



*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

## ENTRY ORDER

APRIL TERM, 2022

Ricky L. LaPrade* v. James Baker	}	APPEALED FROM:
	}	Superior Court, Washington Unit,
	}	Civil Division
	}	CASE NO. 29-1-21 Wncv
		Trial Judge: Robert R. Bent

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals pro se from the court's decision concerning sentencing credit.\* We affirm.

Plaintiff was convicted of numerous crimes in 2003 and 2004, including driving under the influence #4 (DUI #4) and four misdemeanors; the sentences ran consecutively to one another. Plaintiff was charged with three new felonies in June 2004, and his sentences in these cases were consecutive to the sentences for plaintiff's prior crimes. In December 2019, the DUI #4 conviction was vacated. Plaintiff thereafter filed a complaint under Vermont Rule of Civil Procedure 75, arguing that the Department of Corrections (DOC) had not provided him the sentencing credit he was due. The court ultimately determined on summary judgment, with the agreement of plaintiff's counsel, that plaintiff had received the credit due.

The court's decision rested on the following undisputed facts. Plaintiff was arraigned for DUI #4 in January 2003 and held for twelve days before posting bail; he was arraigned for domestic assault in April 2003 and held for eight days before posting bail; in June 2003, he was arraigned on two counts of violating his conditions of release (VCR) and one count of unlawful mischief and held for failure to make bail. In October 2003, he was sentenced to nine-months-to-five-years for DUI #4. There were 129 days between the date he was arraigned and held on the VCR/unlawful misdemeanor charges and the date he was sentenced for DUI #4.

In March 2004, plaintiff was sentenced on the four misdemeanors above to two-to-thirty months, consecutive to the DUI #4 and each other. There were also 129 days between the October 2003 imposition of the DUI #4 sentence and the imposition of sentence for the misdemeanors.

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\* Plaintiff was represented by counsel below.

In June 2004, plaintiff was held on aggravated domestic assault and unlawful trespass charges. Several days later, he was held on escape charges. Plaintiff is still serving sentences in the three felony cases referenced above; the sentences run consecutive to his earlier crimes. In December 2019, plaintiff's DUI #4 conviction was vacated.

Plaintiff argued below that the DOC failed to give him appropriate credit for the misdemeanors for the time between sentencing on the DUI #4 in October 2003 and sentencing for the misdemeanors in March 2004 (129 days). Coincidentally, the court explained, the same number of days were at issue for the time between when plaintiff was held on the misdemeanor charges and the imposition of sentence for the DUI #4.

The court found that plaintiff was owed additional nonduplicative credit for the second 129-day period and it ordered the DOC to recalculate plaintiff's sentences with inclusion of the period between October 2003 to March 2004 applied as pre-trial credit as against the misdemeanors, as was appropriate in consecutive sentences (with no double credit). If that affected plaintiff's sentence commencement date for his current sentences, the court explained, then the DOC should make the necessary adjustment.

Plaintiff moved for reconsideration, arguing the court overlooked one of his arguments, specifically, that he was still owed credit from the time he was held in June 2004 on his new felony charges because the sentences for those crimes were consecutive to his vacated DUI #4 sentence and no other sentence.

At a status conference, a DOC employee agreed with the court's summary judgment decision and applied the additional 129-day credit to plaintiff's sentence, resulting in a total of 482 days of credit. The DOC employee explained that plaintiff had received the credit referenced by plaintiff's attorney in the reconsideration motion and stated that 482 days of credit had been applied to plaintiff's sentence. Plaintiff's attorney agreed that that was the amount of credit she had been advocating for on plaintiff's behalf. The DOC employee stated that she would send a credit verification sheet to plaintiff's attorney. Plaintiff's attorney indicated that she would alert the court if she sought additional action. Counsel did not do so. The court then denied the reconsideration motion as moot. Based on the conference, the court found no present disagreement over plaintiff's sentencing computation. This pro se appeal followed.

Plaintiff argues on appeal that once his DUI #4 conviction was vacated, his sentences on the four misdemeanors could not be treated as consecutive sentences. He contends that the court failed to address his assertion that he was entitled to sentencing credit based on his DUI #4 conviction being vacated. He further asserts that the court failed to address the second argument in his motion to reconsider—apparently, that the DOC failed to treat his later-committed felonies as though they were consecutive to his misdemeanor convictions and give him credit for time served.

We review the court's summary judgment decision applying the same standard as the trial court. Wark v. Zucker, 2021 VT 37, ¶ 10. Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(a). The trial court addressed both arguments raised by plaintiff in his brief. The undisputed facts support its conclusion to grant summary judgment to defendant.

As set forth above, the court found that plaintiff was entitled to credit for an additional 129 days, which was provided. Plaintiff's counsel agreed that plaintiff had been provided all of the credit sought in the complaint. Plaintiff now argues for the first time on appeal that he is

entitled to 945 days of credit rather than the 482 days his counsel agreed was appropriate. He also argues in his reply brief that the trial court applied the wrong statute. Plaintiff failed to pursue these arguments below and we do not address them for the first time on appeal. See Lane v. Town of Grafton, 166 Vt. 148, 153 (1997) (“Failure to raise a reason why summary judgment should not be granted at the trial level precludes raising it on appeal.”); see also In re White, 172 Vt. 335, 343 (2001) (“We have repeatedly stressed that we will not address arguments not properly preserved for appeal” and “[t]o properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it.” (quotation omitted)). Plaintiff, through counsel, agreed below that he had obtained the relief that he sought in his complaint as narrowed through the second round of briefing. The record does not support plaintiff’s assertion that counsel’s agreement on this point was inaudible. It is plainly stated in the transcript. We find no basis to disturb the court’s decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Superior Judge,  
Specially Assigned