reason to believe, that the LaGrange County charges were factually related to the subsequently filed Elkhart County charges. As such, his date of arrest in LaGrange County bears no relation to his sentence in Elkhart County. See, e.g., James v. State, 872 N.E.2d 669, 672 (Ind. Ct. App. 2007).

However, while Wing was incarcerated in LaGrange County, on June 25, 2004, the State filed its Elkhart County information. Thus, on that date, not before or after, Wing officially began serving time for his crimes in Elkhart County (while he concurrently served time for his crimes in LaGrange County). Between June 25, 2004, and his ultimate sentencing date for the Elkhart County crimes on September 22, 2005, a total of 455 days, Wing was incarcerated for the charges on which he was eventually sentenced. As such, the trial court erred in not awarding Wing credit for that period of time served. We reverse the court’s denial of Wing’s motion for jail time credit and remand with instructions that the court enter a credit award of 455 days.

Reversed and remanded with instructions.

RILEY, J., and MAY, J., concur.