

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT

PORTEAGE COUNTY, OHIO
BENCH BRIEF

STATE OF OHIO, : OPINION

Plaintiff-Appellee, :
- vs - :
CASE NO. 2017-P-0074

KEITH B. DAVIS, :
Defendant-Appellant. :
:

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2012 CR 00236.

Judgment: Affirmed.

Victor Vigluicci, Portage County Prosecutor, and *Pamela Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Keith B. Davis, pro se, PID: A693-246, Trumbull Correctional Institution, 5701 Burnett Road, Leavittsburg, OH 44430 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Keith B. Davis, appeals from the September 28, 2017 judgment of the Portage County Court of Common Pleas, denying his pro se motion for oral hearing on his second motion for additional jail-time credit. For the reasons stated, we affirm.

{¶2} On June 21, 2012, appellant pleaded guilty to one count of assembly or possession of chemicals to manufacture a controlled substance, methamphetamine, a

felony of the third degree, in violation of R.C. 2925.041(A) and (C)(1). The trial court accepted the plea and found appellant guilty.

{¶3} On September 10, 2012, the court sentenced appellant to community control sanctions including 90 days in jail with a work release, supervision under the Adult Probation Department, a driver's license suspension, and a mandatory drug fine. Appellant did not pursue a direct appeal.

{¶4} Appellant subsequently violated the terms of his probation. Following a November 21, 2014 hearing, the trial court filed a judgment three days later finding that a more restrictive sanction was necessary and imposed upon appellant 180 days in jail, 12 months of intensive supervision under the Adult Probation Department, and 12 months attendance at two AA meetings per week.

{¶5} Appellant violated the terms of his probation again. On January 31, 2017, the trial court ultimately found that the community control sanctions were no longer sufficient, terminated them, sentenced appellant to two years in prison, and gave him 255 days of jail-time credit.

{¶6} On April 14, 2017, appellant filed his first motion for additional jail-time credit, which the trial court overruled five days later. Appellant did not appeal.

{¶7} Instead, on May 1, 2017, appellant filed his second motion for additional jail-time credit. On September 28, 2017, appellant filed a motion to set his second request for jail-time credit for an oral hearing, which the trial court denied that same date. Appellant timely appealed on October 24, 2017, and raises the following assignment of error:

{¶8} “The sentencing court failed to calculate and provide the correct amount of jail time credit.

{¶9} “A) The sentencing court denied defendant’s motion to Set Oral Hearing concerning the May 1, 2017 motion for jail time credit, therefor denying the jail time credit in which Mr. Davis is entitled to under R.C. 2967.191.

{¶10} “B) The sentencing of the trial court and the denial of the correct amount of jail time credit in which Mr. Davis is entitled to violates The Equal Protection Clause under the State and Federal Constitution.”

{¶11} Appellant argues the trial court erred in giving him 255 days of jail-time credit instead of 481.

{¶12} This court recently stated in *State v. Watson*, 11th Dist. Trumbull No. 2017-T-0047, 2017-Ohio-8631, ¶8:

{¶13} “A defendant is no longer required to contest a trial court’s calculation of his jail-time credit in a direct appeal of his conviction; even if no appeal is pursued, the issue can still be asserted in a post-judgment motion. *State v. Smith*, 11th Dist. Lake No. 2016-L-107, 2017-Ohio-4124, ¶11. ‘R.C. 2929.19(B)(2)(g)(iii) allows an offender “at any time after sentencing, (to) file a motion in the sentencing court to correct any error made in making a determination under division (B)(2)(g)(i) of this section.”’ *Id.* But, in interpreting R.C. 2929.19(B)(2)(g)(iii), *Smith* concluded that res judicata applies to successive post-judgment credit motions: ‘Simply because res judicata does not operate to bar an initial, post-sentence motion for jail-time credit, does not imply the doctrine is inapplicable to successive motions.’ (Emphasis sic). *Id.* at ¶12.”

{¶14} After the trial court denied appellant's first motion for additional jail-time credit, he had the opportunity to fully contest that decision in an appeal to this court. He did not. Therefore, res judicata bars him from raising the same issue in a successive motion or in an appeal from a successive motion.

{¶15} In any event, a review of the record reveals the trial court did not err in giving appellant 255 days of jail-time credit as appellant served 91 days in the Portage County Jail from October 15, 2012 to January 14, 2013, and 164 days of his 180-day sentence, November 21, 2014 to May 20, 2015. Following the original sentencing on September 10, 2012, the trial court imposed 90 days in jail. Appellant's jail term was continued and he served 91 days from October 15, 2012 to January 14, 2013. On November 24, 2014, the trial court found appellant violated his probation and ordered him to serve 180 days in jail. Appellant served 164 days of his 180-day sentence, November 21, 2014 to May 20, 2015. **Thus, by calculation, 91 + 164 = 255.** Appellant violated the terms of his probation again. Appellant did not face concurrent sentences and his dissatisfaction with the amount of jail-time credit given by the trial court on January 31, 2017 is not well-taken.

{¶16} The judgment of the Portage County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, P.J.,

CYNTHIA WESTCOTT RICE, J.,