

[Cite as *State v. Mullin*, 2017-Ohio-939.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105042

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**PATRICK MULLIN**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
REVERSED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-570335-A

**BEFORE:** E.T. Gallagher, J., Kilbane, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** March 16, 2017

**FOR APPELLANT**

Patrick F. Mullin, pro se  
Inmate No. 664-353  
Marion Correctional Institution  
P.O. Box 57  
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**ATTORNEYS FOR APPELLEE**

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BY: Edward R. Fadel  
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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Patrick F. Mullin (“Mullin”), appeals the denial of his motion for jail-time credit and raises one assignment of error:

1. Appellant was denied his constitutional right to due process of law pursuant to Article I, Sections 10 and 16 of the Ohio Constitution and the 14th Amendment to the U.S. Constitution where the trial court denied appellant’s owed jail-time credit.

{¶2} We find merit to the appeal, reverse the trial court’s judgment, and remand the case to the trial court for a calculation of jail-time credit.

### **I. Facts and Procedural History**

{¶3} Mullin pleaded guilty to one count of burglary, a second-degree felony, and domestic violence, a fourth-degree misdemeanor. The trial court sentenced him to five years of community control sanctions. As part of the sentence, Mullin completed a program at a community-based correction facility (“CBCF”) from March 21, 2013, to August 27, 2013. Mullin subsequently violated the terms of his community control three separate times. The court sentenced Mullin to four years in prison on his last violation and gave him jail credit for the 98 days he spent in jail awaiting trial.

{¶4} Mullin subsequently filed a motion for jail-time credit seeking credit for the time he spent at the CBCF. The trial court denied the request. Mullin now appeals the trial court’s judgment.

## II. Law and Analysis

{¶5} In his sole assignment of error, Mullin argues the trial court violated his constitutional rights by failing to give him jail-time credit for the time he spent at the CBCF. The state concedes this error.

{¶6} R.C. 2967.191, which governs jail-time credit, states, in relevant part:

The department of rehabilitation and correction shall reduce the stated prison term of a prisoner \* \* \* by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced.

The Ohio Supreme Court has held that “all time served in a community-based correctional facility constitutes confinement for purposes of R.C. 2967.191.” *State v. Napier*, 93 Ohio St.3d 646, 758 N.E.2d 1127 (2001), syllabus. Thus, Mullin is entitled to jail-time credit for the time he served at the CBCF.

{¶7} When the court sentenced Mullin to four years in prison on his third community control violation, the court gave him credit for the 98 days he spent in the county jail awaiting trial. It did not give Mullin credit for the time he spent at the CBCF as required by the Supreme Court’s mandate in *Napier*.

{¶8} Accordingly, the sole assignment of error is sustained.

{¶9} The trial court’s judgment is reversed. We remand the case to the trial court to grant Mullin jail-time credit for the days he spent in the CBCF.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and  
MELODY J. STEWART, J., CONCUR