

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

DREQUAN ABDULLAH,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case Nos. 19 MA 0011; 19 MA 0012

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case Nos. 2017 CR 590; 2017 CR 1119

BEFORE:

Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed in part.

Reversed in part and Remanded.

Atty. Paul J. Gains, Mahoning County Prosecutor and *Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

Atty. Tim Young, Ohio Public Defender and *Atty. Timothy B. Hackett*, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, for Plaintiff-Appellant.

Dated: September 28, 2020

WAITE, P.J.

{¶1} In these consolidated appeals, Appellant Drequan Appellant contests the judgment and sentence of the Mahoning County Common Pleas Court in two separate matters, one which was bound over from juvenile court, and the second which was initiated as an adult criminal proceeding.

{¶2} Appellant argues the trial court failed to invoke reverse bindover pursuant to R.C. 2152.121, that both guilty pleas were invalid, that he was subject to ineffective assistance of counsel, and that the trial court erred in calculating his jail-time credit. The record reveals that Appellant's guilty pleas are valid, as the process contained in R.C. 2152.121 does not require an advisement by the trial court at the plea hearing relative to reverse bindover. However, the trial court failed to consider or apply the statutory procedure of R.C. 2152.121 to Appellant's juvenile offense, which had been bound over to the court. Therefore, the juvenile matter is remanded to the trial court to comply with the sentencing provisions of R.C. 2152.121. In addition, the trial court erred in failing to include Appellant's juvenile confinement in its jail-time credit calculation. This must be addressed and calculated at the resentencing hearing on remand, as the record before us does not provide sufficient data to calculate Appellant's jail-time credit. Finally, Appellant's claim of ineffective assistance of counsel is moot. Therefore, the judgment of the trial court is affirmed in part and reversed in part and the matter is remanded to the

trial court for consideration of R.C. 2152.121 regarding the juvenile matter that was bound over to the common pleas court and for resentencing of the adult matter in accordance with the appropriate sentencing statutes.

Factual and Procedural History

{¶3} These consolidated appeals are based on two separate cases. Because Appellant was seventeen years old when he committed the first offense, 2017CR590 involved a felony bindover from the juvenile court. The second case, 2017CR1119, involved felonies committed shortly thereafter by Appellant, when he was 18 years old. Although there are two different appeals at issue and two different trial court records regarding these matters, the trial court sentenced both matters together at one hearing and issued identical sentencing entries.

Case No. 2017CR590

{¶4} On September 20, 2016, a complaint was filed in the Mahoning County Juvenile Court alleging Appellant, then 17 years of age, committed aggravated robbery with a firearm specification. Appellant was arraigned on October 24, 2016 and detained in the Mahoning County Juvenile Detention Center. The state moved to transfer the case to the adult court, alleging it was a category two offense subject to mandatory transfer pursuant to R.C. 2152.12(A)(1)(b)(ii). On May 25, 2017, Appellant waived his right to a probable cause determination and the juvenile court relinquished jurisdiction. An indictment was filed in the common pleas court under case number 2017CR590, charging Appellant with one count of aggravated robbery in violation of R.C. 2911.01(A)(1), a first degree felony, and one count of robbery in violation of R.C. 2911.02(A)(2), a second degree felony, with an accompanying firearm specification in violation of R.C. 2941.145.

{¶15} After negotiations, Appellant reached a plea agreement with the state. Appellant agreed to plead guilty to one count of robbery. In exchange, the state agreed to dismiss the aggravated robbery charge and the accompanying firearm specification. The state also agreed to recommend the sentence run concurrent with any sentence ordered in Appellant's subsequent adult criminal matter.

Case No. 2017CR1119

{¶16} As Appellant was no longer a juvenile at the time of his subsequent offense, this second case originated in Mahoning County Common Pleas Court, General Division. On November 9, 2017 an indictment was filed in case number 2017CR1119, charging Appellant with one count of aggravated robbery in violation of R.C. 2911.01(A)(1)(C), a first degree felony, one count of robbery in violation of R.C. 2911.02(A)(1)(2), a second degree felony, with an accompanying firearm specification in violation of R.C. 2941.145; and one count of having weapons under disability in violation of R.C. 2923.13(A)(2)(B), a third-degree felony.

{¶17} Following plea negotiations, Appellant reached an agreement with the state wherein he would plead guilty to one count of aggravated robbery with an accompanying firearm specification and one count of having a weapon while under disability. In exchange, the state agreed to dismiss the robbery charge. The state also agreed to recommend a total sentence of ten years on the charges.

Plea Hearing

{¶18} The cases remained separate, but were assigned to one trial court docket. On July 18, 2018, both cases came on for a plea hearing. At the outset of the hearing, the state informed the court that a plea agreement had been reached in both matters and

indicated which counts were being dismissed in each matter. (7/18/18 Tr., pp. 2-5.) Defense counsel agreed, and further clarified that the firearm specification in 2017CR590 was being dismissed. (7/18/18 Tr., p. 3.) No mention was made by defense counsel, the state, or the trial court of the possible impact of R.C. 2152.121 or even that 2017CR590 had been bound over from the juvenile court. The trial court began its plea colloquy, including reciting the terms of the plea agreement and informing Appellant of his constitutional and nonconstitutional rights. In advising about Appellant's potential sentencing, the trial court described the potential sentences for a first degree felony, third degree felony and the firearm specification. Again, there was no mention of a reverse bindover to the juvenile court, nor was any reference made to R.C. 2152.121. The trial court concluded that Appellant's pleas were entered knowingly, intelligently and voluntarily.

{¶19} At his sentencing hearing on September 6, 2018, Appellant was sentenced to five years of incarceration for robbery in case number 2017CR590. In case number 2017CR1119, he was sentenced to six years for aggravated robbery, three years on the firearm specification and 24 months for having a weapon while under disability. The aggravated robbery and weapons under disability charges were to run concurrently. The sentences for 2017CR590 and 2017CR1119 were also to run concurrently, for a total stated prison term of nine years.

{¶10} Appellant filed these timely appeals, which we consolidated for consideration.

ASSIGNMENT OF ERROR NO. 1

The Mahoning County Court of Common Pleas erred as a matter of law when it failed to sentence Drequan Abdullah in accordance with R.C. 2152.121. (A-1; A-3; 6/1/17 Amended Judgment Entry Case No. 2016JA1294; 7/18/18 T.pp.1-11; 9/6/18 T.p.1-11)

{¶11} Appellant contends the trial court erred when it failed to sentence him in accordance with the reverse bindover procedures for matters transferred from the juvenile court to the adult court pursuant to R.C. 2152.121.

{¶12} Juvenile courts have exclusive initial subject matter jurisdiction in matters involving a child who is alleged to be delinquent for committing acts which would constitute a felony offense if committed by an adult. *State v. Mack*, 7th Dist. Mahoning No. 14 MA 82, 2015-Ohio-4148, ¶ 8 citing *State v. Golphin*, 81 Ohio St.3d 543, 545, 692 N.E.2d 608 (1998). A juvenile matter can be transferred to the general division of the common pleas court. R.C. 2152.10. Moreover, in certain, specified situations, the transfer to the general division is mandatory. R.C. 2151.26(B). R.C. 2152.10, governing mandatory transfer of juvenile matters provides, in pertinent part:

(A) A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in section 2152.12 of the Revised Code in any of the following circumstances:

* * *

(2) The child is charged with a category two offense, other than a violation of section 2905.01 of the Revised Code, the child was sixteen years of age

or older at the time of the commission of the act charged, and either or both of the following apply:

* * *

(b) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

{¶13} Appellant was seventeen years of age when he committed the offense at issue. He was charged with aggravated robbery in violation of R.C. 2911.01(A)(1), with an attached gun specification in violation of R.C. 2941.145. Aggravated robbery is a category two offense. Therefore, the juvenile complaint contained offenses which required mandatory transfer to the adult court. R.C. 2151.26(B)(4)(b); *State v. D.B.*, 150 Ohio St.3d 452, 2017-Ohio-6952, 82 N.E.3d 1162, ¶ 11. In an agreed judgment entry in the juvenile court, Appellant waived his probable cause hearing and the matter was bound over to the common pleas court, where Appellant was indicted in case number 2017CR590. Appellant pleaded guilty to robbery. The aggravated robbery charge and the accompanying firearm specification were dismissed by the state.

{¶14} Pursuant to law, after the matter is transferred and has proceeded through the adversarial process, the juvenile offender may ultimately be convicted of a lesser offense, one that would have permitted the juvenile court to retain the juvenile. This would allow the juvenile to benefit from juvenile rehabilitative services he or she would receive

but for the initial mandatory transfer. *Compare* R.C. 2152.12(A) *with* R.C. 2152.12(B); *State v. Abrams*, 8th Dist. Cuyahoga No. 109409, 2020-Ohio-2729.

{¶15} R.C. 2152.121(B)(3) provides:

(B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) * * * of section 2152.12 of the Revised Code, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

* * *

(3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929 of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. * * *

{¶16} Pursuant to R.C. 2152.121, at the sentencing hearing the common pleas court is required to consider the manner in which the juvenile matter was transferred and compare it with the resulting conviction before the court for sentencing. R.C. 2152.121(B). “In other words, the trial court must determine what the juvenile court *would have been required to do with the case* if the juvenile had been charged with only those offenses for which convictions were obtained.” (Emphasis in original.) *D.B.*, ¶ 12. If the resulting offense would not have required a mandatory transfer, but only a discretionary transfer, the trial court is required to impose sentence, stay the sentence, and return the matter to the juvenile court. *Id.* at ¶ 12-13; R.C. 2152.121(B). This process allows the juvenile court to assess, using its full discretion, whether the child would benefit from rehabilitative measures outside of the adult system even if the juvenile court was not afforded that initial opportunity due to the mandatory bindover.

{¶17} In this case, Appellant waived his probable cause hearing by agreed judgment entry. Essentially, he agreed that although he was seventeen years of age, he may have committed an act which would constitute the crime of aggravated robbery with a firearm specification. Because it was a category two offense with a firearm specification, it was subject to mandatory bindover. He was subsequently indicted in the adult court on aggravated robbery with a firearm specification, and robbery.

{¶18} Appellant pleaded guilty to one count of robbery. The state dismissed the charges of aggravated robbery and the firearm specification pursuant to the plea agreement. Robbery is not a category two offense. Therefore, if Appellant had only been charged with robbery, he would not have been subject to mandatory transfer under the statute. This reduction in the offense from aggravated robbery with a firearm specification

to robbery should have triggered operation of R.C. 2152.121(B)(3), which required the trial court to stay Appellant's sentence in this case and return the matter to the juvenile court. The record reveals the trial court did not raise or discuss R.C. 2152.121(B)(3) at all. Appellant was sentenced under the adult sentencing statutes and is incarcerated in an adult correction facility. While we recognize that the second matter on appeal involved an offense committed while Appellant was an adult and these matters were sentenced together, the sentence imposed in this juvenile matter should ordinarily have been stayed by the trial court and the matter then returned to the juvenile court, which retained jurisdiction on matters of potential rehabilitation under the juvenile system. We conclude that the trial court's failure to properly sentence Appellant under R.C. 2152.121(B)(3) requires the sentence of the trial court to be vacated in this matter. The matter is remanded to the trial court for resentencing that comports with R.C. 2152.121. Moreover, as the trial court sentenced his two cases together and ordered the separate sentences in the juvenile bindover case and the adult case to be served concurrently, resentencing in the adult matter is also required.

{¶19} Appellant's first assignment of error has merit and is sustained.

ASSIGNMENT OF ERROR NO. 2

The trial court erred as a matter of law when it accepted unknowing, unintelligent, and involuntary guilty pleas, in violation of Crim.R. 11(C); the Fifth and Fourteenth Amendments to the U.S. Constitution; Article I, Section 16 of the Ohio Constitution; *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). (A-1; A-3; 6/1/17 Amended Judgment Entry Case No. 2016JA1294; 7/18/18 T.pp.1-11; 9/6/18 T.pp.1-11)

{¶20} In his second assignment of error, Appellant argues that his guilty pleas were not knowingly made because the trial court failed to advise him at his plea hearing of the possibility of rehabilitation provided by the juvenile system based on the reverse bindover statute, R.C. 2152.121. Appellant argues this applies to both guilty pleas at issue in these two consolidated matters, although only one matter was the subject of a mandatory transfer from the juvenile court.

{¶21} Guilty pleas governed by Crim.R. 11 require the trial court to engage in a colloquy with the defendant to advise that defendant of the rights being waived as a result of a guilty plea, as well as the consequences of the plea. Crim.R. 11(C)(2).

{¶22} “The underlying purpose, from the defendant's perspective, of Crim.R. 11(C) is to convey to the defendant certain information so that he can make a voluntary and intelligent decision whether to plead guilty.” *State v. Rowbotham*, 173 Ohio App.3d 642, 2007-Ohio-6227, 879 N.E.2d 856, ¶ 17 (7th Dist.), citing *State v. Ballard*, 66 Ohio St.2d 473, 479-480, 423 N.E.2d 115 (1981). A defendant who lacks the ability to understand the nature and object of the proceedings is unable to enter into a knowing, intelligent, and voluntary plea. *State v. Doak*, 7th Dist. Columbiana Nos. 03 CO 15, 03 CO 31, 2004-Ohio-1548, ¶ 15.

{¶23} The requirement is not all-encompassing, however. The colloquy must include discussion of only certain constitutional and nonconstitutional rights. Crim.R. 11(C)(2) outlines the constitutional rights, which include: the right to a jury trial; to confront witnesses; to have a compulsory process for obtaining favorable witnesses; and the requirement that the state prove all elements beyond a reasonable doubt at a trial where the defendant cannot be compelled to testify against him or herself. *State v. Bell*, 7th

Dist. Mahoning No. 14 MA 0017, 2016-Ohio-1440, ¶ 9, citing *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 19-21; *Ballard, supra*, at 477. The trial court is required to strictly comply with informing the defendant of all of these rights. If the trial court fails to do so, the plea is invalid. *Bell* at ¶ 9, citing *Veney* at ¶ 31; *Ballard* at 477.

{¶24} The trial court also must inform the defendant of certain nonconstitutional rights including: the nature of the charges; the maximum possible penalty, including postrelease control, if applicable; whether the defendant is eligible for probation or community control sanctions; and that the trial court may immediately proceed to sentencing after accepting the guilty plea. *Bell* at ¶ 10. The trial court need only substantially comply when informing the defendant of these nonconstitutional rights. *Id.* Substantial compliance has been defined as “under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *Id.*, citing *Veney* at ¶ 15. If the trial court fails to substantially comply in advising a defendant of these nonconstitutional rights, the defendant must demonstrate prejudice in order to invalidate the plea. *Bell* at ¶ 10.

{¶25} In the instant appeals, Appellant first contends that reverse bindover implicates a constitutional right. He asserts that because it involves a jurisdictional issue, due process requires that only a court of competent jurisdiction may impose imprisonment, and that strict compliance was required. In other words, under reverse bindover, it was the juvenile court that had jurisdiction to impose imprisonment for the offense committed while he was seventeen, and not the general division of the common pleas court.

{¶26} Appellant argues in the alternative that, should this Court determine reverse bindover does not involve a constitutional issue, his pleas were still not valid, as the trial court did not substantially comply with advising him of his nonconstitutional rights and he was prejudiced by not being informed of the potential for a blended juvenile and adult sentence.

{¶27} The state contends the trial court was not required under Crim.R. 11 to advise Appellant of the effect of the reverse bindover statute. The state urges that the trial court is not required to advise defendants about any factors that may impact their plea beyond those specifically contained in Crim.R. 11. The state cites cases concluding a trial court is not required to advise a defendant about a number of topics: that jury verdicts must be unanimous, *State v. Randle*, 8th Dist. Cuyahoga No. 103264, 2016-Ohio-3059; the consequences a guilty plea have on community control, *State v. Rogers*, 8th Dist. Cuyahoga Nos. 105335, 105518, 2017-Ohio-9161; or that certain offenses are subject to arson registration and a notification requirement, *State v. Magby*, 7th Dist. Mahoning No. 17 MA 6, 2019-Ohio-877.

{¶28} It is well established that there are five constitutional rights enumerated within Crim.R. 11(C)(2)(c) and that strict compliance in advising a defendant of those rights is required. *State v. Cruz-Ramos*, 7th Dist. Mahoning No. 17 MA 0077, 2019-Ohio-779, 132 N.E.3d 170, ¶ 8. The reverse bindover procedure for transferred juvenile cases is not enumerated in Crim.R. 11 and is not one of those constitutional rights requiring strict compliance. We also note that because Appellant was, in fact, properly bound over to the common pleas court, that court had the power to sentence him. Reverse bindover does not completely remove sentencing jurisdiction from the common pleas court.

{¶29} Turning to Appellant’s alternative argument that reverse bindover involves a nonconstitutional right requiring the trial court to advise Appellant of the provisions of the statute under the substantial compliance standard, the nonconstitutional rights of which a defendant must be advised before accepting a plea are specified in Crim.R. 11(C)(2), subdivisions (b) and (c). The right to be advised of the reverse bindover procedure contained in R.C. 2152.121 does not appear anywhere in this rule. Appellant cites no law or rule requiring discussion of a reverse bindover at a plea hearing or in support of construing this issue as necessary to the list of nonconstitutional rights which must be discussed by a trial court at the plea hearing. “The [Ohio] Supreme Court has thus rejected any argument that a non-constitutional right must be discussed by the trial court at the plea hearing notwithstanding its absence from Crim.R. 11.” *State v. Cruz-Ramos*, 2019-Ohio-779, 132 N.E.3d 170, ¶ 19 (7th Dist.). As a matter of law, the trial court was not required to advise Appellant of the reverse bindover process at the plea hearing. Hence, both pleas were entered validly.

{¶30} Appellant’s second assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 3

Drequan was denied the effective assistance of counsel, in violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution; and, Article I, Sections 10, and 16, Ohio Constitution. (7/18/18 T.pp.1-11; 9/6/18 T.pp.1-11)

{¶31} Appellant argues that his trial counsel’s performance was deficient because counsel failed to inform the trial court about the effect of R.C. 2152.121 at his hearing and

failed to object to the trial court’s failure to follow the statute at sentencing. Appellant contends these failures result in prejudice, as he was deprived of the potential opportunity to be rehabilitated through the juvenile system.

{¶32} The state contends trial counsel was not defective because Appellant was properly sentenced under R.C. Chapter 2929 and Appellant has not demonstrated he was prejudiced. Appellant’s sentences fell within the sentencing framework and because they were ordered to be served concurrently, Appellant has suffered no harm.

{¶33} In order to establish an ineffective assistance of counsel claim, an appellant must demonstrate that counsel’s performance was deficient and that he was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 141-142, 538 N.E.2d 373 (1989). The burden on proving ineffective assistance of counsel is on the appellant. *Strickland*, at 687. The reviewing court must also strongly presume that trial counsel adequately defended the interests of the client. *Id.* at 690.

{¶34} Appellant filed a notice of additional authority pursuant to App.R. 21(l) citing an Eighth District case, *Abrams, supra*. In *Abrams*, a complaint was filed in juvenile court charging the juvenile offender with several offenses which would constitute felonies if committed by an adult, one of which was attempted murder, and which required mandatory bindover to the general division. After transfer, the juvenile pleaded to one count of felonious assault with a firearm specification, triggering R.C. 2152.121. The trial court sentenced the juvenile to a term of five to seven years in prison and did not stay the sentence and remand to the juvenile court. Counsel for the juvenile did not raise the issue of reverse bindover at the plea hearing or at sentencing *Abrams*, ¶ 17. The Eighth

District concluded that trial counsel was ineffective, as the failure to raise R.C. 2152.121 prejudiced the offender, who was ordered to serve an adult sentence without the opportunity to have the matter remanded to the juvenile court for potential rehabilitation under the juvenile system. *Id.*

{¶35} The holding in *Abrams* is readily distinguishable in this matter. In *Abrams*, there was only one case before the trial court at sentencing: the juvenile matter that was bound over to common pleas court. The offender was clearly prejudiced, as he may be subject to a lesser penalty in the juvenile system if the matter was remanded. R.C. 2152.121. In the instant case, Appellant was sentenced on both a matter arising from juvenile court and for a conviction on an offense committed as an adult. While both cases are remanded for sentencing, as Appellant was clearly convicted of the commission of an adult crime as well as a crime committed while still a juvenile, he remains subject to the adult penal system and will be sentenced as an adult for the crime he committed after he reached his majority. As the trial court in this matter ordered the sentences to run concurrently, he cannot demonstrate, then, that he was prejudiced by trial counsel's failure to raise the issue.

{¶36} Additionally, we have previously held that when the trial court commits plain error in failing to properly sentence an offender pursuant to R.C. 2152.121, a claim of ineffective assistance of trial counsel is rendered moot. *Mack* at ¶ 19. In *Mack*, as here, trial counsel did not raise the issue of R.C. 2152.121 at sentencing, nor did counsel object to the trial court's failure to sentence under the R.C. 2152.121 guidelines. Because the trial court committed plain error and we reverse and remand for sentencing to comply with R.C. 2152.121, Appellant's claim of ineffective assistance of trial counsel is moot. App.R.

12(A)(1)(c). *Mack* ¶ 19. Because Appellant will serve an adult sentence, and we remand the juvenile matter for the trial court to consider reverse bindover, Appellant cannot demonstrate prejudice and his trial counsel was not ineffective for failing to raise the issue.

{¶37} Appellant’s third assignment of error is moot.

ASSIGNMENT OF ERROR NO. 4

The trial court erred when it granted Drequan only 360 days of jail-time credit, even though he was confined for a total of 573 days in connection with these cases. R.C. 2967.191; Fourteenth Amendment to the U.S. Constitution; Article I, Section 16, Ohio Constitution. (A-1; A-3; 9/6/18 T.pp.1-11)

{¶38} Appellant contends on appeal that he is entitled to 573 days of jail-time credit in connection with both cases combined, instead of the 360 days granted by the court. Because the trial court failed to include in the calculation the days Appellant spent in the Mahoning County Juvenile Detention Center while the case that originated in the juvenile court was pending, the court erred in its calculations. The state concedes that the trial court erred in calculating Appellant’s jail-time credit.

{¶39} Although codified by R.C. 2967.191, jail-time credit has its roots in the Equal Protection Clause of the Ohio and United States Constitutions. It requires that all time spent incarcerated prior to trial and prior to commitment must be credited to the prisoner’s sentence. *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 7.

{¶40} The trial court must make a factual determination as to the actual number of days of confinement that a defendant is to have credited to his sentence. R.C.

2929.19(B)(2)(h)(i); *State v. Phillips*, 7th Dist. Mahoning No. 16 MA 0003, 2016-Ohio-5194, ¶ 9 citing *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286, ¶ 7. The jail-time calculation must be included within the sentencing entry. *State v. Norris*, 7th Dist. Mahoning No. 17 MO 7, 2014-Ohio-5833, ¶ 11. Moreover, R.C. 2967.191(A) provides that jail-time credit must be given for “confinement in a juvenile facility.”

{¶41} Pursuant to R.C. 2929.19(B)(2)(g)(iii), the sentencing court has continuing jurisdiction to correct errors made in calculating jail-time credit and such claims are not barred by *res judicata*. *Norris* at ¶ 20. Where, as here, the defendant fails to object to the trial court’s calculation during sentencing, this Court must apply a plain error standard. *State v. McClellan*, 7th Dist. Mahoning No. 10 MA 181, 2011-Ohio-4557, ¶ 39. Plain error exists where a trial court fails to accurately calculate jail-time credit. *State v. Alredge*, 7th Dist. Belmont No. 14 BE 52, 2015-Ohio-2586, ¶ 14.

{¶42} It is apparent from the record that Appellant was held in the Mahoning County Juvenile Justice Center from late October of 2016 until the juvenile matter was bound over to the court of common pleas. The precise dates are not part of this record. The record does reveal Appellant spent 360 days in the Mahoning County jail in case number 2017CR1119, the case which originated in the common pleas general division.

{¶43} In its separate sentencing entries in case number 2017CR590 and 2017CR1119 the trial court held, “Defendant is granted THREE HUNDRED THIRTY SIX (336) DAYS credit as of this date of sentencing along with future custody days while Defendant awaits transportation to the appropriate State institution.” (9/25/18 J.E.) Appellant asserts he was ultimately credited with 360 days of jail time, which presumably

includes the additional days he spent awaiting transport to the correctional facility. In any event, it appears from the record that the trial court did not include the days Appellant spent in juvenile confinement within its calculation of jail-time credit. For this reason, his fourth assignment of error is meritorious. A calculation of the precise jail-time credit to which Appellant is entitled is precluded by the limited record before us. Accordingly, the trial court is instructed on remand to recalculate the jail-time credit to include Appellant's juvenile confinement.

{¶44} Appellant's fourth assignment of error has merit and is sustained.

Conclusion

{¶45} Based on the foregoing, Appellant's guilty pleas are valid, as the reverse bindover process set forth in R.C. 2152.121 does not involve a constitutional or nonconstitutional right pursuant for Crim.R. 11 purposes and does not require an advisement by the trial court at a plea hearing. However, the trial court failed to consider the statutory procedure of R.C. 2152.121 relative to Appellant's bound over juvenile offense. Thus, the matter is remanded to the trial court for resentencing to consider the juvenile case in light of R.C. 2152.121. Because the sentencing was combined with the sentencing in his adult matter, new sentencing is required in both the juvenile and adult cases. In addition, the trial court erred in failing to include Appellant's juvenile confinement in its jail-time credit calculation, which must be addressed and calculated at the resentencing. Appellant's claim of ineffective assistance of counsel is moot in accordance with our previous holdings on this issue. Appellant's first and fourth assignments of error have merit and are sustained. Appellant's second assignment of error is without merit and is overruled. His third assignment of error is moot. Accordingly,

the judgment of the trial court is affirmed in part and reversed in part and remanded to the trial court for proceedings consistent with this Opinion.

Donofrio, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant's first and fourth assignments of error is are sustained, his second assignment is overruled and his third assignment is moot. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed in part and reversed in part. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.