

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR12-664

ERIC L. KENNEDY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 27, 2013

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR10-861]

HONORABLE DAVID L.
REYNOLDS, JUDGE

APPEAL DISMISSED

RITA W. GRUBER, Judge

Appellant, Eric Kennedy, pleaded guilty to offenses in four separate cases, resulting in a combined sentence of twenty years' imprisonment. The circuit court granted 663 days of jail-time credit for the time he spent in custody on the offenses in the first case for which he was charged, arrested, and placed in custody. On appeal, he contends that the circuit court erred in denying his request for jail-time credit on the other offenses. Because we do not allow appeals from a guilty plea, we dismiss the appeal.

Appellant was arrested and placed in custody on June 23, 2010, for the offenses of aggravated robbery, theft of property, and theft by receiving in Case No. 2010-730. He was unable to make bond and remained in custody for those offenses. He was arrested while he was in custody on July 28, 2010, for the offense of second-degree forgery that occurred on June 16, 2010, in Case No. 2010-861. While still in custody, on November 10, 2010, he was arrested and charged with the offense of criminal mischief for damage he caused in jail on



October 24, 2010, in Case No. 2010-1264. Finally, on December 10, 2010, appellant was arrested and charged with the offense of second-degree battery for hitting a corrections officer in the head and giving him a black eye, which occurred while appellant was in custody on November 20, 2010, in Case No. 2010-1354.

On April 16, 2012, appellant appeared in Faulkner County Circuit Court and pleaded guilty to all of the above-listed offenses except for theft of property and theft by receiving in Case No. 2010-730, which were both nolle prossed. The court sentenced him as follows: Case No. 2010-730, thirteen years' imprisonment; Case No. 2010-861, three years' imprisonment; Case No. 2010-1264, six years' imprisonment; and Case No. 2010-1354, four years' imprisonment. The sentences in Case Nos. 730, 861, and 1354 run consecutively, and the sentence in Case No. 1264 runs concurrently, for a total term of twenty years' imprisonment. Appellant had been in custody for the offenses charged in Case No. 2010-730 since June 23, 2010, which was 663 days. At the hearing, but before the guilty pleas were taken, appellant's attorney asked the court for jail-time credit for the sentences in all four cases. The court denied the request and found that appellant was entitled to 663 days of jail-time credit on the sentence imposed in Case No. 730, the offense for which he was in custody before the hearing.

On appeal, appellant does not argue that the court's finding of jail-time credit in Case No. 2010-730 is incorrect; rather, he contends that the circuit court erred in not also giving him jail-time credit for each of the other sentences, calculated from the date he was arrested for the particular offense until April 16, 2012, the date he was sentenced. Specifically, he



contends that he is entitled to 629 days in Case No. 2010-861, 524 days in Case No. 2010-1264, and 484 days in Case No. 2010-1354. He relies on Arkansas Code Annotated section 5-4-404, which provides that “if a defendant is held in custody for conduct that results in a sentence to imprisonment” the court shall credit “the time spent in custody against the sentence.”

Before reaching the merits of appellant’s argument, we turn to whether appellant’s case falls within an exception to the general rule that a defendant cannot appeal from a plea of guilty. Ark. R. App. P.–Crim. 1 (2012). There are three exceptions. *Spires v. State*, 2013 Ark. 6, at 2. First, Arkansas Rule of Criminal Procedure 24.3(b) (2012) states that a defendant may enter a conditional plea of guilty, reserving the right in writing, to appeal from the judgment on three grounds, none of which are applicable here. Second, a plea of guilty may be appealed where the issue is one of sentencing that was determined in a separate hearing after entry of the guilty plea. See, e.g., *Bailey v. State*, 348 Ark. 524, 74 S.W.3d 622 (2002); *Hill v. State*, 318 Ark. 408, 887 S.W.2d 275 (1994). Finally, appeals from posttrial motions challenging the validity and legality of the sentence itself are appealable. See *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003). In *Jones v. State*, 301 Ark. 510, 785 S.W.2d 217 (1990), the supreme court addressed the merits of an appeal from a guilty plea where it involved the application of jail-time credit. The court did not characterize the case as an appeal from a guilty plea but as an appeal from a posttrial motion to correct a sentence. *State v. Sherman*, 303 Ark. 284, 286, 796 S.W.2d 339, 340 (1990); *Jones*, 301 Ark. at 512-A, 512-B, 789 S.W.2d at 731.



Appellant's appeal does not fall within any of the exceptions allowing an appeal from a guilty plea. He did not enter a conditional plea; the court did not hold a separate hearing for taking appellant's plea and sentencing him; and appellant did not file a posttrial motion to modify his sentence. Unlike the defendant in *Jones*, the jail-time-credit case in which the supreme court allowed an appeal from a guilty plea, appellant did not file a posttrial motion to modify his sentence. Rather, he requested jail-time credit at the beginning of his plea hearing. After discussion of the issue and a ruling by the judge from the bench that he was denying appellant's request for the additional jail-time credit, the court continued with the plea hearing, and appellant pleaded guilty in all four cases. This is not an appeal from the decision on a posttrial motion. The denial of jail-time credit was an integral part of the acceptance of appellant's guilty plea. Accordingly, we must dismiss the appeal.

Appeal dismissed.

PITTMAN and WHITEAKER, JJ., agree.

Charles D. Hancock, for appellant.

Dustin McDaniel, Att'y Gen., by: *Laura Shue*, Ass't Att'y Gen., for appellee.