

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Billie J. Minix,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 13, 2021

Court of Appeals Case
21A-CR-1121

Appeal from the Pulaski Superior
Court

The Honorable Crystal A. Kocher,
Judge

Trial Court Cause Nos.
66D01-1807-F6-104
66D01-1812-F6-139

Crone, Judge.

Case Summary

- [1] Billie J. Minix appeals the aggregate sentence imposed in cause numbers 66D01-1807-F6-104 (Cause 104) and 66D01-1812-F6-139 (Cause 139), arguing that his sentence is illegal because the trial court failed to award him all the presentence credit time that he is entitled to. Concluding that the trial court properly applied presentence credit time, we affirm. However, the trial court's May 21, 2021 order on credit time contains a scrivener's error, and we remand with instructions to correct it.

Facts and Procedural History

- [2] On July 27, 2018, the State charged Minix in Cause 104 with two counts of battery, one as a level 6 felony and one as a class A misdemeanor. On August 3, 2018, Minix was arrested, and the next day, he posted bond and was released.¹
- [3] On November 16, 2018, while Minix was out on bond in Cause 104, he was arrested for level 3 felony battery with serious bodily injury in cause number 66-C01-1811-F3-16 (Cause 16). Cause 16 is pending before the Pulaski Circuit Court and is not part of this appeal. On November 26, 2018, while Minix was incarcerated under Cause 16, he was charged in Cause 139 with battery against a public safety official, criminal mischief, and resisting law enforcement for

¹ In its order on credit time, the trial court found that Minix accumulated two days of presentence accrued time from August 3 to August 4, but Minix maintains that he was in jail from August 6 to 8. Given that both the trial court and Minix agree that he is entitled to two days of presentence accrued time in Cause 104, the discrepancy does not affect the outcome in this case.

allegedly damaging a kiosk and refusing to obey the commands of the officer present. Addendum to Appellant's Br. at 3-4.

[4] On November 27, 2018, the State filed a motion to revoke bond in Cause 104. The following day, the trial court revoked Minix's bond, issued a warrant, and ordered that Minix "be held without bond for the remainder of these proceedings." Appellant's App. Vol. 2 at 40. On November 30, 2018, the warrant was served on Minix, who was still incarcerated under Cause 104. *Id.* at 41.

[5] On May 10, 2021, the parties entered into a plea agreement in Causes 104 and 139. *Id.* at 106. Pursuant to the plea agreement, Minix pled guilty to level 6 felony battery in Cause 104 and criminal mischief and resisting law enforcement in Cause 139, and the State agreed to dismiss the remaining charges in those causes. The trial court sentenced Minix in Cause 104 to an executed sentence of 912 days, to be served consecutive to the sentence in Cause 139. *Id.* at 111. The trial court sentenced Minix in Cause 139 to consecutive executed sentences of 180 days for criminal mischief and 365 days for resisting law enforcement.² *Id.* at 113-14. The trial court did not have the

² The plea agreement mistakenly places the level 6 felony battery conviction under Cause 139 and the criminal mischief and resisting law enforcement convictions under Cause 104. Appellant's App. Vol. 2 at 106; *see also* Appellee's Br. at 6.

information to calculate Minix’s credit time and invited the parties to submit their credit time requests after the hearing.³

[6] Minix, pro se, filed a motion for jail time credit, stating that he was arrested on November 16, 2018. *Id.* at 115. The State’s notice of Minix’s incarceration indicated that the days Minix spent incarcerated following his November 16, 2018 arrest in Cause 16 were served under that cause and further indicated that the State had no objection to those days being allocated as the trial court saw fit. *Id.* at 116. On May 21, 2021, the trial court issued an order on credit time, finding that Minix was placed in custody in Cause 16 on November 16, 2018, and been held on that cause continuously since that time, and thus all the credit time accumulated by Minix from November 16, 2018, to January 11, 2020, was under Cause 16. *Id.* at 117. We observe that the date of January 11, 2020, should read May 10, 2021.⁴ The trial court also found that the charges in Cause 139 occurred while Minix was incarcerated and being held under Cause 16. Appellant’s App. Vol. 2 at 117. The court found that Minix accumulated two

³ “Credit time” is defined as “the sum of a person’s accrued time, good time credit, and educational credit.” Ind. Code § 35-50-6-0.5(2). “Accrued time” is defined as “the amount of time that a person is imprisoned or confined.” Ind. Code § 35-50-6-0.5(1). “Good time credit” is defined as the “reduction in a person’s term of imprisonment or confinement awarded for the person’s good behavior while imprisoned or confined.” Ind. Code § 35-50-6-0.5(4). The amount of credit time is primarily determined by the person’s credit time classification. A person, such as Minix, who was not a credit restricted felon and was sentenced for a level 6 felony would have been assigned to class A. Ind. Code § 35-50-6-4(a). A person who commits an offense after June 30, 2014, and is assigned to class A, earns one day of good time credit each day the person is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3.1(b).

⁴ In its appellee’s brief, the State explains that the January 11, 2020 date is incorrect and that “Minix’s credit time in [Cause 16] should extend to May 10, 2021, since he was incarcerated under that cause continuously until this date.” Appellee’s Br. at 8 n.3.

days of accrued time on Cause 104 from August 3 to August 4, 2018. *Id.* The court found that Minix would receive two days of accrued time, plus two days of good time credit, for a total of four days credit time to be applied to Minix's sentence in Cause 104, and zero days of credit time in Cause 139. *Id.* This appeal ensued.

Discussion and Decision

- [7] Minix argues that the trial court erred by finding that the days he spent incarcerated after November 30, 2018, were accumulated in Cause 16 rather than Cause 104. Specifically, he contends that the days he spent incarcerated after November 30, 2018, should be applied to his sentence in Cause 104 because his bond was revoked in that cause and he was served with the warrant for his rearrest on that date. He also asserts that the parties discussed his credit time at the sentencing hearing and that the discussion shows that there was an understanding that his presentence credit time would be applied to the sentence that was being imposed. Finally, he argues that the State had no objection to the allocation of his presentence credit time.
- [8] “Under the Indiana Penal Code, prisoners receive credit time that is applied to reduce their term of imprisonment.” *Rudisel v. State*, 31 N.E.3d 984, 988-89 (Ind. Ct. App. 2015) (quoting *Robinson v. State*, 805 N.E.2d 783, 789 (Ind. 2004)). “Indiana treats pre-sentence imprisonment as a form of punishment.” *Purdue v. State*, 51 N.E.3d 432, 436 (Ind. Ct. App. 2016). Thus, “[t]he time spent in confinement before sentencing applies toward a prisoner’s fixed term of

imprisonment.” *Rudisel*, 31 N.E.3d at 989. “Because pre-sentence jail time credit is a matter of statutory right, trial courts generally do not have discretion in awarding or denying such credit.” *Perry v. State*, 13 N.E.3d 909, 911 (Ind. Ct. App. 2014). Whether a defendant is entitled to pretrial or presentence credit time is based on two criteria: whether the defendant was in pretrial confinement and whether that confinement was “a result of the criminal charge for which sentence is now imposed.” *Alvarez v. State*, 147 N.E.3d 374, 377-78 (Ind. Ct. App. 2020) (citing *Sweeney v. State*, 704 N.E.2d 86, 109 (Ind. 1998), *cert. denied* (1999)), *trans. denied*. Put another way, “credit is to be applied for confinement time that is a result of the charge for which the defendant is being sentenced. In essence, *each court is responsible only for crediting time in confinement as a result of the charge for which that court is sentencing the defendant.*” *Carneal v. State*, 859 N.E.2d 1255, 1258 (Ind. Ct. App. 2007) (quoting *Willoughby v. State*, 626 N.E.2d 601, 602-03 (Ind. Ct. App. 1993)) (emphasis in *Carneal*), *trans. denied*. On appeal, the appellant bears the burden to show the trial court erred. *Harding v. State*, 27 N.E.3d 330, 332 (Ind. Ct. App. 2015).

[9] Here, the record shows that Minix was arrested and incarcerated on November 16, 2018, for the crimes charged in Cause 16, and he remained continuously incarcerated after the date. We are unpersuaded that the revocation of his bond in Cause 104 following his incarceration for the charges in Cause 16 changes the reason for his incarceration. We note that Minix does not contend that he is entitled to credit time for his incarceration in both causes, nor would he be. Minix committed the crimes in Cause 16 while he was out on bond in Cause

104, and therefore the sentences in those cause numbers are statutorily required to be served consecutively. Ind. Code § 35-50-1-2(e). Where consecutive sentencing is imposed, credit time is deducted from the aggregate total of the consecutive sentences, and not from an individual sentence. *State v. Lotaki*, 4 N.E.3d 656, 657 (Ind. 2014).⁵ Thus, if and when Minix is convicted and sentenced in Cause 16, his presentence credit time from November 16, 2018, to May 10, 2021, will be applied to the sentence in that cause. Minix contends that it is sheer speculation that he will get credit for his presentence incarceration in Cause 16 because those charges could be dismissed. However, Cause 16 was not before the trial court, and “*each court is responsible only for crediting time in confinement as a result of the charge for which that court is sentencing the defendant.*”⁶ *Carneal*, 859 N.E.2d at 1258. Presentence credit time is applied only when the defendant’s confinement was “a result of the criminal charge for which sentence is now imposed.” *Alvarez*, 147 N.E.3d at 377-78.

[10] Given the specific facts of this case, we conclude that the trial court did not err by declining to apply presentence credit time to Minix’s sentence. Therefore, we affirm Minix’s sentence. We also remand with instructions to correct the May 21, 2021 order on credit time so that it indicates that Minix’s presentence

⁵ However, if a person who is incarcerated awaiting trial on more than one charge is sentenced to concurrent terms for the separate crimes, he is entitled to receive credit time applied against each separate term. *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied*.

⁶ For the same reason, we are unpersuaded by Minix’s arguments that the parties seemed to agree at the sentencing hearing that the presentence credit time would be applied to Minix’s sentence and that the State had no objection to the court allocating his presentence credit time as the court saw fit.

accrued time under Cause 16 was accumulated from November 16, 2018, to May 10, 2021.

[11] Affirmed and remanded.

Bradford, C.J., and Tavitas, J., concur.