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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY L. HAHN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A04-1103-PC-176
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0812-FA-9

September 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Timothy L. Hahn appeals the post-conviction court's summary dismissal of his petition for post-conviction relief in which he argued that he was entitled to an additional 582 days of credit for time he was imprisoned awaiting sentencing. The State concedes that Hahn is entitled to additional credit time. Concluding that Hahn is entitled to an additional 582 days of credit time, we reverse the post-conviction court.

Facts and Procedural History

On December 9, 2008, Hahn was arrested in Muncie and taken into custody, where he remained throughout the pendency of the underlying proceedings. On December 17, 2008, the State charged Hahn with Class A felony burglary, Class B felony robbery, and Class C felony criminal confinement.

On January 6, 2009, the trial court received a parole violation warrant because Hahn was on parole under Cause Number 18D01-9104-CF-21 (Cause No. 21) at the time he was arrested in this case. Appellant's App. p. 70. The parole violation warrant recommended "to hold probable cause hearing and await local disposition." *Id.*

On May 3, 2010, Hahn pled guilty to Class B felony robbery in this case. His sentencing hearing was set for June 2010 and then rescheduled for July 15, 2010. On July 12, 2010, the Parole Board noted that because Hahn's projected release date from parole was July 15, 2010, its recommendation was to "lift and void parole violation warrant . . . and discharge to wanting authorities." *Id.* at 71. An affidavit from Extradition Coordinator/Parole Services Coordinator Ronald Leffler confirms that Hahn's

parole warrant was lifted and voided, he was discharged to the wanting authorities, and a parole revocation hearing was never held. *Id.* at 94-95.

On August 5, 2010, the trial court sentenced Hahn to ten years, with two years suspended. The trial court placed Hahn in Class I and gave him "jail time credit" of 22 actual days (for a total of 44 days). *Id.* at 12 (CCS entry).

In September 2010, Hahn filed a pro se petition for post-conviction relief alleging, among other things, that the trial court failed to award him credit for the entire time he was imprisoned awaiting sentencing in this case.[1] The State Public Defender later amended the petition raising the same issue. The State responded that Hahn was not entitled to credit for the entire time he served awaiting sentencing in this case because of the parole matter and moved for summary disposition pursuant to Post-Conviction Rule 1(4)(g). The post-conviction court granted the State's motion for summary disposition in February 2011. Hahn filed a motion to correct error, which the court denied. Hahn now appeals.

Discussion and Decision

Hahn contends that the trial court erred in awarding him only 22 days of credit for the time that he was imprisoned awaiting sentencing in this case and that he is entitled to an additional 582 days because the Parole Board ended up not revoking his parole. The State concedes that the trial court "erred in denying [Hahn] credit for the entire time he spent incarcerated prior to his sentencing in the present case" because Hahn was never found to have violated his parole. Appellee's Br. p. 4.

[1] It is unclear why Hahn pursued post-conviction relief instead of raising this issue on direct appeal.

Each inmate in Indiana is placed into a class for the purpose of earning credit time. *Neff v. State*, 888 N.E.2d 1249, 1250 (Ind. 2008). A person who is not a credit-restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I. Ind. Code § 35-50-6-4(a). A person in Class I earns one day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing. *Id.* § 35-50-6-3(a); *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. *Hall v. State*, 944 N.E.2d 538, 542 (Ind. Ct. App. 2011), *trans. denied*. When a defendant is incarcerated on multiple unrelated charges at the same time, a period of confinement may be the result of more than one offense. *Id.* If a person is incarcerated awaiting trial on more than one charge and is sentenced to concurrent terms for the separate crimes, he is entitled to credit time applied against each separate term. *Id.* However, "[w]here a defendant is convicted of multiple offenses and sentenced to consecutive terms, the jail credit is applied against the aggregate sentence." *Id.* (quotation omitted).

The confusion in this case stems from the fact that Hahn was on parole under Cause Number 21 when he was arrested in this case. Although the Parole Board issued a parole violation warrant because of Hahn's arrest in this case, the Board elected to wait until this case was resolved. But even after this case was resolved, the Parole Board never took action. In fact, a parole revocation hearing was never held. If Hahn had to serve the remaining portion of his sentence in Cause No. 21, then the terms of

imprisonment in both cases must have been served consecutively. *See* Ind. Code § 35-50-1-2(d). But because no sentence ever resulted from Hahn's alleged parole violation, logic dictates that there are no consecutive sentences. In fact, Hahn received only one sentence – for robbery – and as a result he is entitled to receive credit against that sentence for the entire time he was imprisoned awaiting sentencing for that crime.

Hahn was arrested on December 9, 2008,[2] incarcerated during the pendency of this case, and sentenced on August 5, 2010. This amounts to 604 days. However, the trial court awarded him credit of only 22 days. Hahn is entitled to an additional 582 days of credit time, and the post-conviction court erred in concluding otherwise. We therefore reverse the post-conviction court and remand with instructions to award Hahn 582 days of additional credit time.

Reversed and remanded.

FRIEDLANDER, J., and DARDEN, J., concur.

[2] Although on appeal the State appears to argue that the salient date is the date that Hahn was charged, December 17, 2008, Hahn was actually arrested and taken into custody on December 9, 2008. In the trial court the State agreed that Hahn was arrested on December 9, 2008. *See* Appellant's App. p. 73. We therefore use the date of Hahn's arrest.