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IN THE COURT OF APPEALS OF INDIANA

JAMES HAROLD HIGGASON III,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 45A03-1011-CR-577
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Judge
The Honorable Natalie Bokota, Magistrate
Cause Nos. 45G04-0711-FC-00146 and 45G04-0804-FC-00061

July 20, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James Higgason III was convicted in Lake Superior Court of Class D felony theft and ordered to serve a one-year sentence with no credit for time served. His one-year sentence was ordered to be served consecutive to a sentence imposed in a separate case for which Higgason received sixty-six days credit for time served. Higgason later filed a pro se motion for jail time credit requesting credit for time served prior to sentencing. The trial court denied the motion, and Higgason appeals pro se.

We affirm.

Facts and Procedural History

On November 21, 2007, Higgason was charged in Lake Superior Court with multiple offenses under case number 45G04-0711-FC-146. At the time those charges were filed, Higgason was awaiting trial on Class C felony burglary and habitual offender charges under case number 45G04-0804-FC-61, also in Lake Superior Court.

On December 22, 2008, Higgason was sentenced in case number 45G04-0804-FC-61 to five years for Class C felony burglary, and the sentence was enhanced by eight years for the habitual offender adjudication, with six years suspended. The trial court also determined that Higgason was in jail for 66 days prior to sentencing and awarded him 132 days of credit time.

Shortly thereafter, on January 6, 2009, Higgason pleaded guilty to Class D felony theft in case number 45G04-0711-FC-146. In that case, he was ordered to serve one year in the Department of Correction, consecutive to the sentence imposed under case number 45G04-0804-FC-61. The trial court did not award any credit for time served in case number 45G04-0711-FC-146.

On October 5, 2010, Higgason filed a pro se motion for jail time credit under case number 45G04-0711-FC-146. Higgason alleged that he was entitled to, but had not received, credit or earned credit time for days served in jail prior to sentencing. The trial court denied Higgason's motion the next day and entered the following order:

> The sentence in this case was ordered to be served consecutively to the sentence in case 45G04-0804-FC-61, pursuant to the express terms of a written plea agreement. Because the defendant was sentenced in case 45G04-0804-FC-61 prior to being sentenced in this case, credit time was awarded only in case 45G04-0804-FC-61.

Appellant's App. p. 2. Higgason now appeals the denial of his motion for jail time credit.

Discussion and Decision

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).

Because Higgason is seeking credit on sentences that were imposed in separate cases but ordered to be served consecutively, he cannot receive pretrial credit on both cases. "[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.").

For this reason, the trial court properly denied Higgason's pro se motion for jail time credit.

Affirmed.

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