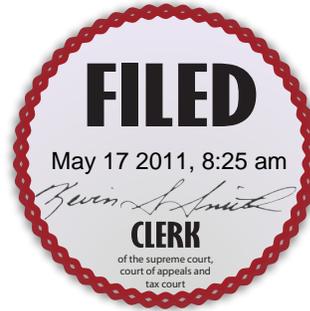


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD E. LEWIS,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

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) No. 87A04-1008-CR-535
)
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)

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Robert R. Aylsworth, Judge
Cause No. 87D02-0810-FB-77

May 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Ronald Lewis appeals the trial court's denial of his motion for earned credit time.

We affirm in part, reverse in part, and remand.

ISSUE

Whether the trial court improperly calculated Lewis' earned credit time.

FACTS

On October 6, 2008, the State charged Lewis with Count 1, class B felony dealing in methamphetamine; Count 2, class D felony possession of chemical reagents with intent to manufacture controlled substances; and Count 3, class D felony possession of precursors with intent to manufacture controlled substances under Cause Number 87D02-0810-FB-077 ("Cause No. 77") in Warrick County. Lewis posted bond the same day and was released from custody.

On or about November 13, 2008, Lewis was arrested in Vanderburgh County. On November 18, 2008, the State charged Lewis with Count 1, class B felony unlawful possession of a firearm by a serious violent felon; Count 2, class D felony resisting law enforcement; Count 3, class A misdemeanor resisting law enforcement; and Count 4, class A misdemeanor criminal recklessness under Cause Number 82D02-0811-FB-1029 ("Cause No. 1029"). Subsequently, on November 25, 2008, while Lewis was being held in Vanderburgh County, the Warrick Superior Court issued a bench warrant for Lewis' arrest after Lewis failed to appear for a hearing.

On January 26, 2010, under Cause No. 1029, Lewis pleaded guilty to Count 1, class C felony unlawful possession of a firearm by a serious violent felon; and Counts 2, 3, and 4, as charged. The Vanderburgh Superior Court held a sentencing hearing on March 9, 2010, after which it sentenced Lewis to a total executed sentence of six years. The trial court also credited Lewis with 483 days of earned credit time. Accordingly, the Department of Correction calculated Lewis' expected release date to be November 10, 2011.

On March 16, 2010, Lewis was served with the arrest warrant issued by the Warrick Superior Court under Cause No. 77. On July 30, 2010, Lewis pleaded guilty to Counts 2 and 3, and the trial court sentenced Lewis to concurrent sentences of three years on each count. The trial court then continued the sentencing hearing for determination of "whether or not this sentence must be ordered to be served consecutively" to the sentence imposed under Cause No. 1029. (Tr. 22).

On August 23, 2010, following a hearing, the trial court ordered that Lewis' sentence under Cause No. 77 be served consecutive to that imposed under Cause No. 1029.¹ The trial court also found that Lewis was not entitled to earned credit time for the time served prior to sentencing in Cause No. 77 because the time was credited to his

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.

sentence under Cause No. 1029. On August 25, 2010, Lewis filed a motion for earned credit time, which the trial court denied.

DECISION

Lewis challenges the trial court's denial of earned credit time for his pre-sentencing confinement. Specifically, he argues that he is entitled to 636 days of earned credit time, which represents the time accrued from 1) March 16, 2010, the date he was served with the arrest warrant under Cause No. 77, through August 23, 2010, the final sentencing hearing in Cause No. 77; 2) May 19, 2009, the "date upon which he should have been released from incarceration in [Cause No. 1029]," Lewis' br. at 8, pursuant to Criminal Rule 4(a), through March 16, 2010, the date he was served with the arrest warrant; and 3) November 25, 2008, the date the Warrick Superior Court issued the bench warrant for his arrest, through May 18, 2009, again, "the expiration of the time period for which he could be held under Rule 4(a)" in the case arising out of Vanderburgh County. Lewis' Br. at 8.

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)). The credit for time served prior to sentencing "will be the number of days the defendant spent in confinement from the date of arrest for the offense to the date of sentencing for that same offense." *Dolan*, 420 N.E.2d at 1373.

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 Lewis was imprisoned, awaiting sentencing under Cause No. 1029, from November 13, 2008, until March 9, 2010, or 483 days; he received credit for all 483 days. On March 9, 2010, Lewis commenced his sentence under Cause No. 1029, during which time he was served with the arrest warrant and sentenced under Cause No. 77.

Lewis has not demonstrated that the time he spent confined after he was served with the Warrick County arrest warrant was a result of the charges filed under Cause No. 77. Rather, Lewis would have been incarcerated regardless of the charges filed or arrest warrant issued in Cause No. 77. He therefore is not entitled to any additional credit time. *See Bischoff*, 704 N.E.2d at 130 (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”).

Moreover, Indiana Code section 35-50-1-2 mandated consecutive sentences in this case. To award Lewis credit time under Cause No. 77, in addition to credit time earned under Cause No. 1020, either during pre-sentencing confinement or afterwards, upon his imprisonment, would give Lewis “double or extra credit” for his pre-sentencing confinement. *See* Ind. Code § 35-50-6-3 (“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.”); *Bischoff*, 704 N.E.2d at 130 (finding that if the defendant were to be granted credit in one case for the time he spent serving his sentence in another case, “he would have effectively been granted concurrent sentences in contravention of” Indiana Code section 35-50-1-2, which mandates consecutive sentences). As Lewis earned credit time under Cause No. 1029, we cannot say that the trial court’s denial of credit time in Cause No. 77 was improper.²

² As to Lewis’ assertion that the State “did not have authorization to continue to hold [him] after May 18, 2009,” and therefore “it stands to reason that he was being held after May 18, 2009 only on the warrant” issued under Cause No. 77, we disagree. Lewis’ Br. at 8. In support of his contention that the State did

Although we decline to remand for an award of credit time for the time Lewis spent confined and imprisoned under Cause No. 1029, we note that Lewis spent one day imprisoned under Cause No. 77 for which he did not serve time under Cause No. 1029; namely, October 6, 2008, or the day of Lewis' initial arrest in Cause No. 77. As it does not appear that Lewis received credit time for this day, we reverse and remand to the trial court to credit Lewis with one additional day of time served while confined awaiting sentencing under Cause No. 77.

Affirmed in part, reversed in part, and remanded with instructions.

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

not have authority to confine him subsequent to May 18, 2009, Lewis relies on Indiana Criminal Rule 4(A), which provides:

No defendant shall be detained in jail on a charge, without a trial, for a period in aggregate embracing more than six (6) months from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge (whichever is later); except where a continuance was had on his motion

Here, the trial court continued Lewis' trial several times on Lewis' own motions, including at least one motion filed prior to May 18, 2009. Furthermore, according to the chronological case summary, Lewis waived his right to a speedy trial.