

## 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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Dustin Lee Walker,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

March 24, 2022

Court of Appeals Case No.  
21A-CR-1651

Appeal from the Vermillion Circuit  
Court

The Honorable Robert M. Hall,  
Judge

Trial Court Cause No.  
83C01-1803-F2-1

**Robb, Judge.**

## Case Summary and Issue

- [1] Dustin Walker appeals the trial court's calculation of his credit time at the time of his original sentencing and after the trial court revoked his probation and ordered him to serve his previously suspended sentence in the Indiana Department of Correction ("DOC"). Concluding the trial court did not err in its allocation of pretrial credit but failed to give Walker credit for time he spent incarcerated while awaiting his probation revocation hearing, we affirm in part and reverse and remand in part with instructions for the trial court to determine how much time Walker was incarcerated during the revocation of probation proceedings and to award Walker the appropriate amount of credit time.

## Facts and Procedural History

- [2] Walker was arrested and jailed on March 24, 2017, and later charged with operating a vehicle while intoxicated and operating a vehicle with a schedule I or II controlled substance, both Level 6 felonies, under cause number 83C01-1703-F6-64 ("F6-64"). Walker was incarcerated until posting bond on July 19, 2017. *See* Amended Appellant's Appendix, Volume 2 at 37.
- [3] On March 10, 2018, Walker was arrested and jailed on charges of operating a vehicle while intoxicated, a Level 6 felony, maintaining a common nuisance, a Level 6 felony, and dealing in methamphetamine, a Level 2 felony, under cause number 83C01-1803-F2-1 ("F2-1"). Walker remained incarcerated from March 10 until his sentencing hearing on April 3, 2019.

[4] Walker pleaded guilty to operating a vehicle while intoxicated under F6-64 and possession of methamphetamine, a Level 4 Felony as a lesser included offense, under F2-1. Walker's plea agreement stipulated that:

In [F6-64] the Defendant shall receive a sentence equal to time served as set forth as follows:

[F6-64]      3/24/17 through 7/19/17      118 days

[F2-1]      3/10/18 through 2/4/19      332 days

for a total period of 450 actual days incarceration. The Defendant is entitled to good time credit.

In [F2-1] the Defendant shall receive a seven (7) year sentence executed to the [DOC].

*Id.* at 30.

[5] Following the sentencing hearing on April 3, 2019, Walker's plea agreement was accepted, and pursuant to the agreement he was sentenced to 900 days under F6-64 and seven years under F2-1 to be served in the DOC. Walker was given credit for fifty-seven "actual days (02/05/2019 to 04/02/2019) . . . and good time credit for time served" under F2-1. *Id.* at 54. On August 4, 2020, Walker's sentence was modified, and he was placed on probation.

[6] On February 24, 2021, the State filed a motion to revoke Walker's probation, citing multiple failed drug tests and the failure to comply with other terms and conditions of his probation. *Id.* at 64-65. On March 4, 2021, Walker was

charged with unlawful possession of syringe, a Level 6 felony, under cause number 84D01-2103-F6-000747 (“F6-747”). The State then filed a second motion for revocation of probation due to this charge. According to Walker, he was detained on March 8, 2021, and held until his probation revocation hearing on June 3, 2021.

- [7] After the hearing, the trial court revoked Walker’s probation for the technical violations and ordered the remainder of his sentence to be executed. The trial court stated that Walker would “get credit for any time that [he’s] served[.]” Transcript, Volume 2 at 79. The abstract of judgment prepared following the revocation of Walker’s probation indicated that he was sentenced to 1,907 days to be served in the DOC; however, it did not show that Walker had any “accrued time” or “good time credit[.]” Supplement to Appellant’s Amended Appendix, Volume 2 at 3. After Walker’s probation was revoked, F6-747 was ultimately dismissed, *see id.* at 10, and he therefore received no credit time for time he spent incarcerated in relation to that charge. Walker now appeals.

## Discussion and Decision

- [8] Walker argues that the trial court failed to award him the appropriate amount of credit time. Specifically, Walker argues that: (1) the trial court erred when determining his pretrial accrued credit time at his original sentencing hearing;

and (2) the trial court failed to award him credit time for days served in jail during his probation revocation proceedings.<sup>1</sup>

- [9] Under Indiana Code section 35-50-6-4, a person who is not a credit restricted felon and who is imprisoned for a Level 6 felony is initially assigned to credit time Class A. Persons assigned to Class A earn one day of good time credit for each day they are imprisoned awaiting trial or sentencing. Ind. Code § 35-50-6-3.1(b). Because credit time is a matter of statutory right, trial courts do not have discretion in awarding or denying such credit. *James v. State*, 872 N.E.2d 669, 671 (Ind. Ct. App. 2007). On appeal, it is the appellant’s burden to show that the trial court erred. *Gardner v. State*, 678 N.E.2d 398, 401 (Ind. Ct. App. 1997).
- [10] First, Walker argues that the trial court “inexplicably” awarded him only fifty-seven days of pretrial credit time when originally sentencing him. Brief of

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<sup>1</sup> The State argues that Walker has waived any appellate claim to credit time by failing to timely appeal the issue. However, our supreme court has indicated that the untimely filing of a notice of appeal is not a jurisdictional defect depriving the appellate courts of the ability to entertain an appeal. *In re Adoption of O.R.*, 16 N.E.3d 965, 971 (Ind. 2014). “The Court may, upon the motion of a party or the Court’s own motion, permit deviation from [the Appellate] Rules.” Ind. Appellate Rule 1. If the right to appeal has been forfeited, the question is whether there are extraordinarily compelling reasons why this forfeited right should be restored. *O.R.*, 16 N.E.3d at 971. Because the award of credit time is a statutory right that cannot be denied, we are compelled to address Walker’s arguments on the merits. Further, we have held

that *any* time a defendant whose liberty has been restricted through imprisonment or confinement requests a trial court to reconsider its previous award of jail time credit, and the defendant’s motion in this regard identifies a sufficient factual basis for his eligibility, the court must address the merits of such motion.

*Weaver v. State*, 725 N.E.2d 945, 948 (Ind. Ct. App. 2000). Walker clearly identifies a sufficient factual basis by arguing his time spent incarcerated while awaiting his probation revocation went unawarded.

Appellant at 7. However, Walker's plea agreement dictated the allocation of Walker's pretrial credit time, stating the following:

In [F6-64] the Defendant shall receive a sentence equal to time served as set forth as follows:

[F6-64]	3/24/17 through 7/19/17	118 days
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[F2-1]	3/10/18 through 2/4/19	332 days
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for a total period of 450 actual days incarceration. The Defendant is entitled to good time credit.

In [F2-1] the Defendant shall receive a seven (7) year sentence executed to the [DOC.]

Am. Appellant's App., Vol. 2 at 30.<sup>2</sup> The trial court's sentencing order also stipulated that under F2-1, Walker "served 57 actual days (02/05/2019 to 04/02/2019) prior to sentencing and shall be given credit and good time credit for time served." *Id.* at 54.

[11] Walker's plea agreement clearly allocates 450 days of his credit time to F6-64 while the remaining fifty-seven days go toward his F2-1 sentence. When a person has been incarcerated in connection with multiple matters and the trial court imposes consecutive sentences, the "credit time cannot be [applied]

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<sup>2</sup> Walker received a sentence of 900 days under F6-64, *see* Supp. Appellant's Am. App., Vol 2 at 19, or "equal to time served" as laid out in the plea agreement, Am. Appellant's App., Vol. 2 at 30.

against each of the underlying sentences.” *Purdue v. State*, 51 N.E.3d 432, 437 (Ind. Ct. App. 2016). Rather, the trial court must apply the credit time only once. *See State v. Lotaki*, 4 N.E.3d 656, 657 (Ind. 2014). To do otherwise would result in multiplying the offender’s credit time, “effectively enabl[ing] him to serve part of the consecutive sentences concurrently.” *Id.* Therefore, the trial court did not err in allocating Walker’s pretrial credit time and did not fail to give him credit time to which he was entitled.

[12] Next, Walker argues that the trial court erred by failing to award him additional credit time when his probation was revoked. Walker contends that after he was arrested under cause F6-747, he remained incarcerated until his probation revocation hearing on June 3, 2021, and that he should have received credit time for that period of incarceration. We recently held that trial courts must award credit time for time accrued while imprisoned awaiting revocation proceedings. *See Niccum v. State*, 21A-CR-1533 at \*2 (Ind. Ct. App. Dec. 20, 2021).

[13] Here, the record supports Walker’s contention that he spent time incarcerated awaiting the revocation of his probation;<sup>3</sup> however, the abstract of judgment for F2-1 after his probation was revoked showed that he was not awarded any

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<sup>3</sup> The record shows that Walker was detained on March 8, 2021 and was in custody for his revocation hearing on June 3. The record is not clear as to whether Walker remained incarcerated for the entirety of this time.

“accrued time” or “good time credit[.]”<sup>4</sup> Supp. Appellant’s Am. App., Vol 2 at 3. Therefore, we conclude Walker was never awarded accrued credit time to which he had a statutory right.

## Conclusion

[14] We conclude the trial court did not err in its allocation of pretrial credit time but failed to give Walker credit for time he spent incarcerated awaiting his probation revocation. Accordingly, we affirm in part and reverse and remand in part with instructions for the trial court to determine how much time Walker spent incarcerated awaiting the revocation of his probation and to award Walker the appropriate amount of credit time.

[15] Affirmed in part, reversed and remanded in part with instructions.

Riley, J., and Molter, J., concur.

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<sup>4</sup> Again, we note that Walker’s charge under F6-747 was dismissed, Supp. to Appellant’s Am. App., Vol. 2 at 10, and therefore, credit time for the time he spent incarcerated was not allocated toward F6-747.