

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO :
Plaintiff : **CASE NO. 2012 CR 00086**
vs. : **Judge McBride**
PERRY JAMES WORKMAN : **DECISION/ENTRY**
Defendant :

Catherine Adams, assistant prosecuting attorney for the State of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Perry J. Workman, *pro se* defendant, #A659-489, North Central Correctional Institution, P.O. Box 1812, Marion, Ohio 43301-1812.

This matter is before the court for consideration of a motion for appointment of counsel at state expense.

The defendant was sentenced to prison in this case on April 13th and April 20th 2012, and, during the sentencing hearing, a determination was made as to the amount of jail time credit to which the defendant was entitled. The defendant indicated that he was in agreement with the number of days allowed as jail time credit, and the sentencing entry that included the calculation of jail time credit was journalized on April 23, 2012.

The defendant failed to file a timely appeal from his conviction and sentencing in this case, and for the first time on April 8, 2013, nearly one year after his sentencing in this case, he filed a motion before this court asking for jail time credit from May 20, 2011 through December 10, 2011. After reviewing the matter, the court determined that the defendant was not entitled to any additional credit and denied the defendant's motion in an entry which was journalized on May 17, 2013. The defendant subsequently filed a notice of appeal from this decision and has asked that the court appoint counsel.

“ [A] defendant may only contest a trial court's calculation of jail-time credit in an appeal from the judgment entry containing the allegedly incorrect calculation.’ ”¹

Principles of res judicata apply to bar the assertion of any claim relating to sentencing that was or could have been raised on direct appeal.²

R.C. 2967.191 was amended in 2012 and now reads as follows:

“The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term, as determined by the sentencing court under division (B)(2)(g)(i) of section 2929.19 of the Revised Code, and confinement in a juvenile facility. The department of rehabilitation and correction also shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of

¹ *State v. Britton* (Mar. 18, 2013), 3rd Dist. No. 4-12-13, 2013-Ohio-1008, at ¶ 14, citing, *State v. Sumerall* (Dec. 31, 2012), 10th Dist. No. 12AP-445, 2012-Ohio-6234, at ¶ 10, quoting, *State v. Roberts*, 10th Dist. No. 10AP-729, 2011-Ohio-1760, ¶ 6 quoting, *State v. Lomack* (June 2, 2005), 10th Dist. No. 04AP-648, 2005-Ohio-2716, at ¶ 11.

² *State v. Fitzgerald* (May 9, 2013), 8th Dist. No. 98723, 2013-Ohio-1893, ¶ 3.

the prisoner by the total number of days, if any, that the prisoner previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.”

R.C. 2929.19(B)(2)(g)(iii) allows the court, in its discretion, to correct any error in the calculation of jail time credit not previously raised at sentencing. Thus, “if the trial court makes a mathematical mistake, rather than an erroneous legal determination, in calculating the jail-time credit, then a defendant may seek judicial review via a motion for correction before the trial court.”³

However, principles of res judicata apply to bar the assertion of any claim relating to sentencing that was or could have been raised on direct appeal.⁴ Thus, where the motion for correction does not seek to correct a mathematical error, but instead seeks to litigate the inclusion or exclusion of a time period from the calculation of jail time credit, an issue which could have been raised before the trial court at the time of sentencing or could have been raised on direct appeal from the sentence, the doctrine of res judicata precludes a motion for correction from being brought on these grounds.⁵

The defendant could have, but did not, raise the legal issue of credit for the time in 2011 before the trial court at the time of sentencing or in a direct appeal from his convictions. As a result, those issues have been waived.

The defendant failed to file any appeal of his convictions and, as such, these issues can still be raised if the court of appeals grants the defendant leave to file a delayed appeal. The defendant has filed a motion for appointment of counsel in both

³ *Britton*, supra, at ¶ 14, quoting, *State v. Roberts* (April 12, 2011), 10th Dist. No. 10AP-729, 2011-Ohio-729, ¶ 6, citing *State v. Eble* (Dec. 14, 2004), 10th Dist. No. 04AP-334, 2004-Ohio-6721, ¶ 10, abrogated on other grounds by, *State v. Fugate* (2008), 117 Ohio St.3d 261, 883 N.E.2d 440, 2008-Ohio-856.

⁴ *Fitzgerald*, supra, at ¶ 3.

⁵ *Britton*, supra, at ¶ 15.

this court and in the appellate court; however, said motion is within the purview of the appellate court. As the defendant would be filing a motion for leave to file a delayed appeal, the appellate court will consider the motion for leave and may appoint counsel to represent the defendant for purposes of his appeal if that motion for leave is granted.⁶

The defendant's motion for a copy of transcripts at the state's expense was properly filed with the court of appeals, not with this court.

The court finds that the defendant's motion for appointment of counsel is not well-taken and shall be overruled.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

⁶ See, e.g., *State v. Kenney* (March 17, 2011), 8th Dist. No. 94657, 2011-Ohio-1232, ¶ 3 (“* * * [defendant] filed a pro se motion for leave to file a delayed appeal, which was granted by this court. [Defendant] was appointed counsel.”); *State v. Johnson* (July 20, 2010), 10th Dist. No. 09AP-1065, 2010-Ohio-3381, ¶ 3 (“Appellant filed a pro se motion seeking leave to file a delayed appeal. We granted the motion and appointed counsel to represent appellant on appeal.”); *State v. Smith* (Sept. 18, 2007), 7th Dist. No. 06-BE-42, ¶ 7 (“* * * this court granted appellant leave to file a delayed appeal and appointed counsel to represent him.”); and, *State v. Harris* (Dec. 31, 2001), 10th Dist. No. 01AP-340, 2001 WL 1661878, *1 (“This court granted defendant’s motion [for leave to file a delayed appeal] and, accordingly, appointed counsel to pursue the appeal.”).

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 20th day of June 2013 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride