

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

State of Ohio

Court of Appeals No. WD-09-075

Appellee

Trial Court No. 2009CR0039

v.

John Dillon

DECISION AND JUDGMENT

Appellant

Decided: May 7, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebers, Assistant Prosecuting Attorney, for appellee.

William V. Stephenson, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, John Dillon, appeals the October 9, 2009 judgment of the Wood County Court of Common Pleas, which denied appellant's motion for jail time credit. The state concedes that the trial court erred; we agree and reverse the trial court's judgment.

{¶ 2} Briefly, the facts are as follows. On September 8, 2009, appellant was sentenced to six months of imprisonment following his guilty plea to felony non-support of dependents, in violation of R.C. 2919.21(A)(2)(G)(1). The judgment entry stated that: "Defendant is to be given credit for jail time as specified in R.C. 2967.191 as calculated by the Wood County Sheriff."

{¶ 3} According to appellant, on September 11, 2009, once he was delivered into state custody, he discovered that he only received 40 days of jail time credit (the period he was incarcerated in Ohio). Appellant asserts that he was entitled to credit from May 6 to June 1, 2009, when he was jailed in Louisiana on the Wood County charge, and from June 1 to June 7, 2009, while being transported back to Wood County.

{¶ 4} R.C. 2949.08(B) requires that the trial court specify the "total number of days, if any, that the person was confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper under this section."

{¶ 5} Further, R.C. 2967.191 states:

{¶ 6} "The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the 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, confinement for examination to determine the prisoner's

competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term."

{¶ 7} In *State v. Miller*, 8th Dist. Nos. 84540, 84916, 2005-Ohio-1300, ¶ 10, the court noted that it is the trial court's responsibility to properly calculate the number of jail time credit days. The trial court's failure to include such calculation in the sentencing order was plain error. *Id.* Upon review, we find that the trial court erred by failing to calculate and specify the number of days that appellant was entitled to jail credit. The court then erred when it denied appellant's motion for jail time credit. Accordingly, we find that appellant's assignment of error is well-taken.

{¶ 8} On consideration whereof, we find that appellant was prejudiced and prevented from having a fair proceeding and the judgment of the Wood County Court of Common Pleas is reversed and the matter is remanded for correction of the sentencing order. Pursuant to App.R. 24, appellee is ordered to pay the costs of this appeal.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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:
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