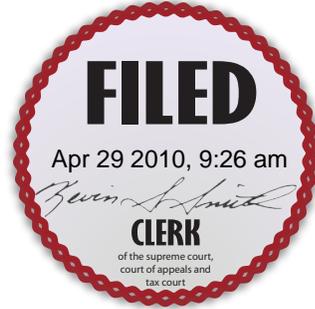


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES D. LUCAS,)
)
Appellant-Defendant,)
)
vs.) No. 78A04-0910-CR-598
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE SWITZERLAND CIRCUIT COURT
The Honorable W. Gregory Coy, Judge
Cause No. 78C01-0901-FA-45

April 29, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, James D. Lucas (Lucas), appeals the denial of his petition for jail time credit.

We affirm.

ISSUE

Lucas presents one issue for our review, which we restate as: Whether the trial court erred by denying his petition for jail time credit.

FACTS AND PROCEDURAL HISTORY

On April 23, 2007, Lucas was arrested in Switzerland County, Indiana, and charged with several offenses including possession of cocaine or a narcotic drug, as a Class C felony, Ind. Code § 35-48-4-6, and resisting law enforcement, as a Class D felony, I.C. § 35-44-3-3(b)(1). Lucas was held while pending trial from the date of his arrest until June 8, 2007, when he posted bond and was released from jail.

While out on bond, Lucas was arrested and charged with criminal offenses in Clark County, Indiana.¹ On August 6, 2007, while Lucas was being held in Clark County, a warrant for his arrest was issued in Switzerland County.² On April 27, 2008, Lucas was sentenced for his offenses committed in Clark County. On April 14, 2009, in Switzerland

¹ Lucas has not included documentation regarding his criminal proceedings in Clark County in his Appendix. We rely upon his characterization of the Clark County proceedings as stated in his Appellant's Brief, not because they must be true and accurate, but because even if they are true, they do not demonstrate that the trial court has erred by denying his petition for jail time credit. These facts should not be considered as having been established as true in any other proceeding.

² Again, Lucas has not included a copy of this warrant in his Appendix; therefore, we rely solely upon his representations made in his Appellant's Brief for this information. This fact should not be considered as having been established as true in any other proceeding.

County, Lucas pled guilty to possession of cocaine or a narcotic drug, as a Class C felony, and resisting law enforcement, as a Class D felony. On May 19, 2009, Lucas was sentenced to an aggregate sentence of nine and one-half years for his Switzerland County offenses, and given fifty days of jail time credit for his time served prior to posting bond on June 8, 2007. At the sentencing hearing, Lucas explicitly agreed to the calculation that he deserved fifty days of jail time credit for his Switzerland County offenses.

On July 27, 2009, Lucas filed a petition for jail time credit, arguing that he should have earned credit time for his Switzerland County offenses while he was awaiting trial in Clark County because of the fact that Switzerland County issued a warrant for his arrest. On August 10, 2009, the trial court denied his petition, stating that pursuant to I.C. § 35-50-1-2(d)(2)(B), Lucas' sentences in Clark and Switzerland Counties were required to be served consecutively.

Lucas now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

We begin by noting that the State argues that Lucas has waived his appeal by not including in the record on appeal supporting documentation for his claims regarding the criminal proceedings in Clark County, or the warrant which he claims Switzerland County filed after he was arrested in Clark County. We must agree with the State. The appellant carries a duty to present an adequate record clearly showing the alleged error. *Jackson v. State*, 496 N.E.2d 32, 33 (Ind. 1986). "Where he fails to do so, the issue is deemed waived." *Id.* However, because we prefer to dispose of issues on their merits, we will assume for

purposes of this appeal that the facts contended by Lucas are accurate and address his claim, waiver notwithstanding. *See Lake Holiday Conservancy v. Davison*, 808 N.E.2d 119, 120 (Ind. Ct. App. 2004).

The sequence of events which Lucas contends occurred is strikingly similar to the sequence of events in *Diedrich v. State*, 744 N.E.2d 1004 (Ind. Ct. App. 2001). Diedrich was arrested in Marshall County and later released on bond. *Id.* at 1005. While out on bond, Diedrich failed to appear for a pre-hearing conference and an arrest warrant was issued for him. Marshall County learned that Diedrich was being held in the Indiana Department of Correction (IDOC) due to an offense he had committed in another county. *Id.* On appeal, Diedrich argued that his jail credit time for his offense in Marshall County should have included the time he was being held in the IDOC after the warrant from Marshall County was served upon him. *Id.* We acknowledged the legal precedent that:

Where a defendant is confined during the same time period for multiple offenses and the offenses are tried separately, the defendant is entitled to a “full credit” for each offense for which he is sentenced. Each “full credit” is determined by the number of days the defendant spent in confinement for the offense for which the defendant is sentenced up to the date of sentencing for that offense The credit will be the number of days the defendant spent in confinement from the date of arrest for the offense to the date of sentencing for that same offense.

Id. (quoting *Dolan v. State*, 420 N.E.2d 1364, 1373 (Ind. Ct. App. 1981)). However, we noted that the *Dolan* court expressly excluded the “full credit” principle from circumstances where the defendant was required to serve mandatory consecutive sentences. *Id.* at 1006. Diedrich was required to serve mandatory consecutive sentences since he committed the

second offense while out on bond, and, therefore, he was ineligible for jail time credit on his Marshall County sentence for any of the time he was in the IDOC on the sentence from another county. *Id.* (citing I.C. § 35-50-1-2(d)(2)(B)).

Likewise, Lucas committed his offense in Clark County while out on bond. Therefore, Indiana Code section 35-50-1-2(d)(2)(B) requires that he serve his sentences for the two offenses consecutively. If we were to give Lucas credit time on his Switzerland County sentence for the time while he was serving his sentence for his Clark County offense, we would permit him to serve a significant portion of his sentences concurrently, in direct contravention of our legislature's mandate of consecutive sentencing. Therefore, we conclude that the trial court did not err when it denied Lucas' petition for jail time credit.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err when denying Lucas' petition for jail time credit.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.