

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jason Paul Duety,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 30, 2021

Court of Appeals Case No.
21A-CR-1015

Appeal from the Hancock Superior
Court

The Honorable Dan E. Marshall,
Judge

Trial Court Cause No.
30D02-1808-F6-1891

Pyle, Judge.

Statement of the Case

- [1] Jason Paul Duety (“Duety”) appeals following the revocation of his probation. Duety argues that the trial court erred by failing to apply credit time when sentencing him upon the revocation of his probation. Concluding that the trial court did not err, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court erred by failing to apply credit time when sentencing Duety upon the revocation of his probation.

Facts

- [3] In August 2018, the State charged Duety with Level 6 felony possession of cocaine, Class A misdemeanor possession of a controlled substance, and Class A misdemeanor driving while suspended. In September 2019, Duety pleaded guilty to the Level 6 felony possession of cocaine charge in exchange for the State’s dismissal of the two misdemeanor charges. The trial court imposed a sentence, pursuant to the parties’ agreement, of 730 days, with 130 days executed at the county jail and 610 days suspended to probation. The trial court also ordered Duety to complete a substance abuse evaluation and substance abuse treatment.
- [4] Five months later, on February 19, 2020, the State filed a notice of probation violation, alleging that Duety had violated probation by testing positive on a drug screen for opiates, fentanyl, and cannabinoids and by failing to comply

with treatment. That same day, the trial court issued a warrant for Duety's arrest without bond ("Hancock County arrest warrant").

[5] A few months later, on May 9, 2020, Duety was arrested in Marion County for the commission of new offenses alleged to have occurred that same day. The State charged Duety in Marion County with Level 5 felony possession of a narcotic drug, Level 5 felony intimidation, Level 6 felony criminal recklessness, two counts of Level 6 felony pointing a firearm, Class A misdemeanor domestic battery, Class B misdemeanor possession of marijuana, and Class A misdemeanor carrying a handgun without a license ("Marion County case").¹ That same day, Duety was served with the Hancock County arrest warrant. The Marion County trial court set a surety bond of \$200,000 in Duety's Marion County case. The Marion County trial court noted that "[u]pon [s]atisfaction [o]f [this] [b]ond, [Duety] [was being] [h]eld [f]or [an][o]ther [a]gency[.]" (App. Vol. 2 at 66).

[6] On January 7, 2021, Duety filed, in his Marion County case, a petition for bond reduction. On January 13, 2021, the Marion County trial court granted Duety's request and reduced Duety's bond to a cash bond of 10% of \$75,000. The Marion County trial court again noted that "[u]pon [s]atisfaction [o]f [this]

¹ Duety's Marion County case was filed under cause number 49G21-2005-F5-015849. Pursuant to Indiana Evidence Rule 201(5), we take judicial notice of in Duety's Marion County case chronological case summary ("CCS") that is contained in Odyssey. That CCS reveals that the charges for Level 5 felony possession of a narcotic drug and Class B misdemeanor possession of marijuana were dismissed in March 2021. Additionally, the CCS indicates that, pursuant to Duety's request, the trial court vacated Duety's jury trial in his Marion County case and has set a guilty plea hearing for November 1, 2021.

[b]ond, [Duety] [was being] [h]eld [f]or [an][o]ther [a]gency[.]” (App. Vol. 2 at 72).

[7] One week later, on January 14, 2021, Duety filed, in this Hancock County case, a petition for release pending his probation revocation hearing. In his motion, Duety noted that he had been arrested pursuant to the Hancock County warrant on May 9, 2020 and had been held in jail since that date. Duety also indicated that the “Hancock County Sheriff ha[d] declined to transport [Duety] due to Covid-19 restrictions.” (App. Vol. 2 at 35). The following day, on January 15, 2021, the Hancock County trial court ordered that “the existing [Hancock County] arrest warrant for [Duety] in this cause [to] be recalled.” (App. Vol. 2 at 37).

[8] Duety remained incarcerated in the Marion County Jail after the Hancock County arrest warrant had been recalled. On January 19, 2021, Duety posted bond in his Marion County case. That same day, the Marion County trial court released Duety from the Marion County Jail on bond.

[9] A few days later, on January 26, 2021, the State filed a second notice of probation violation in the Hancock County case, alleging that Duety had violated probation by committing the new offenses alleged in Duety’s Marion County case. As an attachment to this second probation violation notice, the State included the charging information and probable cause affidavit from Duety’s Marion County case. That same day, the trial court issued a warrant for Duety’s arrest without bond. This second warrant was served and Duety

was arrested on January 28, 2021. However, at that time, the trial court, “by agreement of [the] parties[,]” set a “cash bond” of \$200. (App. Vol. 2 at 15) (modified to lower case). That same day, January 28, 2021, Duety posted the \$200 cash bond.²

[10] On April 28, 2021, prior to Duety’s probation revocation hearing, Duety filed a motion for credit time. In his motion, Duety requested the Hancock County trial court to apply 251 days of credit time for the time he spent incarcerated in the Marion County Jail. Specifically, Duety sought credit time from May 9, 2020, which was the date he “was taken into custody . . . based in part upon [the Hancock County arrest] warrant” to January 15, 2021, which was the date the Hancock County trial court recalled the arrest warrant. (App. Vol. 2 at 51). Duety asserted that Hancock County had declined to extradite him on the warrant because of Covid-19. Additionally, Duety “acknowledge[d] that he [wa]s not entitled to the same credit time on this case and any unrelated case,” and he asserted that he had not received credit for that 251-day period in any other case. (App. Vol. 2 at 53).

[11] On April 30, 2021, the trial court held a probation revocation hearing on the first probation revocation notice that had been filed in February 2020.³ Duety

² The CCS indicates that the \$200 bond was “POSTED @ HCSD” on January 28, 2021 and “Received by [the] Clerk” on February 1, 2021. (App. Vol. 2 at 3).

³ At the probation hearing, the State indicated that it was not prepared that day to pursue the allegation from the second probation revocation notice, and the trial court scheduled a hearing for the second probation revocation notice for August 27, 2021. We take judicial notice of the CCS from this Hancock County case and note that the State dismissed the second 2021 probation violation notice during that August hearing.

admitted to violating his probation. Specifically, Duety admitted that he had violated probation by testing positive for opiates, fentanyl, and cannabinoids. The trial court revoked Duety's probation and ordered him to serve 365 days of his previously 610-day suspended sentence in the Hancock County Jail.

[12] The trial court also heard argument on Duety's motion for application of credit time for the 251 days spent in the Marion County Jail. Duety asserted that he had been arrested and placed in the Marion County Jail on May 9, 2021 based, in part, on the Hancock County arrest warrant. He argued that he should receive 251 days of credit time for the time he spent incarcerated in the Marion County Jail because he had been "confined and could not be released while this warrant was . . . active" and because those days had "not be[en] applied to anything" yet. (Tr. Vol. 2 at 40).

[13] The trial court disagreed with Duety's assertion that he should receive credit time on his Hancock County probation revocation sentence for the time he had spent incarcerated in the Marion County Jail. The trial court noted that it had "thoroughly" reviewed Duety's Marion County case and the credit time issue. (Tr. Vol. 2 at 42). The trial court stated that the probable cause affidavit from Duety's Marion County case "contradict[ed]" Duety's assertion that he had been arrested and placed in the Marion County Jail based on the Hancock County arrest warrant. (Tr. Vol. 2 at 38). Specifically, the trial court asserted the Marion County probable cause affidavit "reflect[ed] that [Marion County] [had been] aware of a Hancock County warrant, but they called to check to see if Hancock County wanted [Duety.]" (Tr. Vol. 2 at 38). According to the trial

court, Hancock County “said they did not” want Duety. (Tr. Vol. 2 at 38). The trial court pointed out that the Marion County trial court had set Duety’s bond in his Marion County case and noted that Duety had remained in jail on the Marion County bond until he had posted bond with the Marion County trial court. The trial court stated that Marion County had arrested Duety for his “very serious felony charge in Marion County” and that the time spent in the Marion County Jail could be credited toward his Marion County case if he were to be convicted in Marion County. (Tr. Vol. 2 at 42).

[14] Thus, the trial court declined Duety’s request to give him 251 days of credit time towards his Hancock County probation revocation case. In the trial court’s order, it specifically noted that Duety “shall not receive credit for time served in Marion County.” (App. Vol. 2 at 2). Duety now appeals.

Decision

[15] Duety does not challenge the revocation of his probation. Nor does he challenge the trial court’s order that he serve 365 days of his previously 610-day suspended sentence in the Hancock County Jail. Instead, Duety argues that the trial court erred by failing to apply credit time when sentencing him upon the revocation of his probation. Specifically, Duety contends that the trial court should have given him 251 days of credit time for the time he spent incarcerated in the Marion County Jail from May 9, 2020 (when the Hancock County arrest warrant was served on him in Marion County) to January 15, 2021 (when the Hancock County arrest warrant was recalled). Duety acknowledges that he was incarcerated in the Marion County Jail during that time period under his

Marion County case, but he argues that the trial court should have applied the 251 days of credit time to this Hancock County probation revocation sentence because he has not been convicted or sentenced in his Marion County case and the credit time is “available for application” in this Hancock County probation revocation case. (Duety’s Br. 11).

[16] “Because credit time is a matter of statutory right, trial courts do not have discretion in awarding or denying such credit.” *Harding v. State*, 27 N.E.3d 330, 331-32 (Ind. Ct. App. 2015). “Credit time” is defined as “the sum of a person’s accrued time, good time credit, and educational credit.” I.C. § 35-50-6-0.5(2). “Accrued time” is defined as “the amount of time that a person is imprisoned or confined.” I.C. § 35-50-6-0.5(1). A person who is not a credit restricted felon and who is imprisoned awaiting trial or sentencing for a Level 6 felony earns one day of credit time for each day he is confined awaiting trial or sentencing. I.C. § 35-50-6-4(a); I.C. § 35-50-6-3.1(b). The burden is on the appellant to show the trial court erred in its application of credit time. *Harding*, 27 N.E.3d at 332.

[17] When determining whether a defendant is entitled to pretrial or presentencing credit time, we must determine whether the defendant was in pretrial confinement and whether that confinement was a result of the criminal charge for which a sentence is being imposed. *See Alvarez v. State*, 147 N.E.3d 374, 377 (Ind. Ct. App. 2020), *trans. denied*. Stated differently, “[c]redit is to be applied for time spent in confinement that is the result of the charge for which the

defendant is being sentenced.” *Bischoff v. State*, 704 N.E.2d 129, 130 (Ind. Ct. App. 1998), *trans. denied*.

[18] Here, the Hancock County trial court correctly recognized that Duety could not receive credit time on both his Hancock County probation revocation sentence and any future Marion County sentence. The trial court declined to apply the credit time to his Hancock County probation revocation sentence, reasoning that Duety had not been confined as a result of his Hancock County probation revocation and because Duety could receive credit time in his Marion County case if he were to be convicted and sentenced in that case. We agree.

[19] Given the specific facts of this case, we conclude that the trial court did not err by declining to apply credit time upon the revocation of Duety’s probation. The record before us indicates that, on May 9, 2020, Duety was arrested in Marion County for the commission of new offenses alleged to have occurred that same day. The same day of his Marion County arrest, Duety was served with the Hancock County arrest warrant. Months later and pursuant to a request by Duety, the Hancock County trial court recalled the Hancock County arrest warrant on January 14, 2021. Even after the Hancock County arrest warrant had been recalled, Duety remained incarcerated in the Marion County Jail based solely on the charges stemming from his Marion County case. Later, on January 19, 2021, Duety posted bond in his Marion County case, and the Marion County trial court released Duety from the Marion County Jail on bond.

[20] “Credit is to be applied for time spent in confinement that is the result of the charge for which the defendant is being sentenced.” *Bischoff*, 704 N.E.2d at 130. While Duety was in pretrial confinement in the Marion County Jail, he was subject to that pretrial confinement as a result of his Marion County case. Indeed, Duety remained incarcerated in the Marion County Jail even after his Hancock County arrest warrant had been recalled. It was only upon Duety posting bond in his Marion County case, did the Marion County trial court release Duety from the Marion County Jail. Because the record before us reveals that Duety was subject to pretrial confinement in the Marion County Jail as a result of his Marion County case, we conclude that the Hancock County trial court did not err by refusing to award Duety with the Marion County credit time when sentencing him upon the revocation of his probation in Hancock County. Accordingly, we affirm the trial court’s judgment.

[21] Affirmed.⁴

[22] Bailey, J., and Crone, J., concur.

⁴ Duety also argues that the trial court erred by declining to award him with fifty-seven days of credit time for time spent in the Hancock County Jail. Duety, however, has waived this argument. First, Duety did not raise this argument to the trial court in his credit time motion or during the probation revocation hearing. Because he is attempting to raise it for the first time on appeal, he has waived the argument. *See Groves v. State*, 823 N.E.2d 1229, 1232 (Ind. Ct. App. 2005) (“Generally, a failure to object to error in a proceeding, and thus preserve an issue on appeal, results in waiver.”). Second, Duety makes no cogent argument in support of the application of such days. For example, Duety does not show what dates comprise the now sought after fifty-seven days nor does he explain why he should receive such credit time. Therefore, he has waived this argument. *See State v. Holtsclaw*, 977 N.E.2d 348, 350 (Ind. 2012) (holding that the defendant had waived his argument by failing to appropriately develop or support it); Ind. Appellate Rule 46(A)(8)(a) (requiring appellate arguments to be supported by cogent reasoning and citations to the authorities); *Brattain v. State*, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002) (explaining that where a defendant asserts error in the amount of credit time received at sentencing, the failure to present relevant documentation establishing entitlement to additional credit will result in waiver of the issue).