

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-T-0070
SAUL KERBERT CUSTER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2010 CR 0083.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Saul Kerbert Custer, pro se, PID: A590-091, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Saul Kerbert Custer, appeals the judgment of the Trumbull County Court of Common Pleas denying his motion for jail-time credit. For the reasons that follow, we affirm.

{¶2} Appellant was indicted on the following charges: grand theft, in violation of R.C. 2913.02(A)(1), a felony of the fourth degree; four counts of breaking and entering, in violation of R.C. 2911.13(A), felonies of the fifth degree; receiving stolen property, in

violation of R.C. 2913.51(A), a felony of the fourth degree; and possessing criminal tools, in violation of R.C. 2923.24(A), a felony of the fifth degree. A jury trial ensued. Appellant was found guilty of all charges in the indictment.

{¶3} This is appellant's fourth appeal following his finding of guilt. Before sentencing, appellant, although represented by counsel, filed a pro se notice of appeal, assigned case No. 2010-T-0034. This court dismissed appellant's appeal on May 3, 2010, for lack of a final, appealable order. *State v. Custer*, 11th Dist. No. 2010-T-0034, 2010-Ohio-1968.

{¶4} After appellant was sentenced, but before the trial court filed its sentencing entry, appellant again filed a pro se notice of appeal, assigned case No. 2010-T-0078. Appellant's trial counsel, after the sentencing entry was filed, then filed a notice of appeal, assigned case No. 2010-T-0093. Upon the request of appellant, by and through appointed counsel of record, this court dismissed case No. 2010-T-0093.

{¶5} With respect to case No. 2010-T-0078, this court released its opinion on March 4, 2011. In *State v. Custer*, 11th Dist. No. 2010-T-0078, 2011-Ohio-1009, this court noted that appellant failed to set forth assignments of error for our review and failed to provide a transcript of the proceedings below. We affirmed the judgment of the Trumbull County Court of Common Pleas.

{¶6} While the above appeal was pending, appellant filed two motions for jail time credit in the trial court. In a June 8, 2011 judgment entry, the trial court denied appellant's motion.

{¶7} Appellant appealed and asserts the following assignment of error for review:

{¶8} “The trial court did fail to credit Defendant the jail time credit he is entitled to.”

{¶9} The doctrine of res judicata requires a party “to present every ground for relief in the first action, or be forever barred from asserting it.” *Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62 (1990). “It has long been the law of Ohio that ‘an existing final judgment or decree between the parties to the litigation is conclusive as to all claims which were *or might have been* litigated in a first lawsuit.” (Emphasis sic.) *Id.*, quoting *Rogers v. Whitehall*, 25 Ohio St.3d 67, 69 (1986). The Ohio Supreme Court has stated:

{¶10} [W]e expressly adhere to the modern application of the doctrine of *res judicata* * * * and hold that a valid, final judgment rendered upon the merits bars all subsequent action based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382 (1995).

{¶11} In *State v. Caldwell*, 11th Dist. No. 2004-L-173, 2005-Ohio-6149, this court held that a defendant’s failure to raise an issue regarding the calculation of his jail-time credit in a prior proceeding is barred by res judicata. *Id.* at ¶10. See also *State v. Smith*, 11th Dist. No. 2010-L-070, 2011-Ohio-1014. In *Caldwell*, this court stated:

{¶12} Caldwell appealed the judgment entry of sentence. * * * On his direct appeal, he did not raise any issue regarding the calculation of his jail-time credit. * * * However, the trial court’s judgment entry of sentence clearly provides that he was credited with eight days of

jail time. Therefore, this was an issue that could have been raised in his direct appeal. In addition, in May 2003, the trial court denied a nearly identical motion for recalculation of jail time. Caldwell did not appeal the trial court's May 1, 2003 judgment entry. Therefore, this issue has been previously litigated in a prior proceeding, which is final due to Caldwell's failure to appeal it. *Id.*

{¶13} Here, the trial court's sentencing entry indicated that appellant was granted "jail-time credit for time incarcerated in the Trumbull County Jail pursuant to these charges from February 3, 2010." Therefore, appellant was aware of the issue presented when he initially filed his notice of appeal, but failed to assert it for our review on appeal.

{¶14} For the reasons stated in the opinion of this court, the assignment of error is not well taken. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J.,
THOMAS R. WRIGHT, J.,
concur.