

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Michael J. Poe,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 26, 2022

Court of Appeals Case No.  
21A-CR-1916

Appeal from the Kosciusko  
Superior Court

The Honorable Torrey J. Bauer,  
Judge

Trial Court Cause No.  
43D02-2103-F6-215  
43D02-2103-F6-216

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Defendant, Michael J. Poe (Poe), appeals the trial court's calculation of his credit time at sentencing.
- [2] We reverse and remand with instructions.

## ISSUE

- [3] Poe presents this court with one issue on appeal, which we restate as: Whether the trial court erred by failing to apply his accumulated presentence credit time toward the aggregate total sentence imposed for two consecutive sentences.

## FACTS AND PROCEDURAL HISTORY

- [4] On February 25, 2021, Poe was arrested for battering his father and intimidating his grandmother while Poe was at his grandmother's residence. He was transported to the Kosciusko County Jail. On February 27, 2021, without being formally charged, Poe was released on his own recognizance. The following day, February 28, 2021, Poe was again arrested for committing a battery on his mother and resisting law enforcement. He was again transported to the Kosciusko County jail, where he remained until the sentencing hearing.
- [5] On March 2, 2021, the State filed an Information in two separate Causes: in Cause No. 43D01-2103-F6-215 (F6-215), the State charged Poe with Class A misdemeanor and Level 6 felony domestic battery for the battery on his mother, and in Cause No. 43D01-2103-F6-216 (F6-216), the State charged Poe with Level 6 felony domestic battery with moderate bodily injury, Level 6 felony

intimidation, Class A misdemeanor domestic battery, Class A misdemeanor resisting law enforcement, and Level 6 felony domestic battery for the incidents involving Poe's father and grandmother.

[6] On June 16, 2021, Poe entered into a plea agreement with the State, which resolved both Causes in a single negotiated document. In the agreement, Poe agreed to plead guilty to domestic battery as a Level 6 felony in F6-215 and domestic battery as a Level 6 felony and resisting law enforcement as a Class A misdemeanor in F6-216. In return, the State agreed to dismiss the remaining charges and capped the aggregate executed sentence at two years, with the remaining sentencing options to be left to the discretion of the trial court. This sentence was to be served consecutively to Poe's sentence in Cause No. 43C01-2009-F5-703 (F5-703), a previous unrelated conviction. The presentence investigation report (PSI), prepared in anticipation of the sentencing hearing, indicated that Poe was entitled to jail time credit for his time served in F6-215 from March 1, 2021 to August 3, 2021, for a total of 156 actual days. In F6-216, the PSI concluded that Poe was entitled to jail time credit for his time served from February 25, 2021 to February 27, 2021, for a total of three actual days.

[7] On August 3, 2021, the trial court conducted the sentencing hearing and sentenced Poe in F6-216 to two-and one-half years for domestic battery with eighteen months executed, with the remainder suspended to probation, and one year for resisting law enforcement with three months executed, to be served consecutively to one another and to F6-215 and F5-703. The trial court

awarded Poe three days of jail time credit. In F6-215, the trial court sentenced Poe to two and one-half years for domestic battery, with three months executed and the remainder suspended to probation. The trial court awarded 156 days of jail time credit “against the executed sentence for the time that he has been incarcerated,” an amount that exceeded the executed sentence imposed. (Transcript Vol. II, p. 16). This sentence was ordered to be served consecutively to Cause F5-703.

[8] Poe now appeals. Additional facts will be provided if necessary.

## DISCUSSION AND DECISION

[9] Poe contends that the trial court erred in failing to apply his accumulated total credit time against the aggregate sentence of his two consecutive sentences in F6-215 and F6-216. Because “jail time credit is a matter of statutory right, trial courts generally do not have discretion in awarding or denying such credit.” *Roberts v. State*, 998 N.E.2d 743, 747 (Ind. Ct. App. 2013) (quoting *Molden v. State*, 750 N.E.2d 448, 449 (Ind. Ct. App. 2001)). To the extent that a claim involving credit time requires statutory interpretation, we engage in *de novo* review. *Temme v. State*, 169 N.E.3d 857, 859 (Ind. 2021).

[10] Indiana considers presentence confinement a form of punishment. *Purdue v. State*, 51 N.E.3d 432, 436 (Ind. Ct. App. 2016). Therefore, during such confinement, defendants earn credit time—which is defined as “the sum of a person’s accrued time, good time credit, and educational credit”—against their ultimate sentences. Ind. Code § 35-50-6-0.5(2). Credit time statutes are in

effect for the benefit of the defendant and should be “liberally construed in favor of those benefited by the statute.” *Williams v. State*, 759 N.E.2d 661, 664 (Ind. Ct. App. 2001). When a defendant is confined in multiple charges before being sentenced to concurrent terms, he is entitled to credit time against each separate term. *Stephens v. State*, 735 N.E.2d 278284 (Ind. Ct. App. 2000), *trans. denied*. When a defendant is sentenced to consecutive sentences, however, “credit time is deducted from the aggregate total of the consecutive sentences, not from the individual sentence.” *State v. Lotaki*, 4 N.E.3d 656, 657 (Ind. 2014). A defendant may not receive credit time for time served on a case that is “wholly unrelated” to the case for which he is being sentenced. *Dolan v. State*, 420 N.E.2d 1364, 1373 (Ind. Ct. App. 1981). Where cases are not “wholly unrelated” though, credit time technically earned in one cause can be applied to another. *Purdue*, 51 N.E.3d at 438.

[11] Poe maintains—and the State agrees—that his aggregate executed sentence for the two Causes, which were related and ran consecutively, was two years—three months in F6-215 and twenty-one months in F6-216. Because the trial court applied the entirety of his 156 days of jail time credit to a Cause in which it imposed only a three-month executed sentence, Poe contends that “a total of 111 actual days that [he] spent incarcerated awaiting the resolution of his related criminal matters were lost.” (Appellant’s Br. p. 12).

[12] In *Purdue*, the defendant was charged with multiple offenses in separate cause numbers, all of which were pending while he was being held in pretrial criminal confinement. *Purdue*, 51 N.E.3d at 433-34. Purdue entered into a plea

agreement with the State in which he pled guilty to one case in exchange for the State agreeing to dismiss the other causes. *Id.* at 434. The trial court imposed an executed sentence for the case in which Purdue pled guilty but did not apply any of the credit time which had been accrued based on the warrants that had been served in the causes that were dismissed. *Id.* at 435. On appeal, this court held that the trial court erred in failing to apply the credit time for the 128 days he spent in pretrial confinement while awaiting trial on the cause numbers that were dismissed under the terms of the plea agreement. *Id.* at 438. To support our holding, we explained that the credit can be applied only to the sentence for the offense for which the presentence time was served, because “[a]ny other result would allow credit time for time served on wholly unrelated offenses.” *Id.* As such, the *Purdue* court noted that it was not giving Purdue credit for wholly unrelated offenses because: (1) the causes were pending simultaneously during Purdue’s time in confinement, (2) the significant pleadings throughout the case referenced all the cause numbers, and (3) all causes were considered together during the give and take of the plea negotiations. *Id.* Accordingly, we remanded with instruction to deduct the accrued credit time from Purdue’s consecutive sentence. *Id.*

[13] We agree with Poe and the State that Poe was entitled to credit toward his aggregate sentence for the total amount he spent in presentence incarceration because Poe’s presentence confinement was the result of the two criminal charges for which the consecutive sentence was imposed. *See Stephens*, 735 N.E.2d at 284. As in *Purdue*, Poe’s cases were not wholly unrelated because he

was incarcerated during the pendency of both cases, the Causes were filed on the same day, negotiated together, and they were resolved by one plea agreement. The PSI discussed both Causes together. The hearings on both Causes were conducted together and the plea agreement capped the aggregate sentence for both Causes. The trial court subsequently imposed a consecutive sentence, adhering to the plea agreement's aggregate cap. Therefore, we conclude that the trial court erred in not granting Poe the additional 111 days of accrued time. *Purdue*, 51 N.E.3d at 438. Accordingly, we reverse and remand to the trial court with instructions to grant Poe the total credit time accrued during presentence incarceration in both Causes and to deduct that credit time from the aggregate of Poe's consecutive sentences in F6-215 and F6-216.

## CONCLUSION

- [14] Based on the foregoing, we hold that the trial court erred by not applying Poe's credit time toward his aggregate sentence in two consecutive sentences.
- [15] Reversed and remanded with instructions.
- [16] Robb, J. and Molter, J. concur