

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-07-083

Appellee

Trial Court No. 05 CR 593

v.

Roger D. Newman

DECISION AND JUDGMENT

Appellant

Decided: June 19, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebers, Assistant Prosecuting Attorney, for appellee.

Robert Newman, pro se.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a November 27, 2007, judgment of the Wood County Common Pleas Court denying appellant's motion for jail time credit. For the reasons that follow, this court affirms the judgment of the trial court.

{¶ 2} On appeal, appellant sets forth the following sole assignment of error:

{¶ 3} "I. THE TRIAL COURT ERRORED [sic] WHEN IT DENIED THE APPELLANT JAILTIME CREDIT TOWARD EACH OF HIS CONCURRENT SENTENCES."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On March 20, 2006, appellant pled guilty to one count of aggravated possession of drugs, in violation of R.C. 2925.11(A) and (C)(1)(a), a felony of the fifth degree, and to one count of possession of cocaine, a violation of R.C. 2925.11(A) and (C)(4)(a), a felony of the fifth degree. The trial court accepted appellant's guilty plea and stayed further criminal proceedings. The trial court subsequently determined that appellant was eligible, pursuant to R.C. 2951.041, for intervention in lieu of conviction.

{¶ 5} On September 11, 2006, the trial court found appellant to be in violation of the intervention plan. The stay on criminal proceedings was lifted. On October 30, 2006, the trial court sentenced appellant to three years community control subject to specified conditions on both counts. Specifically, the trial court conditioned the community control sentence imposed on Count 1 upon appellant's successful completion of the SEARCH program.

{¶ 6} On June 4, 2007, the trial court determined that appellant had violated the conditions of community control by failing to successfully complete the SEARCH program. Given appellant's breach of the conditional community control requirement, the trial court sentenced appellant to concurrent terms of 11 months on each count. In sentencing appellant, the trial court, pursuant to R.C. 2967.191, credited 105 days for

time served on Count 1 in the SEARCH program and the Wood County Justice Center, and 22 days for time served on Count 2 in the Wood County Justice Center. On November 27, 2007, the trial court denied appellant's pro se motion for jail time credits. It is from this judgment that appellant now appeals.

{¶ 7} In the sole assignment of error, appellant argues that the trial court erred in failing to grant appellant an additional 83 days credit on Count 2, equaling a total desired jail-time credit of 105 days on each count. In support, appellant argues that, since the two counts are to be served concurrently, under *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, the trial court erred in crediting appellant with only 22 days on Count 2.

{¶ 8} Appellant argues that the trial court erred in failing to credit appellant on Count 2 for time served in the SEARCH program. The record clearly shows that the trial court imposed the SEARCH program condition upon appellant's sentence solely with respect to Count 1. The record further shows that appellant failed to successfully complete the SEARCH program.

{¶ 9} As noted by this court in *Bainter*, supra, at ¶ 9, appellant's confinement in the SEARCH program was "a distinct punishment." Moreover, as this court has previously held, "for a community control violation, any days in confinement count *only* toward the * * * offense for which the community control * * * was imposed." *State v. Mitchell*, 6th Dist. No. L-05-1122, L-05-1123, 2005-Ohio-6138, ¶8. (Emphasis added).

{¶ 10} This court previously determined in *State v. McLain*, 6th Dist. No. L-07-1164, 2008-Ohio-481, that a motion to correct jail time credit is an alternative to raising

the issue on direct appeal or in postconviction relief. The device is limited to scenarios involving a clerical mistake rather than a substantive claim.

{¶ 11} Failure to timely raise substantive jail time credit claims results in the issue being barred from further consideration by the doctrine of res judicata. In the instant case, appellant's motion was premised upon the allocation of jail credit days between multiple cases. This was not a clerical mistake. This was a substantive claim now barred by res judicata under *McLain*.

{¶ 12} After careful review of the record of evidence in conjunction with the controlling legal principles, this court finds appellant's assignment of error not well-taken.

{¶ 13} The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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