

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

CHRISTIAN R. BARROW,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 19 CO 0051**

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Criminal Appeal from the  
Court of Common Pleas of Columbiana County, Ohio  
Case No. 2018 CR 196

**BEFORE:**

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

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**JUDGMENT:**

Affirmed

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*Atty. Tammie Riley Jones*, Columbiana County Prosecutor's Office, 105 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee and

*Atty. Wesley Johnston*, P.O. Box 6041, Youngstown, Ohio 44501, for Defendant-Appellant.

Dated:  
June 23, 2021

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**Donofrio, J.**

{¶1} Defendant-appellant, Christian Barrow, appeals from a Columbiana County Common Pleas Court judgment denying his request for jail-time credit.

{¶2} On May 17, 2018, a Columbiana County Grand Jury indicted appellant on one count of complicity to aggravated robbery, a first-degree felony in violation of R.C. 2911.01(A)(3); one count of felonious assault, a second-degree felony in violation of R.C. 2911.03(A)(1); one count of intimidation, a third-degree felony in violation of R.C. 2921.04(B)(1); and one count of intimidation, a third-degree felony in violation of R.C. 2921.04(B)(2). Appellant initially entered a not guilty plea. The trial court set a \$100,000 recognizance bond, which appellant refused to sign.

{¶3} At the time he was indicted, appellant was already serving a prison term for another unrelated case.

{¶4} On March 1, 2019, the trial court once again set appellant's recognizance bond at \$100,000. This time appellant signed the bond and was released on his own recognizance having now completed his other sentence.

{¶5} Subsequently, on August 15, 2019, appellant entered into a plea agreement with plaintiff-appellee, the State of Ohio. Pursuant to the terms of the plea agreement, appellant changed his plea to guilty to the reduced charge of second-degree felony complicity to robbery and to the other three counts in the indictment. The trial court accepted appellant's plea and set the matter for sentencing.

{¶6} At the October 18, 2019 sentencing hearing, appellant argued that he should be entitled to jail-time credit for the time he spent serving his sentence in the unrelated case while this case was pending. The state disagreed. The trial court sentenced appellant to two years on each of the four counts to be served concurrently for a total of two years in prison. The court took the matter of jail-time credit under advisement and gave counsel the opportunity to brief the issue.

{¶7} Later, on November 19, 2019, the trial court entered judgment finding that appellant was not entitled to jail-time credit because he was serving a separate prison

sentence at the time. Appellant subsequently filed a motion for delayed appeal, which this court granted. He now raises a single assignment of error.

{¶8} Appellant's sole assignment of error states:

THE TRIAL COURT ERRED WHEN IT GAVE BARROW ZERO DAYS OF JAIL TIME CREDIT.

{¶9} Appellant argues the trial court should have given him 290 days of jail-time credit. He states that he was confined in lieu of bail while awaiting trial. He argues that pursuant to *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, when a defendant is sentenced to concurrent prison terms for multiple offenses the law requires that credit for days the defendant served in jail in lieu of bond while awaiting trial must be counted against each of the concurrent sentences. Appellant asserts that he spent 290 days from May 18, 2018, when the trial court imposed a \$100,000 bond, to March 4, 2019, when he was released from prison, awaiting trial.

{¶10} R.C. 2967.191 governs jail-time credit and provides in pertinent part:

The department of rehabilitation and correction shall reduce the prison term of a prisoner, as described in division (B) of this section, 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, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term, as determined by the sentencing court under division (B)(2)(g)(i)1 of section 2929.19 of the Revised Code, and confinement in a juvenile facility.

R.C. 2967.191(A).

{¶11} Appellant's argument relies solely on the Ohio Supreme Court's opinion in *Fugate*, supra. This court spelled out the issue in *Fugate* and discussed it in detail in *State v. McKinney*, 7th Dist. Mahoning No. 12 MA 163, 2013-Ohio-4357, ¶ 9-11:

The issue under review in *Fugate* was whether jail-time credit that was awarded in a probation revocation case should also be calculated towards defendant's sentence in the corresponding criminal case that prompted the probation revocation in the first place. In *Fugate*, the defendant was on community control after being convicted of receiving stolen property. He was later charged with theft and burglary. Probation revocation charges were filed in the earlier case because Fugate committed a crime while serving community control sanctions. He was later convicted of the theft and burglary charges, and he was sentenced in both cases at the same time. He was sentenced to 12 months in prison for the community control violation, with 213 days jail-time credit given. He was sentenced to two years in prison on the theft and burglary charges, and no jail-time credit was given. The sentences were ordered to be served concurrently. *Fugate* at ¶ 3.

The issue in *Fugate* was whether the 213 days of jail-time credit should also have been applied in his second case because his prison terms were ordered to be served concurrently. *Fugate* was primarily attempting to interpret and correctly apply R.C. 2967.191, which states that “[t]he 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, including confinement in lieu of bail while awaiting trial \* \* \*.” *Id.* at ¶ 12, 22. In *Fugate*, the defendant was being held in jail simultaneously awaiting sentencing for both probation revocation and theft and burglary. Thus, there was no question that he was confined in lieu of bail awaiting trial on both cases simultaneously.

The *Fugate* Court ruled for the defendant that, pursuant to R.C. 2967.191, the 213 days should have been applied to both cases. *Fugate* held that: “When a defendant is sentenced to consecutive terms, the terms of imprisonment are served one after another. Jail-time credit applied to one prison term gives full credit that is due, because the credit reduces the entire

length of the prison sentence. However, when a defendant is sentenced to concurrent terms, credit must be applied against all terms, because the sentences are served simultaneously. If an offender is sentenced to concurrent terms, applying credit to one term only would, in effect, negate the credit for time that the offender has been held. To deny such credit would constitute a violation of the Equal Protection Clause. Therefore we hold that when a defendant is sentenced to concurrent prison terms for multiple charges, jail-time credit pursuant to R.C. 2967.191 must be applied toward each concurrent prison term.” *Id.* at ¶ 22.

{¶12} Thus, *Fugate’s* holding does not apply to appellant in this case. Here, appellant was serving a prison term on an unrelated case when he was indicted on the charges in this case. He then completed his sentence in the unrelated case and was subsequently released from prison. Appellant remained out on bond while he awaited the resolution of the charges in the present case.

{¶13} The Ohio Supreme Court has held that “[a] defendant is not entitled to jail-time credit while held on bond if, at the same time, the defendant is serving a sentence on an unrelated case.” *State v. Cupp*, 156 Ohio St.3d 207, 2018-Ohio-5211, 124 N.E.3d 811, at the syllabus. In this case, appellant initially refused to sign the recognizance bond. He seems to suggest that because of that, he was not being held on bond and the above holding does not apply to him. Appellant did eventually sign the recognizance bond in this case when he completed his unrelated sentence. He was released from prison when he completed his sentence in the unrelated case. Appellant was not held in in jail awaiting the disposition of this case once he completed his unrelated prison term.

{¶14} Moreover, this court has determined that “R.C. 2967.191’s jail-time credit provision ‘does not include time that the prisoner was incarcerated by reason of a sentence previously imposed for a different offense, even if that prior sentence is one with which the present sentence is ordered to be served concurrently.’” *State v. Simmons*, 7th Dist. Jefferson No. 13 JE 2, 2013-Ohio-5282, ¶ 32, quoting *State v. Ways*, 2d Dist. No. 25214, 2013-Ohio-293, ¶ 20. Thus, appellant was not entitled in jail-time credit in this case.

{¶15} Accordingly, appellant's sole assignment of error is without merit and is overruled.

{¶16} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs to be waived.

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.**