

COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
LAWRENCE COUNTY

2015 JAN 30 PM 2:45

STATE OF OHIO,	:	Case No. 14CA13
Plaintiff-Appellee,	:	
v.	:	<u>ENTRY DENYING</u>
CARL V. CARPENTER,	:	<u>APPELLANT'S MOTION</u>
Defendant-Appellant.	:	<u>TO CERTIFY A CONFLICT</u>
	:	<u>AND STAY</u>

MIKE PATRICKSON  
CLERK OF COURTS  
LAWRENCE COUNTY, OHIO

APPEARANCES:

Timothy Young, Ohio Public Defender, and Allen Vender, Ohio Assistant Public Defender, Columbus, Ohio, for appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and W. Mack Anderson, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

Harsha, J.

{11} The Lawrence County Court of Common Pleas revoked Carl V.

Carpenter's community control and sentenced him to serve 12 months in prison. The trial court granted Carpenter jail-time credit for 54 days plus additional days in custody awaiting transportation to prison. Instead of timely appealing his sentence to contest the trial court's jail-time credit order, Carpenter filed two pro se motions for jail-time credit and one pro se motion to clarify jail-time credit. Ultimately, over a year after the trial court's judgment, counsel for Carpenter filed a motion for recalculation of jail-time credit. The trial court denied the motion, finding it had previously addressed the issue and given Carpenter the appropriate days of credit.

{12} On appeal we rejected Carpenter's claim that the trial court committed reversible error by denying his motion to recalculate his jail-time credit. *State v. Carpenter*, 4th Dist. Lawrence No. 14CA13, 2014-Ohio-5698. We held that the trial

court did not err in denying his motion because “[r]es judicata barred him from raising claims in his postsentence motions that he could have raised in timely appeals from his sentencing entries.” *Id.* at ¶ 19.

{¶13} Carpenter now seeks to certify a conflict between our judgment and the judgments of the Eighth District Court of Appeals in *State v. Quarterman*, 8th Dist. Cuyahoga No. 101064, 2014-Ohio-5796, and the Tenth District Court of Appeals in *State v. Inboden*, 10th Dist. Franklin Nos. 14AP-312 and 14AP-317, 2014-Ohio-5762. The state did not file a timely response.

{¶14} A court of appeals has a constitutional duty to certify a conflict when its judgment is in conflict with the judgment on the same question by any other court of appeals in Ohio. Ohio Constitution, Article IV, Section 3(B)(4). The following three requirements must exist for a court of appeals to certify a conflict to the Supreme Court of Ohio: (1) the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be on the same question; (2) the alleged conflict must be on the law, not facts; and (3) the journal entry or opinion of the certifying court must clearly set forth the rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596, 613 N.E.2d 1032 (1993); *State v. Lewis*, 4th Dist. Washington No. 97CA51, 1998 WL 337879, \*1 (June 24, 1998); *State v. Gilmore*, 7th Dist. Mahoning No. 11 MA 30, 2014-Ohio-5059, ¶ 2. The Supreme Court set forth the procedural requirements for motions to certify a conflict in App.R. 25, which requires that the motion “specify the issue

proposed for certification” and “cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed.”

{15} Carpenter claims that our judgment conflicts with the judgments of the courts of appeals in *Quarterman* and *Inboden* on the following issue:

May a post-sentencing motion for jail-time credit only be used to address a purported mathematical/clerical mistake by the trial court?

{16} In his sole assignment of error Carpenter asserted that the trial court erred in denying his motion for recalculation of jail-time credit and he claimed to have filed his motion under R.C. 2929.19(B)(2)(g)(i), which requires the sentencing court to “[d]etermine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the stated prison term under section 2967.191 of the Revised Code.”

{17} We rejected Carpenter’s assignment of error based on the Sixth District Court of Appeals’ holding in *State v. Verdi*, 6th Dist. Erie No. E-13-025, 2013-Ohio-5630:

Carpenter points to the seemingly expansive language in R.C. 2929.19(B)(2)(g)(iii) to argue it precludes courts from applying res judicata to bar postsentence motions for jail-time credit even when these claims could have been raised by timely appeal from the sentencing judgment. R.C. 2929.19(B)(2)(g)(iii) states “[t]he sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing in making a determination under division (B)(2)(g)(i) of this section. The offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under division (B)(2)(g)(i) of this section, and the court may in its discretion grant or deny that motion.”

However, in *State v. Verdi*, 6th Dist. Erie No. E-13-025, 2013-Ohio-5630, ¶ 14-15, the Sixth District Court of Appeals recently rejected a similar claim:

Referencing R.C. 2929.19(B)(2)(g)(iii), appellant contends that the General Assembly intended to create a "statutory exception to the doctrine of res judicata as applied to custody credit determinations." However, appellant's argument overlooks several cases decided by appellate courts in this state since the effective date of the amendment, all of which maintain that "[a] post-sentencing motion for jail-time credit may only be used to address a purported mathematical mistake by the trial court, rather than \* \* \* an erroneous legal determination." *State v. Doyle*, 10th Dist. Franklin Nos. 12AP-567, 12AP-794, 12AP-568, 12AP-793, 2013-Ohio-3262, ¶ 10, citing *State v. Roberts*, 10th Dist. Franklin No. 10AP-729, 2011-Ohio-1760, ¶ 6; see also *State v. Summerall*, 10th Dist. Franklin No. 12AP-445, 2012-Ohio-6234, ¶ 11 (applying res judicata to bar appellant's motion where appellant "failed to challenge the trial court's award of jail-time credit at sentencing or on a direct appeal from his conviction" and "did not allege that the trial court committed any mathematical error in the calculation of jail-time credit so as to avoid the res judicata bar"); *State v. McKinney*, 7th Dist. Mahoning No. 12 MA 163, 2013-Ohio-4357 (stating that appellant's failure to raise his "purely legal argument" concerning jail-time credit on a direct appeal precluded him from raising it in a subsequent appeal under the doctrine of res judicata); *State v. Perry*, 7th Dist. Mahoning No. 12 MA 177, 2013-Ohio-4370, ¶ 12 (finding that appellant's substantive claim for jail-time credit was barred by res judicata where he failed to raise it on a direct appeal, noting that "[i]s the view across the state"); *State v. Britton*, 3d Dist. Defiance Nos. 4-12-13, 4-12-14, 4-12-15, 2013-Ohio-1008, ¶ 14 (limiting the use of a motion for correction of jail-time credit to situations where the trial court made a mathematical mistake).

In light of the foregoing, we conclude that principles of res judicata bar appellant's claim for additional jail-time credit. Accordingly, appellant's first assignment of error is not well-taken.

We agree with the holding in *Verdi*. Notably, the Supreme Court of Ohio did not accept jurisdiction for a review of the appellate court's decision in *Verdi*. *State v. Verdi*, 138 Ohio St.3d 1495, 2014-Ohio-2021, 8 N.E.3d 964.

*Id.* at ¶ 15-17.

{¶18} In *Quarterman*, 8th Dist. Cuyahoga No. 101064, 2014-Ohio-5796, the Eighth District Court of Appeals at ¶ 8 applied a different rationale on reconsideration in

that case by opining in dicta that the statutory amendment changed preexisting precedent:

Amended R.C. 2929.19(B)(2)(g)(iii) marks a significant change in the law regarding jail-time credit. Previously, inmates could only challenge errors in jail-time credit on direct appeal unless the error consisted of a mathematical mistake in calculation rather than an erroneous legal determination. See, e.g., *State v. Robinson*, 4th Dist. Scioto No. 00 CA 2698, 2000 Ohio App. LEXIS 5001 (Oct. 23, 2000). R.C. 2929.19(B)(2)(g)(iii) now allows the court to correct "any error," regardless of whether the error involved a mathematical miscalculation or an erroneous legal determination, i.e., whether the defendant was entitled to jail-time credit for time served in an inpatient rehabilitation facility.

{¶19} Nevertheless, the court of appeals reaffirmed the judgment of the trial court denying part of Quarterman's request for jail-time credit because he had been released from prison, rendering his appeal on the jail-time credit issue moot. *Id.* at ¶ 6, 9.

{¶110} In *Inboden*, 10th Dist. Franklin Nos. 14AP-312 and 14AP-317, 2014-Ohio-5762, the Tenth District Court of Appeals at ¶ 8 also opined that the statutory amendment legislatively overruled the application of the judicial doctrine of res judicata:

R.C. 2929.19(B)(2)(g)(iii), however, states that the court has continuing jurisdiction to correct any jail-time credit error "not previously raised at sentencing," thereby abating the application of the doctrine of res judicata as it relates to issues that could have been raised at sentencing but were not.

{¶111} But the court of appeals ultimately affirmed the trial court's denial of the appellant's motion for jail-time credit because it determined that the amendment was inapplicable based on the facts of the case—appellant previously raised his claim at sentencing. *Id.* at ¶ 9-11.

{¶12} It is axiomatic that “[a]n actual conflict must exist in order for the court to order certification.” See generally Painter and Pollis, *Ohio Appellate Practice*, Section 7:41 (2014); *Whitelock*, 66 Ohio St.3d 594, 613 N.E.2d 1032, at paragraph one of the syllabus (“there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination”); *Metcalf v. Kilzer*, 4th Dist. Athens No. 14CA13, 2014-Ohio-4713, ¶ 7, quoting *State v. Hankerson*, 52 Ohio App.3d 73, 557 N.E.2d 847 (2d Dist.1989), paragraph two of the syllabus (“ ‘For a court of appeals to certify a case as being in conflict with another case, it is not enough that the reasoning expressed in the opinions of the two courts of appeals be inconsistent; the judgments of the two courts must be in conflict’ ”).

{¶13} Our judgment here-affirming the denial of Carpenter’s motion for jail-time credit—is not in actual conflict with the judgments of the courts of appeals in *Quarterman* and *Inboden*, which also affirmed judgments denying motions for jail-time credit, although some of the reasoning expressed in these opinions is inconsistent with our rationale in *Carpenter*.

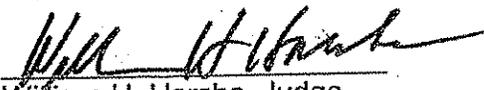
{¶14} Therefore, in the absence of an actual conflict, we deny Carpenter’s motion to certify a conflict and to stay our judgment. However, the Supreme Court of Ohio may wish to allow a discretionary appeal in this case to resolve the seeming inconsistencies between our decision in *Carpenter*, which relied on the Sixth District’s decision in *Verdi*, 6th Dist. Erie No. E-13-025, 2013-Ohio-5630, and the decisions of the Eighth District in *Quarterman* and the Tenth District in *Inboden*. One of the important issues that could be resolved in such an appeal is whether under separation of powers

principles, the General Assembly can legislatively preclude courts from applying the judicial doctrine of res judicata. See *State v. Hochhausler*, 76 Ohio St.3d 455, 463, 668 N.E.2d 457 (1996) (The principle of separation of powers is embedded in the constitutional framework of our state government and each of the three grand divisions of the government must be protected from the encroachments of the others so far that its integrity and independence may be preserved).

MOTION TO CERTIFY A CONFLICT AND TO STAY DENIED.

Abele, J. & McFarland, A.J.: Concur.

For the Court

BY:   
William H. Harsha, Judge