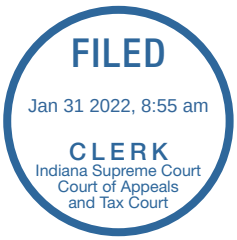
MEMORANDUM DECISION



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IN THE
COURT OF APPEALS OF INDIANA

Roosevelt Mack, et al.,
Appellants-Defendants,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2022

Court of Appeals Case No. 21A-CR-1391

Consolidated Appeal from the Cass Superior Court

The Honorable Lisa L. Swaim, Judge

Trial Court Cause Nos.
09D02-2003-F5-25 (Mack)
09D02-2004-F5-27 (Perry)

Bradford, Chief Judge.

Case Summary

[1] Roosevelt Mack and Ian Perry (collectively, "Appellants") were involved in separate incidents while serving indeterminate sentences in the Logansport Juvenile Detention Center ("the JDC"), resulting in both being charged with Level 5 felony battery resulting in bodily injury to a public safety official. After each of the incidents, Appellants remained committed to the JDC in relation to their respective unrelated juvenile cases, and each subsequently pled guilty to their respective Level 5 felony battery charges. At sentencing for those charges, the trial court did not award either credit for time spent in the JDC prior to sentencing, finding that all prior confinement had related to Appellants' juvenile cases and not the Level 5 battery charges. Appellants initiated this consolidated appeal, arguing that the trial court abused its discretion by denying them presentence credit time. We affirm.

Facts and Procedural History

[2] While Appellants raise the same contention of error in this consolidated appeal, the facts and procedural history for each differ and will therefore be discussed separately.

A. Mack

[3] On September 5, 2018, Mack was committed to the JDC for an indeterminate term in relation to juvenile cases involving what would be the following crimes if committed by an adult: robbery, resisting law enforcement, conversion,

battery causing bodily injury, criminal mischief, battery, and theft. He was also alleged to have committed ten probation violations.

[4] On January 21, 2020, Mack shoved a juvenile corrections officer, causing her to fall backwards and suffer pain. On March 20, 2020, the State charged Mack with Level 5 felony battery resulting in bodily injury to a public safety official. On May 10, 2021, Mack pled guilty to the Level 5 felony battery charge. At the time of both the guilty plea and the subsequent sentencing hearing, Mack was still committed to the JDC in connection with his unrelated juvenile cases. The trial court accepted Mack's guilty plea and conducted a sentencing hearing on June 2 and 3, 2021. On the second day of the sentencing hearing, the trial court was notified that, as of that date, Mack had completed his juvenile sentence and the DOC was relinquishing jurisdiction over Mack in his juvenile cases. At or about that time, a warrant/writ of attachment, which had been previously issued for Mack on April 23, 2020, was served upon Mack.

[5] Following the sentencing hearing, the trial court sentenced Mack to 1095 days, 547 days of which could be served on home detention if Mack qualified and was accepted for the placement. The trial court ordered that Mack's sentence would run consecutively to his juvenile confinement and did not award Mack any credit for any time confined prior to sentencing. Specifically, the trial court noted,

> As far as a warrant, if someone is in custody in the DOC whether it's juvenile DOC or adult DOC, there's another warrant that's placed in the case and they're still serving a sentence on the first

> case, then there's, they're still serving the sentence on the first case regardless of exactly when a warrant is issued. I mean, he … was supposed to finish his first case and he actually committed this offense while he was in custody on the first case and that was part of the reason why it was, it was a battery on a public safety official. So, the fact that he's serving another case and in, and in this case I've seen nothing that indicates that the first case has ended even yet. So, I, I have nothing before the Court that indicates that his first case has ever been finished, that he finished his programming in regard to that, that the Court in the other county that sentenced him has relinquished any control over him, and therefore, and this was actually committed while he was serving the sentence for that other county. And so, it would be, I'm ordering that the sentence in this case run consecutive to the sentence of, for the original, the original sentence he was serving when he committed this offense. And regardless of whether or not the jail wanted or did, you know, end up, whether or not they housed him here, he still had that other case to deal with even if, even if he was transported here for hearings or for anything else. I mean, he, that case is still running as far as I know. And because of that, this would be a consecutive sentence.

Mack's Tr. pp. 47–48.

B. Perry

[6] Perry was first committed to the DOC in 2014 for committing what would be two counts of child molesting and battery if committed by an adult. Shortly after he was released from confinement on that case, he was found to have committed what would be criminal mischief if committed by an adult and, later, what would be battery if committed by an adult. He was eventually confined to the JDC for an indeterminate term.

[7] On February 22, 2020, Perry struck a juvenile corrections officer three times with a closed fist in the back of the head, nose, and chest, causing the officer to bleed. On April 7, 2020, the State charged Perry with Level 5 felony battery resulting in bodily injury to a public safety official. On May 10, 2021, Perry pled guilty to the Level 5 felony battery charge. At the time of both the guilty plea and the subsequent sentencing hearing, Perry was still committed to the JDC in connection with his unrelated juvenile cases. The trial court accepted Perry's guilty plea and conducted a sentencing hearing on June 2 and 3, 2021. On the second day of the sentencing hearing, the trial court was notified that, as of that date, Perry had completed his juvenile sentence and the DOC was relinquishing jurisdiction over Perry in his juvenile cases. At or about that time, a warrant/writ of attachment, which had been previously issued for Perry on May 5, 2020, was served upon Perry.[1]

[8] Following the sentencing hearing, the trial court sentenced Perry to 1095 days, the last 365 days of which could be served on home detention if Perry qualified and was accepted for the placement. The trial court ordered that Perry's sentence would run consecutively to his juvenile confinement and did not award Perry any credit for any time confined prior to sentencing. Specifically, the trial court noted,

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[1] While Perry states on appeal that he "was never served with the actual warrant," Perry's Br. p. 16, the record indicates that the warrant/writ of attachment was served on Perry on June 3, 2021.

> I will not give the days of good time credit for any time from the time of the plea hearing to now … because those would be days attributable to time that Mr. Perry spent under the other commitment in the Juvenile [DOC]. So, Mr. Perry's sentence is consecutive to the sentence that he is currently serving and will finish serving today for the [JDC].… He's sentenced to 1,095 days. He may serve the last 365 days of the sentence on Community Corrections In-Home Detention at his grandparent's home if qualified and accepted[.]

Perry Tr. p. 60.

Discussion and Decision

[9] Appellants contend that the trial court erroneously denied them credit for time they were confined in relation to their Level 5 battery cases prior to sentencing. "Confined awaiting trial or sentencing has been construed to mean confined as a result of the charge for which the defendant is being sentenced." *Diedrich v. State*, 744 N.E.2d 1004, 1005 (Ind. Ct. App. 2001). "When a defendant is incarcerated on multiple unrelated charges at the same time, it is possible that a period of confinement may be the result of more than one offense." *Id.* In such a case, the defendant may receive a credit on each sentence. *Id.* However, we have previously concluded that in creating a statutory right to presentence credit time,

> the Legislature clearly intended the credit to apply only to the sentence for the offense for which the presentence time was served. Any other result would allow credit time for time served on wholly unrelated offenses. Under the criminal justice system, once convicted, the defendant must serve the sentence imposed

> for the offense committed. Credit time allowed by legislative grace toward a specific sentence clearly *must be for time served for the offense for which that specific sentence was imposed*.

Dolan v. State, 420 N.E.2d 1364, 1373 (Ind. Ct. App. 1981) (emphasis added). Stated differently, "the test is whether the confinement was the result of the criminal charge for which the sentence was imposed." *Glover v. State*, 177 N.E.3d 884, 886 (Ind. Ct. App. 2021). "Determination of a defendant's pretrial credit is dependent upon (1) pretrial confinement, and (2) the pretrial confinement *being a result of the criminal charge for which sentence is being imposed*." *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000) (emphasis added).

[10] In support of their contention that the trial court erroneously denied them presentence credit time, Appellants rely on a panel of this court's decision in *Purdue v. State*, 51 N.E.3d 432 (Ind. Ct. App. 2016). In *Purdue*, over the course of approximately three months, Purdue was arrested, held, and released on various actions which resulted in charges brought under three separate cause numbers. 51 N.E.3d at 433–34. In total, he was confined for 128 days prior to sentencing. *Id.* at 434. Purdue eventually pled guilty to some charges and others were dismissed. *Id.* At sentencing, the trial court awarded Purdue credit for three days of presentence confinement. *Id.* On appeal, Purdue challenged the amount of pretrial credit time which the trial court awarded him at sentencing. *Id.* at 435. Upon review, a panel of this court concluded that the trial court had erred by failing to grant Purdue credit for all 128 days he was confined prior to sentencing, stating:

> We agree that Purdue would not be entitled to credit time for days served on *wholly unrelated* offenses; however, those are not the facts before us. Purdue was charged under Cause Nos. 1030 and 1180 before he was arrested in connection with Cause No. 1246; therefore, all three causes were pending during his 128 days of confinement. [F]rom the record before us, it is clear that the trial court, as well as the parties, did not consider these three causes to be wholly unrelated. All of the significant pleadings referenced all three cause numbers.

Id. at 438 (emphasis in original). Appellants' reliance on *Purdue*, however, is misplaced, as it is distinguishable from the cases at issue in this appeal.

[11] As we recognized in *Purdue*, "'the Legislature clearly intended the credit to apply *only* to the sentence for the offense for which the presentence time was served. Any other result would allow credit time for time served on wholly unrelated offenses.'" *Id.* (quoting *Dolan*, 420 N.E.2d at 1373) (emphasis added). "[T]he test remains whether the confinement was the result of the criminal charge for which the sentence was imposed." *Glover*, 177 N.E.3d at 887 (citing *Stephens*, 735 N.E.2d at 284). It is clear from the record that Appellants were not confined prior to sentencing with relation to their Level 5 felony cases, but, rather, with relation to their wholly-unrelated juvenile cases. Therefore, if the trial court had awarded them credit for time confined prior to sentencing in their Level 5 felony cases, Appellants would have effectively received concurrent sentences, rather than the consecutive sentences imposed by the trial court, as the trial court would have effectively awarded them credit time for time served on wholly-unrelated offenses. *See Hall v. State*, 944 N.E.2d 538, 543 (Ind. Ct. App. 2011) ("If Hall were granted presentence credit on the Fulton

County sentence for the time during which he was accruing credit on the unrelated convictions, he would effectively receive concurrent sentences, rather than consecutive sentences, as ordered by the trial court in this case.") The trial court, therefore, did not err by denying Appellants' requests for credit for time confined prior to sentencing in the underlying felony cases.[2]

[12] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.

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[2] Given our conclusion that Appellants were serving their juvenile commitments at all of the relevant times coupled with the caselaw cited above, we are unconvinced by Appellants' assertions that an allegedly "secret" agreement between the Cass County Sheriff and the warden of the JDC to continue Appellants in their juvenile placement during the pendency of their Level 5 felony battery cases somehow impacted their substantial rights. Furthermore, to the extent that Appellants expand their original arguments relating to credit time in their joint Reply Brief to include claims that the State negligently delayed the proceedings, such claims are waived as they were not raised in their appellant's briefs. *See Chupp v. State*, 830 N.E.2d 119, 126 (Ind. Ct. App. 2005) ("An issue not raised in an appellant's brief may not be raised for the first time in a reply brief.").