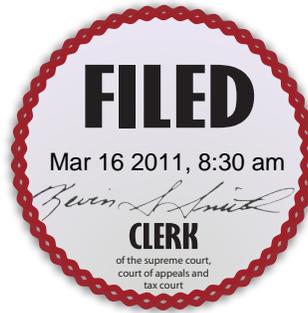


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

VICTOR J. IPPOLITI

Ferdinand, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER

Attorney General of Indiana
Indianapolis, Indiana

MICHAEL GENE WORDEN

Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DARBY L. HAPE,)

Appellant-Defendant,)

vs.)

No. 19A01-1009-CR-499

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE DUBOIS SUPERIOR COURT

The Honorable Mark R. McConnell, Judge

Cause No. 19D01-0703-FC-310

MARCH 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Darby L. Hape appeals the denial of his Petition for Jail Time Credit (“Petition”). We affirm.

ISSUE

Hape raises one issue, which we restate as whether the trial court erred when it denied his Petition.

FACTS AND PROCEDURAL HISTORY

This case began on March 27, 2007 under Cause Number 19D01-0703-FC-310 (“FC-310”), when the State charged Hape with multiple offenses. At that time, Hape was on probation in Cause Number 19D01-0512-FC-1127 (“FC-1127”), and the State filed a petition to revoke Hape’s probation in FC-1127 on April 11, 2007. Subsequently, on April 24, 2007, the State filed other charges against Hape in Pike County under Cause Number 63C01-0704-FA-241 (“FA-241”). Hape concedes that he was incarcerated in Pike County prior to being charged in FC-310 and remained in the Pike County Jail until his trial in FA-241.

On October 30 and 31, 2007, Hape was tried in Pike County in FA-241 and was found guilty. On January 4, 2008, the court in FA-241 sentenced Hape to an aggregate sentence of eighty years with 261 days of credit for pre-sentencing incarceration. After Hape’s trial, he was turned over to the Department of Correction to serve his sentence.¹ Hape appealed, and this Court vacated Hape’s habitual offender determination, which

¹ The date of Hape’s transfer to the Department of Correction is not identified in the record.

reduced his sentence in FA-241 to fifty years. *See Hape v. State*, 903 N.E.2d 977, 998 (Ind. Ct. App. 2009), *trans. denied*.

Meanwhile, in FC-1127, Hape appeared before the court for a revocation hearing on January 10, 2008. The court determined that Hape had violated the terms of his probation and sentenced him to his previously-suspended sentence of four years, to be served consecutively to the sentence in FA-241. The trial court noted that Hape was entitled to 131 days of credit time, which he had accrued prior to being originally sentenced and placed on probation. Subsequently, Hape filed a motion for credit time in FC-1127, and the court denied his motion. Hape appealed, and this Court affirmed the trial court's ruling in an unpublished memorandum decision. *See Hape v. State*, Cause No. 19A05-1003-CR-163 (Ind. Ct. App. Aug. 19, 2010), *trans. denied*.

As FA-241 and FC-1127 moved forward, the parties delayed the trial in FC-310. Eventually, the parties reached a plea agreement in FC-310. On June 30, 2009, the trial court accepted the plea agreement and sentenced Hape to serve six years, to be served consecutively to the sentence in FC-1127 and concurrently with the sentence in FA-241. The trial court did not award any credit time to Hape.

In September 2010, Hape filed a petition for jail time credit in this case, FC-310. The trial court denied Hape's petition. This appeal followed.

DISCUSSION AND DECISION

Before we address Hape's claim, we address the State's contention that Hape's claim is barred by res judicata. Specifically, the State asserts that Hape presented his

credit time claim to the court in FC-310 on a prior occasion, and the court denied his previous request.

We conclude that the State's res judicata argument is without merit. Any time a defendant whose liberty has been restricted through imprisonment or confinement requests a trial court to reconsider its previous award of jail time credit, and the defendant's motion identifies a sufficient factual basis for his eligibility, the court must address the merits of such motion. *Weaver v. State*, 725 N.E.2d 945, 948 (Ind. Ct. App. 2000). Therefore, we turn to the merits of Hape's claim.

A person who is confined awaiting trial or sentencing is assigned to Class I for purposes of credit time calculation. Indiana Code § 35-50-6-4(a) (2000).² A person who is assigned to Class I receives one day of credit time for each day the person is confined awaiting trial or sentencing. Indiana Code § 35-50-6-3(a) (1977).³ Determination of a defendant's pretrial credit is dependent upon (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which sentence is being imposed. *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied*.

In this case, Hape argues that he is entitled to 803 days of credit time against his sentence in FC-310 because he was incarcerated at the Pike County Jail at the time that he was arrested for the charges in FC-310 and remained incarcerated until his sentencing in June 30, 2009. He notes that his sentences in FA-241 and FC-310 are to be served concurrently, so he believes he is entitled to credit time against both sentences.

² This statute was amended in 2008. We cite to the version of the statute that was in effect when Hape committed the crimes at issue in FC-310.

³ This statute was also amended in 2008. We cite to the version of the statute that was in effect when Hape committed the crimes at issue in FC-310.

We disagree. Credit is to be applied for time spent in confinement that is the result of the charge for which the defendant is being sentenced. *Id.* at 285. In this case, at the time Hape was arrested for the charges at issue in FC-310, he was incarcerated in the Pike County Jail and faced charges there. Hape remained jailed in Pike County, and only came to Dubois County when required for hearings in FC-310 and FC-1127, until after he was convicted and sentenced in FC-241. After that, Hape was sent to the Department of Correction to serve his sentence in FC-241. Consequently, Hape's confinement in Pike County was not a result of the charges for which he was sentenced in FC-310, and he is not entitled to credit time. *See Bischoff v. State*, 704 N.E.2d 129, 130 (Ind. Ct. App. 1998), *trans. denied* (affirming the denial of credit time for presentence incarceration where the defendant was incarcerated for an unrelated offense while the case at issue was pending).

In addition, where a defendant is confined during the same time period for multiple offenses for which he is convicted and sentenced to consecutive terms, credit time is applied against the aggregate sentence, not against each individual sentence. *Bennett v. State*, 802 N.E.2d 919, 922 (Ind. 2004) (quotation omitted). Here, the court in FC-310 ordered Hape to serve his sentence consecutively to the sentence from Hape's probation revocation in FC-1127. The court's order was appropriate because Hape was on probation in FC-1127 when he committed the crimes at issue in FC-310. *See* Ind. Code § 35-50-1-2(d) (2006) (stating "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 imposed for the first crime; . . . the terms of

imprisonment shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed”).⁴ Consequently, Hape is not entitled to credit against both sentences. *See Stephens*, 735 N.E.2d at 285 (concluding that credit time should be awarded on the aggregate of two consecutive sentences rather than to each sentence).

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.

⁴ This statute, like the other statutes cited in this opinion, was amended in 2008. We cite to the version of the statute that was in effect when Hape committed the crimes at issue in FC-310.