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IN THE COURT OF APPEALS OF INDIANA

AARON FROMER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 03A04-1008-CR-520
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0703-FB-540

July 15, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Aaron Fromer ("Fromer) pleaded guilty in Bartholomew Superior Court to two counts of Class C felony robbery. He was ordered to serve two consecutive six-year terms in the Indiana Department of Correction, for an aggregate sentence of twelve years. He was also ordered to serve his sentence consecutive to a sentence imposed in a separate cause. The trial court determined that Fromer served 295 days in jail while awaiting trial and sentencing and awarded him 590 days of credit time. Fromer later filed a petition for credit time requesting 619 days of credit time, which resulted in the trial court reducing his credit time to 536 days. Fromer appeals the denial of his petition for additional credit time.

We affirm.

Facts and Procedural History

On March 20, 2007, Fromer was arrested for and shortly thereafter charged with Class B felony robbery, two counts of Class C felony robbery, and Class D felony intimidation in Bartholomew County. On December 13, 2007, while he was in jail awaiting trial, he was sentenced for unrelated burglary and resisting law enforcement convictions in Johnson County.

On January 9, 2008, Fromer was released on his own recognizance for the Bartholomew County charges. As to those charges, he later agreed to plead guilty to the two Class C felony robbery charges and the remaining charges were dismissed. On September 30, 2008, he was ordered to serve two consecutive terms of six years in the Department of Correction, an aggregate sentence of twelve years. The trial court also ordered his Bartholomew County sentence to be served consecutive to the sentence

imposed for his Johnson County convictions. Finally, the trial court determined that Fromer had served 295 days in jail while awaiting trial and sentencing and awarded him 590 days of credit time.

On May 18, 2010, Fromer filed a petition for jail time credit, a copy of which has not been included in the record on appeal. In the petition, Fromer argued that he was entitled to 619 days of credit time. Appellant's Br. at 1, 3. The trial court denied Fromer's petition and entered the following findings.

> 1. The defendant was arrested for the charge[s] under this [c]ause number on March 20, 2007, and was given 295 actual jail days credit in the sentencing order dated September 30, 2008.
> 2. The defendant was sentenced on charges in Johnson County on December 13, 2007, under [c]ause numbers 41D02-0704-FD-71 and 41D02-0703-FC-6, as shown by Department of Correction Offender Database.
> 3. The Court finds defendant was given some credit days that have been applied to the sentences from Johnson County.
> 4. The sentence hereunder was ordered consecutive to the Johnson County sentences and therefore the Court has given the defendant duplicate days that were awarded in Johnson County.

See Appellant's Brief. The trial court then reduced Fromer's credit time and amended its order to reflect that Fromer served 268 actual jail days for 536 days of credit time. Fromer filed a motion to reconsider, which the trial court denied. Fromer now appeals.

Discussion and Decision

Fromer argues that he was denied credit time to which he was entitled. But Fromer included only the chronological case summary in his record on appeal and has therefore failed to provide an adequate record for review of his claimed jail time credit.

Consequently, his claim is waived. See Thompson v. State, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002) (stating that "'[i]t is [a defendant's] duty to present an adequate record clearly showing the alleged error. Where he fails to do so, the issue is deemed waived'")) (citation omitted).

Waiver notwithstanding, because Fromer is seeking credit on sentences that were imposed in separate cases and ordered to be served consecutively, he cannot receive pretrial credit in both cases.[1] "[T]he prohibition against an award of 'double credit' applies when a defendant has arguably been incarcerated at the same time on more than one offense if the sentences for the multiple offenses are to be served consecutively." French v. State, 754 N.E.2d 9, 17 (Ind. Ct. App. 2001). See also Bennett v. State, 802 N.E.2d 919, 922 (Ind. 2004) (holding "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.").

In its recalculation pursuant to Fromer's petition, the trial court correctly concluded that Fromer served 268 days in jail from March 20, 2007 (the date of his arrest for the Bartholomew County charges) to December 13, 2007 (the date he was sentenced

[1] A person imprisoned for a crime or confined awaiting trial or sentencing is assigned to Class I and, based upon that classification, earns one day of credit time for each day he is confined. Ind.Code § 35–50–6–3; Ind.Code § 35–50–6–4(a). "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. 'Pre-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion.'" Hall v. State, 944 N.E.2d 538, 542 (Ind. Ct. App. 2011), trans. denied (citations omitted).

for the Johnson County convictions), and is therefore entitled to a net amount of 536 days credit for time served.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.