

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

State of Ohio

Court of Appeals No. L-11-1063

Appellee

Trial Court No. CR0200801263

v.

Nathaniel Boles

**DECISION AND JUDGMENT**

Appellant

Decided: October 14, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
J. Christopher Anderson, Assistant Prosecuting Attorney,  
for appellee.

Nathaniel Boles, pro se.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Nathaniel Boles, appeals the March 7, 2011 judgment of the Lucas County Court of Common Pleas which denied appellant's motion for jail-time credit. Upon review, we affirm the court's judgment.

{¶ 2} An overview of the relevant facts is taken, in part, from appellant's direct appeal in this case. See *State v. Boles*, 6th Dist. No. L-08-1352, 2010-Ohio-1885. On September 29, 2006, the Lucas County Court of Common Pleas, in a separate case, case No. CR0200602058, ordered that a *capias* be issued for appellant's arrest for failing to appear. A *capias* arrest warrant was issued but not served on appellant until December 19, 2006. The crimes charged in the instant case were committed in conjunction with Toledo police officers' attempt to apprehend appellant on the *capias*. Appellant fled in a vehicle and then he gave chase on foot. After his arrest, his vehicle was inventoried and 170 pills, later identified as Percocet a Schedule II controlled substance, were seized. Appellant was charged with failure to comply with the order of a police officer and possession of drugs.

{¶ 3} On December 27, 2006, at the request of the prosecutor, a *nolle prosequi* was entered as to the charges. On February 1, 2008, once the pills were laboratory tested, appellant was indicted on the two charges. Following a bench trial, appellant was convicted on both counts and sentenced to a total of nine years of imprisonment.

{¶ 4} On appeal, this court reversed appellant's possession of drugs conviction and, thereafter, appellant was resentenced to four years of imprisonment. Following the December 21, 2010 resentencing, appellant filed a motion for jail-time credit. In his motion, appellant argued that due to a clerical error, the court omitted the dates from December 19 through December 27, 2006, when appellant was initially jailed on the

charges. On March 7, 2011, the trial court, without discussion, denied the motion. This appeal followed.

{¶ 5} Appellant, pro se, raises the following assignment of error:

{¶ 6} "Assignment of Error 1: The trial court committed plain error when not granting the appellant's motion for jail time credit whereby violating his due process rights under the 5th 6th and 14th Amendments of the United States Constitution and Article 1, Section 10 & 16 of the Ohio Constitution."

{¶ 7} In appellant's sole assignment of error he asserts that the trial court failed to add the eight days he was initially incarcerated when calculating his jail-time credit. In response, the state makes two arguments: first, that the argument is barred by the doctrine of res judicata; and second, that appellant received credit at sentencing for the eight days in the case for which the *capias* was ordered.

{¶ 8} The doctrine of res judicata prevents appellants from asserting issues in postconviction proceedings that were raised or could have been raised on direct appeal. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 96; *State v. Perry* (1967), 10 Ohio St.2d 175, paragraphs seven and nine of the syllabus. A motion to correct jail-time credit can be used as an alternative to filing a direct appeal only where the relief requested is due to a "clerical mistake," or mathematical error of the court. *State v. McLain*, 6th Dist. No. L-07-1164, 2008-Ohio-481, ¶ 11, citing *State v. Weaver*, 1st Dist. No. C-050923, 2006-Ohio-5072.

{¶ 9} Appellant argued below that the court's failure to add the eight days of incarceration was merely a clerical error. On appeal, the state contends that because the days appellant argues were not included is a "category of time" that the claim is substantive and, thus, barred by res judicata. In support, the state relies on *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840. In *Chafin*, the appellant argued that the trial court erred in failing to credit him with the days he was incarcerated on an escape charge. The court concluded that because the argument encompassed a specific period or category of time, it was substantive in nature. *Id.* at ¶ 15.

{¶ 10} In the present case, it is conceivable that, due to the lapse in time between appellant's arrest in December 2006, and the indictment in February 2008, the court overlooked the days when calculating the time. Because it could be construed as a clerical error, we will examine the merits of the argument.

{¶ 11} R.C. 2967.191 provides that the department of rehabilitation and correction must reduce the stated prison term of a prisoner by 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 \* \* \*." A trial court is charged with calculating the number of days to be credited. See *State v. Fair* (2000), 136 Ohio App.3d 184.

{¶ 12} Appellant's chief argument is that because the court counted the days at issue when considering whether his speedy trial rights had been violated, he must be entitled to jail-time credit for those days. In its September 11, 2008 decision denying appellant's motion to dismiss, the court did include in its calculation the eight days

appellant was held in December 2006; however, the court also noted that, at the time, appellant was also being held on other charges so the "triple-count" provision under R.C. 2945.71(C) did not apply.

{¶ 13} The state contends that appellant was credited with the eight days in the case for which the arrest warrant was issued, case No. CR0200602058. At sentencing in that case, appellant was given credit for 227 days of incarceration. The state asserts that a defendant is not entitled to multiple jail-time credit for different offenses. See *State v. Eble*, 10th Dist. Nos. 04AP-334, 04AP-335, 2004-Ohio-6721; *State v. Whitaker*, 4th Dist. No. 02CA2691, 2003-Ohio-3231.

{¶ 14} We first note that police were attempting to apprehend appellant on an arrest warrant and appellant had additional felony warrants when he committed the crimes charged in this case. Next, appellant was not released following the dismissal of the charges due to a holdover on a charge from Wood County, Ohio. Finally, the state claims that appellant already received credit for the eight days he alleged were omitted during sentencing in a separate case. Based on these facts, we find that the trial court did not err in denying appellant's motion for jail-time credit. Appellant's assignment of error is not well-taken.

{¶ 15} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

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JUDGE

Thomas J. Osowik, P.J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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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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