

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-T-0088
CHRISTOPHER MARTIN CRETELLA,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2015 CR 00383.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *Ashleigh Musick*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Christopher Martin Cretella, pro se, PID: A681-379, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Christopher M. Cretella, appeals the trial court’s denial of his motion for jail-time credit. We affirm.

{¶2} In November 2015, Cretella pleaded guilty to robbery and assault on an officer and was sentenced to a total of four years. Cretella filed a pro se motion for jail-time credit, which was denied.

{¶3} His sole assignment of error asserts:

{¶4} “The trial court erred in failing to give appellant jail time credit against each of the concurrent terms in violation of R.C. 2967.191. The court’s action deprived appellant of equal protection under the Fourteenth Amendment to the United States Constitution.”

{¶5} Cretella avers he is entitled to jail-time credit in this case for time he served for a conviction in another case out of the Trumbull County Eastern District Court. Cretella claims he was serving probation for the TCEDC conviction when he committed the instant offenses, and as a result of the charges in this case, his probation was revoked in his TCEDC case. He also avers that the judge in his TCEDC case ordered his sentence to run concurrently with the sentence in this case that had yet to be imposed. Thus, Cretella asks for jail-time credit for 19 days of confinement pending his sentencing in his TCEDC case and for the entirety of his 130-day sentence after his TCEDC probation violation. His arguments fail for two reasons. First, there is nothing in the record supporting the factual basis for appellant’s argument.

{¶6} An appellant has the burden of showing the trial court erred based on reference to matters in the record. *State v. Ray*, 181 Ohio App.3d 590, 2009-Ohio-1395, 910 N.E.2d 34, ¶29 (5th Dist.). App.R. 9(A)(1) limits appellate records to the “original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases.” Documents attached to an appellate brief are not properly part of the appellate record, and we cannot consider an attachment unless it appears in the trial court’s record. *Id.*;

Willis v. Ohio Dept. of Transp., 2016-Ohio-1593, 50 N.E.3d 581, fn. 1 (4th Dist.), citing *Dagostino v. Dagostino*, 165 Ohio App.3d 365, 2006-Ohio-723, 846 N.E.2d 582, fn. 2.

{¶7} Similarly, factual assertions in a party's brief, but not in any submission filed with the trial court, do not constitute part of the record on appeal, and we are precluded from considering such assertions in deciding the merits of an appeal. App.R. 9(A); *Ray*, *supra*, at ¶29.

{¶8} Thus, the copies of the docket attached to Cretella's appellate brief as well as the factual assertions in the body of his brief regarding the amount of time he served for a probation violation and the reasons for his probation violation are not properly before us.

{¶9} Second, and assuming the sentencing court in Cretella's TCEDC case ordered his time to run concurrent with his sentence in this case as he alleges, the trial court lacked authority to do so since Cretella was not sentenced in this case until after the term in his other case was already completed. *State v. White*, 18 Ohio St.3d 340, 342–43, 481 N.E.2d 596, 598 (1985) (concluding that when a trial court imposes a sentence and orders it to be served consecutively with any future sentence, "such a sentence interferes with the discretion granted the second trial judge to fashion an appropriate sentence or sentences pursuant to the provisions of the Revised Code."); *State v. Marshall*, 5th Dist. Richland No. 14CA37, 2015-Ohio-1986, ¶ 24, *appeal not allowed*, 144 Ohio St.3d 1427, 2015-Ohio-5225, 42 N.E.3d 763, ¶¶24-25 (holding that the use of the past-tense term "imposed" in R.C. 2929.41(A) evinces legislative intent to allow a trial court to fashion a concurrent or consecutive sentence only in relation to a then-existing sentence.)

{¶10} Accordingly, Cretella's sole assigned error lacks merit, and the trial court's judgment is affirmed.

DIANE V. GREDELL, J.,
TIMOTHY P. CANNON, J.,
concur.