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ATTORNEY FOR APPELLANT:

MARCE GONZALEZ, JR.
Dyer, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

HENRY A. FLORES, JR.
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ANTHONY J. JURANICH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0901-CR-4
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0704-FC-47

September 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Anthony J. Juranich appeals the trial court's sentencing order for Class C felony burglary which denies him credit for a short period of time he served in the Lake County Jail before sentencing. Because the record shows that Juranich received credit for this same period of time against a sentence he was serving in Illinois, the trial court properly denied him credit. We therefore affirm the trial court.

Facts and Procedural History

On or about December 17, 2005, Juranich broke a window and entered a building in Crown Point, Indiana. He then stole money and other property without the owner's consent. Juranich was not charged with Class C felony burglary for this offense until 2007.

On July 24, 2008, while serving time on an unrelated conviction in Illinois, Juranich filed a Request for Disposition of his pending Indiana burglary charge pursuant to the Interstate Agreement on Detainers ("IAD"). Appellant's App. p. 13. The Request for Disposition contained a Certificate of Inmate Status from the warden of Juranich's Illinois prison stating that he was eligible for parole on October 11, 2008. *Id.* at 14.

On August 13, 2008, Indiana accepted temporary custody of Juranich pursuant to the IAD and indicated that Juranich would be placed in the physical custody of Lake County, Indiana, on September 9, 2008. *Id.* at 16. Once Juranich was in Indiana custody, Illinois continued to credit the days he spent in Indiana against his Illinois sentence until that sentence was completed on October 10, 2008.[1] Tr. Vol. III p. 32-33; *see also* Tr.

[1] This seems to be in accordance with the IAD, which provides:

Vol. II p. 20 (Indiana probation officer testifying that Juranich's Illinois DOC records reflect that his sentence was completed on October 10, 2008).

On October 24, 2008, Juranich pled guilty to Class C felony burglary and agreed to a sentence of six years. At the two-day sentencing hearing, the parties disputed the credit time to which Juranich was entitled. Juranich argued that he was entitled to credit from August 13, 2008, when Indiana accepted temporary custody of him pursuant to the IAD. The State, however, argued that Juranich was not entitled to credit time until October 10, 2008, which is the date that he completed his Illinois sentence (which amounted to fifty-four days); otherwise, giving him credit time dating back to an earlier date would amount to impermissible double credit. The trial court agreed with the State and awarded Juranich fifty-four days of credit time plus fifty-four days of good time credit. Appellant's App. p. 43. Juranich now appeals.

Discussion and Decision

Juranich contends that the trial court improperly calculated his credit time to be only fifty-four days, which represents the time that he completed his Illinois sentence to the time of his sentencing in this case. Instead, Juranich argues that he is entitled to credit time from either the date that Indiana accepted temporary custody of him pursuant

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> During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

Ind. Code § 35-33-10-4, art. 5(f). We have held that this provision only applies to the *sending* (and not the receiving) state. *Bertucci v. State*, 528 N.E.2d 90, 93 n.4 (Ind. Ct. App. 1988), *reh'g denied*, *trans. denied*. Indiana is the receiving state in this case.

to the IAD to the date of sentencing (which amounts to 121 days) or the date that he arrived in Indiana to the date of sentencing (which amounts to 83 days).

Indiana Code § 35-50-6-3(a) provides that a person imprisoned for a crime or confined awaiting trial or sentencing earns one day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing. *See Payne v. State*, 838 N.E.2d 503, 510 (Ind. Ct. App. 2005), *trans. denied*. 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*. *Id.* If a person incarcerated awaiting trial on more than one charge is sentenced to concurrent terms for the separate crimes, he or she is entitled to receive credit time applied against each separate term. *Id.* However, if the defendant receives consecutive terms, he or she is only allowed credit time against the total or aggregate of the terms. *Id.*

Here, the record reflects that, although Indiana accepted temporary custody of Juranich pursuant to the IAD on August 13, 2008, and Juranich was brought to Lake County on September, 9, 2008, Illinois continued to credit the days Juranich spent in the Lake County Jail against his Illinois sentence until his sentence was finally completed on October 10, 2008. Tr. Vol. III p. 32-33. Because Juranich received credit in Illinois for his time spent in Indiana, Juranich is not entitled to credit time in Indiana for that same time period. In *Payne*, we observed that we should avoid construing the credit time statutes as permitting a defendant to claim "double or extra credit" for presentencing credit. 838 N.E.2d at 510. Although Juranich's Illinois and Indiana sentences did not run directly consecutive, that is the practical effect of what happened. Juranich did not start

serving his Indiana burglary sentence until December 2, 2008 (the date of the final sentencing hearing), which was after he completed his Illinois sentence on October 10, 2008. As such, we conclude that Juranich would improperly receive "double or extra credit" if we permitted the period from either August 13 to October 10, 2008, or September 9 to October 10, 2008, to count against both his Illinois and Indiana sentences because he already received credit for that same time period against his Illinois sentence.[2] *See id.* Therefore, the trial court properly calculated Juranich's credit time to be fifty-four days.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.

[2] Although Juranich relies on *Bertucci* for the proposition that he is entitled to credit time for the time he spent in the Lake County Jail upon his arrival in Indiana, we note that in *Bertucci*, the defendant was sentenced to concurrent sentences in Indiana and in the federal system; accordingly, we held that he was entitled to credit time against both sentences. 528 N.E.2d at 93. This holding is in accordance with *Payne*, which provides that if a person incarcerated awaiting trial on more than one charge is sentenced to concurrent terms for the separate crimes, he or she is entitled to receive credit time applied against each separate term. *Payne*, 838 N.E.2d at 510. As explained above, here Juranich essentially received consecutive sentences and is therefore not entitled to double credit. *See id.*

As for Juranich's reliance on *Nutt v. State*, 451 N.E.2d 342 (Ind. Ct. App. 1983), we find it to be misplaced. The issue in *Nutt* is whether the defendant was entitled to credit time in Indiana while the defendant was incarcerated in Texas pursuant to Indiana's hold. It is inapposite.