

## 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.



---

### ATTORNEY FOR APPELLANT

Arturo Rodriguez II  
Rodriguez Law, P.C.  
Lafayette, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
Tiffany A. McCoy  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Lionel Russell,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 14, 2021

Court of Appeals Case No.  
20A-CR-2394

Appeal from the Warren Circuit  
Court

The Honorable Hunter Reece,  
Judge

Trial Court Cause Nos.  
86C01-2002-F6-12  
86C01-2010-F6-67

**Crone, Judge.**

## **Case Summary**

- [1] Lionel Russell appeals the sentencing order issued by the trial court following his guilty plea to level 6 felony resisting law enforcement. He contends that the trial court erred when determining his good time credit. Concluding that Russell has waived our review of this issue, we affirm.

## **Facts and Procedural History**

- [2] On February 5, 2020, the State charged Russell with level 6 felony resisting law enforcement, class B misdemeanor leaving the scene of an accident, class C misdemeanor reckless driving, and class C misdemeanor operating a vehicle without a license in cause number 86C01-2002-F6-12 (Cause F6-12). The State also subsequently alleged that Russell was a habitual offender. On October 19, 2020, the State charged Russell with three counts of level 6 felony battery by bodily waste and class A misdemeanor criminal mischief in cause number 86C01-2010-F6-67 (Cause F6-67). The State again alleged that Russell was a habitual offender.
- [3] Thereafter, the parties entered into a plea agreement wherein Russell agreed to plead guilty to level 6 felony resisting law enforcement in Cause F6-12 and three counts of level 6 felony battery by bodily waste and the habitual offender enhancement in Cause F6-67, in exchange for dismissal of the remaining charges. The plea agreement specifically provided that Russell would receive a two-year sentence in Cause F6-12 and a seven-year aggregate sentence in Cause F6-67 (three consecutive one-year sentences for each battery by bodily waste

conviction plus a four-year habitual offender enhancement), which reflected “the intent of the parties that the Defendant receive a total executed sentence of nine (9) years in the Indiana Department of Corrections [sic] between the two Cause numbers.” Appellant’s App. Vol. 2 at 76.

[4] Following a hearing, the trial court accepted Russell’s guilty plea.<sup>1</sup> However, because the plea agreement did not specifically address Russell’s receipt of good time credit, the trial court called a brief recess so that the parties, including Warren County Sheriff Russell Hart, could discuss the issue in light of Russell’s multiple conduct violations while in custody in Cause F6-12.<sup>2</sup> Following the recess, the parties indicated that they had agreed that Russell would receive 304 days of actual credit time and 152 days of good time credit, for a total of 456 days of credit time applied to his two-year sentence in F6-12. Thereafter, the trial court entered judgments of conviction in both causes as well as sentencing orders to reflect the terms of both the plea agreement and the parties’ good time credit agreement. This appeal ensued.

---

<sup>1</sup> Russell appeared pro se during the guilty plea hearing.

<sup>2</sup> On October 21, 2020, Sheriff Hart filed a memo with the trial court in Cause F6-12, with conduct reports attached, requesting that the trial court consider Russell’s serious conduct violations while incarcerated in the Warren County Jail when determining his good time credit. On October 26, the trial court issued an order setting a hearing on the issue to “be held concurrently with any Sentencing Hearing set in this matter, if the Defendant [is] convicted of the instant offense.” Appellee’s App. Vol. 2 at 2. The plea agreement pertaining to both Cause F6-12 and Cause F6-67 was subsequently filed on December 3, 2020.

## Discussion and Decision

- [5] Russell’s sole contention on appeal is that the trial court erred in determining his good time credit in Cause F6-12. Pursuant to the Indiana Penal Code, prisoners receive credit time that is applied to reduce their term of imprisonment. *Purdue v. State*, 51 N.E.3d 432, 436 (Ind. Ct. App. 2016). “The time spent in confinement before sentencing applies toward a prisoner’s fixed term of imprisonment.” *Id.* (citation omitted). “Accrued time” is the amount of time that a person is imprisoned or confined. Ind. Code § 35-50-6-0.5. “Good time credit” is the reduction in a person’s term of imprisonment or confinement awarded for the person’s good behavior while imprisoned or confined. *Id.* “Credit time” is the sum of a person’s accrued time, good time credit, and educational credit. *Id.* A person, such as Russell, assigned to Class A “earns one day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.” Ind. Code § 35-50-6-3.1(b).
- [6] “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) (citation omitted). However, a person may be deprived of good time credit the person has earned if the person violates “one (1) or more rules of the penal facility in which the person is imprisoned.” Ind. Code § 35-50-6-5(a)(2). Indiana Code Section 35-50-6-5(b) provides that before a person may be deprived of good time credit, he must be granted a hearing to determine his guilt or innocence and, if found guilty, whether deprivation of earned good time credit is an appropriate sanction for

the violation. Although the person is entitled to certain procedural safeguards in connection with that hearing, “[t]he person may waive” his right to the hearing. Ind. Code § 35-50-6-5(b).

[7] On appeal, Russell concedes that he waived his right to a hearing to determine his guilt or innocence and whether deprivation of earned good time credit was an appropriate sanction for his conduct violations.<sup>3</sup> He also concedes that he specifically agreed to the deprivation of half his earned good time credit. Still, he urges us to find error in the trial court’s sentencing order because the court deprived him of half his good time credit without certain unnamed “procedural safeguards in place” and because “[i]t does not appear that [he] had ample time to prepare for that portion of the guilty plea hearing.” Appellant’s Br. at 10-11. However, Russell has waived our review of this issue by failing to object at any time during the proceedings below. Indeed, it is well established that to preserve a claim for review, the defendant must object to the trial court’s ruling and state the reasons for that objection. *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018).

This gives the court an opportunity to cure the alleged error, which, in turn, can result in enormous savings in time, effort and expense to the parties and the court, including avoiding an appeal and retrial. If the trial court overrules the objection, the

---

<sup>3</sup> As noted by the trial court, Russell admitted being guilty of several of the alleged conduct violations (e.g., committing battery by bodily waste against various correctional officers) by his testimony during the guilty plea hearing. Moreover, after the trial court stated that good time credit was still an issue to be resolved, Russell immediately indicated his willingness to negotiate and reach an agreement on that issue rather than having either party present additional testimony or evidence.

appellate court benefits from a sufficiently-developed record on which to base its decision. A party's failure to object to an alleged error at trial results in waiver, also known as procedural default or forfeiture. While there are certain exceptions to this rule, it's designed to promote fairness by preventing a party from sitting idly by, ostensibly agreeing to a ruling only to cry foul when the court ultimately renders an adverse decision.

*Id.* at 651 (citations and quotation marks omitted).

[8] Russell not only sat idly by during the guilty plea hearing when the trial court announced its intention to call a brief recess so that the parties could discuss the impact of his admitted conduct violations on his earned good time credit, but he also sat idly by when the trial court announced its intention to award him only half his good time credit based upon the parties' agreement on the issue. If he believed that the trial court lacked a sufficient basis to deprive him of good time credit or that he needed more time to prepare before making such an agreement, he could have objected. Having failed to do so, Russell cannot now cry foul on appeal, as he has waived our review of this issue.<sup>4</sup> The trial court's order is affirmed.

[9] Affirmed.

Riley, J., and Mathias, J., concur.

---

<sup>4</sup> Russell makes no argument that the alleged lack of procedural safeguards, or the trial court's acceptance of the parties' agreement regarding good time credit, constituted fundamental error.