

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

David Scott Hayes

Court of Appeals No. L-07-1229

Petitioner

v.

James Telb, Lucas County Sheriff
and Bernard Hite, Director,
Correctional Treatment Facility

DECISION AND JUDGMENT ENTRY

Respondents

Decided: July 9, 2007

* * * * *

Jerome Phillips, for petitioner.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kevin A. Pituch, Assistant Prosecuting Attorney, for respondents.

* * * * *

HANDWORK, J.

{¶ 1} In this petition for a writ of habeas corpus, relator, David S. Hayes, asserts that he is unlawfully imprisoned and restrained in the Correctional Treatment Facility located in Toledo, Lucas County Ohio. Appellant contends that his six month sentence

imposed by the Lucas County Court of Common Pleas for his conviction on two counts of illegal processing of drug documents expired "on or about July 3, 2007."

{¶ 2} On January 2, 2007, the Lucas County Court of Common Pleas sentenced appellant to six months in prison for each of his convictions, with each sentence to be served concurrent to the other. Relator was given credit for the one day that he served in jail. On February 12, 2007, relator filed a motion for judicial release in the Lucas County Court of Common Pleas.

{¶ 3} Subsequently, relator was found guilty in the Wood County Court of Common Pleas on one count of attempted deception to obtain a dangerous drug and, on April 27, 2007, was sentenced to four years of community control, which included 180 days of electronic home monitoring. At that point, relator was incarcerated in the Wood County Jail.

{¶ 4} On April 30, 2007, the Lucas County Court of Common Pleas granted relator's motion for judicial release, ordered him to be placed on community control for five years, and ordered him to spend 90 days in treatment at the Correctional Treatment Facility. On May 7, 2007, relator's counsel sent a letter to the common pleas court judge in which he asked her to reduce the amount of time that relator was required to spend in the Correctional Treatment Facility from 90 days to 30 days. On May 18, 2007, the trial court granted relator's request. However, relator was held in the Wood County jail from April 27 until June 13, 2007, when he was finally transferred to the Correctional Treatment Facility. Due to the fact that the 30 days, if commenced at the Correctional

Treatment Facility on June 13, would exceed the six month sentence originally imposed by the Lucas County Court of Common Pleas, relator filed, on June 5, 2007, a motion asking the court to eliminate the requirement of 30 days in Correctional Treatment Facility. The trial court denied this motion.

{¶ 5} It is clear that appellant should have been credited with the time spent in the Wood County Jail from April 27 to June 13, 2007. See *State v. Napier*, 93 Ohio St.3d 646, 2001-Ohio-1890. Therefore, respondents, James Telb, Sheriff of Lucas County and Bernard Hite, Director of the Correctional Treatment Facility, are ordered to release David S. Hayes forthwith. Costs assessed to respondents.

WRIT GRANTED.

Peter M. Handwork, J.

William J. Skow, J.

Thomas J. Osowik, J.
CONCUR.

JUDGE

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.