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APPELLANT PRO SE:

BILLY ARD
Bunker Hill, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

BILLY ARD,)
)
 Appellant-Defendant,)
)
 vs.) No. 37A04-1001-CR-103
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE JASPER SUPERIOR COURT
The Honorable James R. Ahler, Judge
Cause Nos. 37D01-9501-CF-61 and 65

February 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Billy Ard, pro se, appeals the trial court's denial, in part, of his motion for earned credit time.

We reverse and remand.

ISSUE

Whether the trial court improperly credited Ard for 225 days of earned credit time.

FACTS

On or about May 8, 1995, Ard pleaded guilty to two counts of class B felony burglary under Cause Numbers 37D01-9501-CF-061 and 37D01-9501-CF-065 ("Cause Nos. 61 and 65") in Jasper Superior Court. On September 24, 2007, Ard began serving his terms of probation under Cause Nos. 61 and 65.

On or about September 11, 2008, the State charged Ard with burglary in Wells County under Cause Number 90C01-0812-FB-28 ("Cause No. 28"). On September 22, 2008, the State filed a petition to revoke Ard's probation under Cause Nos. 61 and 65. That same date, the Jasper Superior Court issued a warrant for Ard's arrest. On November 14, 2008, Ard was arrested pursuant to, among others, the arrest warrant issued by the Jasper Superior Court.

On June 26, 2009, the Wells Circuit Court sentenced Ard to twenty years, with eight years suspended, under Cause No. 28. The trial court ordered that the sentence be

served consecutive to the sentences imposed under Cause Nos. 61 and 65.¹ The abstract of judgment entered in Cause No. 28 provided that Ard served “0” days in jail prior to sentencing. (App. 54).

On September 14, 2009, the Jasper Superior Court held a probation revocation hearing under Cause Nos. 61 and 65. Also on September 14, 2009, Ard, pro se, filed a motion for earned credit time. Ard asserted that he was entitled to “a total of three hundred and five (305) actual days with six hundred and ten (610) days of good time.” (App. 37). Ard based this calculation on the time from his arrest on November 14, 2008, until the date of sentencing in Jasper Superior Court on September 14, 2009.

During the probation revocation hearing, Ard admitted to violating his probation. The trial court then heard arguments on Ard’s motion for earned credit time. The State argued that Ard was not entitled to earned credit time for the “time he’s served while awaiting charges in another county,” (tr. 9), or “serving time in another county on a charge in their county.” (Tr. 10).

The trial court sentenced Ard to two years, to be served concurrent to sentences imposed in Fulton, Starke, and Porter Counties. The trial court took Ard’s motion under advisement.

¹ Indiana Code section 35-50-1-2(d)(1) instructs as follows:

If, after being arrested for one (1) crime, a person commits another crime . . . before the date the person is discharged from probation, parole, or a term of imprisonment for the first crime . . . the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

On December 23, 2009, the trial court entered an order, granting Ard “jail time credit of two hundred twenty-five (225) actual days, (November 14, 2008 through June 26, 2009).” (App. 49). The trial court therefore entered an amended abstract of judgment, reflecting that Ard had been confined 225 days prior to sentencing.

DECISION

We first note that the State has not filed an appellee’s brief.

The obligation of controverting arguments presented by the appellant properly remains with the State. Thus, when the appellee does not submit a brief, the appellant may prevail by making a prima facie case of error, i.e. an error at first sight or appearance. We are nevertheless obligated to correctly apply the law to the facts of the record to determine if reversal is required.

Mateyko v. State, 901 N.E.2d 554, 556 (Ind. Ct. App. 2009), *trans. denied*.

Ard challenges the trial court’s calculation of the credit to which he was entitled for his pre-sentencing confinement. Specifically, he argues that he is entitled to 80 additional days of earned credit time, which represents the time from June 26, 2009, the date of his sentencing under Cause No. 28 in Wells Circuit Court, until September 14, 2009, the date of his sentencing under Cause Nos. 61 and 65 in Jasper Superior Court. We agree.

Indiana Code section 35-50-6-3(a) provides that a “person assigned to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.” “Confined awaiting trial or sentencing has been construed to mean confined as a result of the charge for which the defendant is being

sentenced.” *Diedrich v. State*, 744 N.E.2d 1004, 1005 (Ind. Ct. App. 2001); *see also Bischoff v. State*, 704 N.E.2d 129, 130 (Ind. Ct. App. 1998) (stating that determination of a defendant’s pretrial credit is dependent upon “the pretrial confinement being a result of the criminal charge for which sentence is being imposed”).

Generally, “[a] defendant who is awaiting trials on different crimes during the same period of time and who is convicted and sentenced separately on each should have full credit applied on each sentence.” *Brown v. State*, 907 N.E.2d 591, 595 (Ind. Ct. App. 2009) (quoting *Dolan v. State*, 420 N.E.2d 1364, 1372 (Ind. Ct. App. 1981)). Where, however, “consecutive sentences are required, credit time cannot be earned against each of the underlying sentences.” *Brown*, 907 N.E.2d at 595. Rather, a defendant who receives consecutive terms “is only allowed credit time against the total or aggregate of the terms.” *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000); *see also Payne v. State*, 838 N.E.2d 503, 510 (Ind. Ct. App. 2005) (“[W]e should avoid construing the credit time statutes as permitting a defendant to claim “double or extra credit” for pre-sentencing confinement).

Here, the record shows that Ard was imprisoned, awaiting sentencing under Cause Nos. 61 and 65, from November 14, 2008, until September 14, 2009, or 305 days. He therefore is entitled to credit time of 305 days, to be applied toward his aggregate sentence.² *See, e.g., Dolan v. State*, 420 N.E.2d at 1373 (stating that the credit for time served prior to sentencing “will be the number days the defendant spent in confinement

² Ard concedes that because his sentences under Cause Nos. 61 and 65 and Cause No. 28 are to be served consecutively, his credit time must be applied toward the aggregate sentences.

from the date of arrest for the offense to the date of sentencing for that same offense”),
and Brown, 907 N.E.2d at 595 (stating that credit time cannot be earned or applied
against each of the underlying sentences where consecutive sentences are imposed).
Accordingly, we reverse and remand to the trial court to credit Ard with 80 additional
days of time served while confined awaiting sentencing under Cause Nos. 61 and 65.

Reversed and remanded.

BAILEY, J., and NAJAM, J., concur.