

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 12AP-445
 : (C.P.C. No. 02CR-10-5857)
 Bobby Summerall, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on December 31, 2012

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Bobby Summerall, pro se.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Bobby Summerall, appeals from a judgment of the Franklin County Court of Common Pleas denying his pro se "Motion Clarification of Jail Time Credit." For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} In September 2003, a jury found appellant guilty of rape and kidnapping, each a first-degree felony. At sentencing, the trial court imposed a ten-year term of imprisonment for the rape count, and declared appellant to be a sexual predator. On the issue of jail-time credit, the trial court engaged in the following exchange with appellant's counsel:

THE COURT: All right. How many days of jail time credit is he entitled to?

MR. THOMAS: Your Honor, that's in dispute. At the time he was on probation to the Court. There was a *capias* that went out in this case I believe on nine-twenty of two-thousand-two. I know for the probation case they tend to apply all the jail time credit towards the probation case in order to get it terminated. I think he would be entitled still to about nineteen days of jail time credit.

THE COURT: Nineteen days?

MR. THOMAS: Yes.

THE COURT: Okay. You don't have a problem with that, do you?

MR. DOMIS: No, Your Honor.

THE COURT: All right. I'll give him nineteen days of jail time credit.

(Sept. 17, 2003 Tr. 10-11.)

{¶ 3} In a timely appeal of his conviction, appellant argued that he received ineffective assistance of counsel at trial and challenged the admission of particular evidence. *State v. Summerall*, 10th Dist. No. 03AP-1024, 2004-Ohio-6599, ¶ 2. This court overruled his assignments of error and affirmed his conviction. *Id.* at ¶ 47.

{¶ 4} In the years that followed, appellant filed various *pro se* motions and petitions, including motions for jail-time credit in October 2003 and February 2009. In April 2012, appellant filed a motion seeking an order of clarification of jail-time credit. Referring to a prior jail-time-credit motion from March 2012, appellant argued that more than 206 days were missing from the trial court's sentencing entry. The state opposed appellant's motion, and stated that, though it received a copy of the March 2012 motion referred to by appellant, the state did not respond because the motion was never filed with the trial court.

{¶ 5} The trial court denied appellant's motion in a decision and entry filed on May 7, 2012. Appellant, acting *pro se*, now appeals.

II. DISCUSSION

{¶ 6} Appellant's brief identifies the following assignment of error for our review:

WHERE THE TRIAL COURT FAILED TO CALCULATE THE
CORRECT NUMBER DAYS OF JAIL TIME CREDIT
PURSUANT TO OHIO REVISED CODE 2967.191. (Sic.)

{¶ 7} At the outset, appellant's brief contains several deficiencies hindering our review. In addition to being largely indecipherable, appellant's brief lacks a statement of the issues, *see* App.R. 16(A)(4), a statement of the case, App.R. 16(A)(5), and an argument containing his contentions with respect to each assignment of error and the reasons in support of the contentions, *see* App.R. 16(A)(7). Appellant's brief is almost entirely contained within his statement of facts, which combines procedural history with his own legal arguments as well as descriptions of various jail-time credit cases. Nevertheless, while his supporting argument is unclear, appellant's assignment of error appears to challenge the trial court's denial of his motion for correction of jail-time credit.

{¶ 8} R.C. 2967.191 authorizes jail-time credit for "the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced." The statute "requires a connection between the jail-time confinement and the offense upon which the defendant is convicted." *State v. Thomas*, 10th Dist. No. 12AP-144, 2012-Ohio-4511, ¶ 6, citing *State v. Slager*, 10th Dist. No. 08AP-581, 2009-Ohio-1804, ¶ 25, citing *State v. Hunter*, 10th Dist. No. 08AP-183, 2008-Ohio-6962, ¶ 17.

{¶ 9} The trial court denied appellant's motion for jail-time credit based on our decision in *State v. Spillan*, 10th Dist. No. 06AP-50, 2006-Ohio-4788, wherein we held that the defendant's motion for jail-time credit was barred by the doctrine of res judicata. Under the doctrine of res judicata, a final judgment of conviction precludes a defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense that the defendant could have raised at the trial that resulted in the conviction or on appeal from that judgment. *State v. Szefcyk*, 77 Ohio St.3d 93, syllabus (1996).

{¶ 10} This court has consistently held that "the doctrine of res judicata applies to a jail-time credit motion that alleges an erroneous legal determination on jail-time credit." *Spillan* at ¶ 9, citing *State v. Lomack*, 10th Dist. No. 04AP-648, 2005-Ohio-2716, ¶ 12; *State v. Smiley*, 10th Dist. No. 11AP-266, 2012-Ohio-4126, ¶ 12. " '[A] defendant may only

contest a trial court's calculation of jail-time credit in an appeal from the judgment entry containing the allegedly incorrect calculation.' " *State v. Roberts*, 10th Dist. No. 10AP-729, 2011-Ohio-1760, ¶ 6, quoting *Lomack* at ¶ 11. However, " 'if the trial court makes a mathematical mistake, rather than an erroneous legal determination, in calculating the jail-time credit, then a defendant may seek judicial review via a motion for correction before the trial court.' " *Roberts* at ¶ 6, citing *State v. Eble*, 10th Dist. No. 04AP-334, 2004-Ohio-6721, ¶ 10.

{¶ 11} In this case, appellant failed to challenge the trial court's award of jail-time credit at sentencing or on a direct appeal from his conviction. Moreover, appellant's motion did not allege that the trial court committed any mathematical error in the calculation of jail-time credit so as to avoid the res judicata bar. Without explanation, appellant merely claimed that the trial court failed to include a period of 206 days in its jail-time credit calculation. In effect, appellant merely argued that "he was denied credit for a *category of time* to which he believed he was entitled." *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840, ¶ 12, citing *State v. Parsons*, 10th Dist. No. 03AP-1176, 2005-Ohio-457, ¶ 8. This court has recognized "[t]he inclusion or exclusion" of such a period of time "should have been raised during sentencing before the trial court or on direct appeal, not in a motion for correction." *Chafin* at ¶ 12, citing *Parsons* at ¶ 8. Thus, because appellant did not seek review of a mathematical mistake in the calculation of jail-time credit, "the doctrine of res judicata precluded his motion for correction." *See State v. McBride*, 10th Dist. No. 10AP-1152, 2011-Ohio-3030, ¶ 8.

{¶ 12} Accordingly, appellant's sole assignment of error is overruled.

III. CONCLUSION

{¶ 13} Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and DORRIAN, J., concur.
