

Appellant-Defendant Jeffrey W. Wagner admitted a probation violation and was ordered incarcerated for 900 days, the remainder of his sentence from his underlying burglary conviction. Wagner raises a single issue for our review, namely whether the trial court erred in denying his petition for 107 days of presentence jail time. Concluding that Wagner was only entitled to receive presentence credit against the aggregate term of his consecutive sentences, and that Wagner's aggregate term has already been credited for at least ninety-six days of presentence jail time, we affirm in part, and remand to the trial court for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

On January 12, 2007, Wagner pled guilty to Class B felony Burglary and was sentenced to ten years, with six years executed and four years suspended to probation under cause number 29D03-0304-FB-129 ("Cause No. 129"). The trial court ordered that of the six-year executed sentence, 1240 days were to be served in the Department of Correction ("DOC") followed by the remainder of the sentence to be served on work release in Hamilton County Community Corrections ("HCCC"). The trial court granted Wagner 1240 days credit for time served prior to sentencing.

On February 26, 2007, HCCC filed a notice of non-compliance alleging that Wagner had failed to report to work as scheduled and that his whereabouts were unknown for approximately ten hours. On March 5, 2007, the Hamilton County Probation Department ("HCPD") filed a "1st Information of Violation of Probation" under Cause No. 129, alleging that Wagner failed to report that on February 26, 2007, he was charged with Class D felony

Failure to Return to Lawful Detention under cause number 29D04-0702-FD-833 (“Cause No. 833”). Appellant’s App. p. 36. On July 10, 2007, the HCPD filed a “2nd Information of Violation of Probation” under Cause No. 129, alleging that Wagner again failed to report that on July 2, 2007, he was charged with Class A misdemeanor Battery and Class B misdemeanor Public Intoxication “under cause 0712877 in Marion County Superior Court 10.” Appellant’s App. p. 39. On August 23, 2007, an outstanding arrest warrant was served on Wagner. The following day, the HCPD filed a “3rd Information of Violation of Probation” under Cause No. 129, alleging that Wagner again failed to report that on February 24, 2007, he was charged with Class A misdemeanor Domestic Battery under cause number 29D03-0703-CM-101. Appellant’s App. p. 41.

On December 7, 2007, Wagner admitted to the probation violations set forth in the “1st Information of Violation of Probation” and the “Notice of Non-Compliance with Community Corrections.” Appellant’s App. p. 43. In exchange for Wagner’s admission, the State agreed to dismiss the allegations set forth in the 2nd and 3rd Informations of Violation of Probation. The trial court sentenced Wagner “to the balance of his community correction sentence [900 days] to be served at [DOC].” Appellant’s App. p. 43. The trial court further ordered that Wagner, who was then incarcerated as a result of the sentence imposed in Cause No. 833, would not be awarded any credit time and that “this sentence [was] to be served consecutively to [Cause No. 833].” Appellant’s App. p. 43.

On July 28, 2008, Wagner filed a pro se petition for jail time credit which was denied following a hearing on August 29, 2008. Wagner subsequently filed a motion to correct

error, which was also denied by the trial court. This appeal follows.

DISCUSSION AND DECISION

Wagner argues that the trial court erred in declining to grant him jail time credit for 107 days that he served between August 23, 2007 and December 7, 2007, while awaiting the resolution of his probation violations in Cause No. 129. The State, on the other hand, argues that Wagner is not entitled to the 107 days credit time because “he was given the credit” on a sentence for an unrelated offense for which he was incarcerated during the same period. Appellee’s Br. p. 5.

A person imprisoned for a crime or confined awaiting trial or sentencing earns one day of credit time for each day he is confined. 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. 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 v. State, 704 N.E.2d 129, 130 (Ind. Ct. App. 1999) (citations omitted), *trans. denied*.

It is well-established that “a defendant who received consecutive sentences is entitled to presentence credit only against the aggregate term of his consecutive sentence.” *Emerson v. State*, 498 N.E.2d 1301, 1302 (Ind. Ct. App. 1986) (citing *Simms v. State*, 421 N.E.2d 698, 702-03 (Ind. Ct. App. 1981)); *see also Corn v. State*, 659 N.E.2d 554, 558-59 (Ind. 1995) (adopting *Emerson*).

Applying *Emerson* and *Corn* to the instant matter, we observe that Wagner received credit on the aggregate of the consecutive sentences imposed in Cause Nos. 129 and 833 by receiving credit on his commitment resulting from the sentence imposed in Cause No. 833.

To additionally award Wagner credit on the sentence imposed following the disposition of Cause No. 129 would be to award him double or extra credit, a result the legislature did not intend. *Corn*, 659 N.E.2d at 558-59; *Emerson*, 498 N.E.2d at 1302. Further, if Wagner were granted presentence credit against the sentence imposed following Wagner's admission of his probation violations in Cause No. 129, the presentence credit portion of this sentence would in effect be served concurrently with his sentence imposed in Cause No. 833. *Emerson*, 498 N.E.2d at 1302-03. Consequently, Wagner is not entitled to presentence commitment credit on the sentence imposed in Cause No. 129. *See Corn*, 659 N.E.2d at 559; *Emerson*, 498 N.E.2d at 1303.

To the extent that Wagner claims that *Dolan v. State*, 420 N.E.2d 1364 (Ind. Ct. App. 1981), implies otherwise, we disagree. In *Dolan*, the defendant was incarcerated in the Marshall County Jail as a result of an unrelated charge when a warrant for his arrest was issued by the Elkhart County Superior Court on May 16, 1978. 420 N.E.2d at 1371. The defendant was transferred to the Elkhart County Jail on May 25, 1978 and subsequently received a three-year sentence as a result of the charges brought against him in Elkhart County. *Id.* At sentencing, the Elkhart County Court credited the defendant with thirty-four days presentence time served. *Id.* On appeal, this court concluded that the trial court erred in granting thirty-four days of credit time and that the defendant should have received credit for "the time he spent in confinement from the date of his arrest for the violation of probation (May 25, 1978) to the date of his sentencing for the violation of probation (December 28, 1978)." *Id.* at 1373. *Dolan* is distinguishable from the instant matter, however, because

nothing in *Dolan* suggests that the unrelated sentences in question were ordered to be served consecutively to one another. Thus, Wagner's reliance on *Dolan* is misplaced.

The State, however, concedes that while Wagner is not entitled to 107 days of presentence credit time for Cause No. 129, he may be entitled to an additional eleven days credit to be applied to his aggregate term of imprisonment because the trial court has apparently awarded Wagner credit for only ninety-six days of presentence commitment rather than the 107 days of presentence commitment alleged by Wagner. Therefore, we remand this matter to the trial court for the sole purpose of determining whether Wagner is entitled to an additional eleven days credit to be applied to his aggregate term of the consecutive sentences imposed in Cause Nos. 129 and 833.

The judgment of the trial court is affirmed in part, and remanded to the trial court for further proceedings consistent with this opinion.

CRONE, J., and BROWN, J., concur.