

[Cite as *State v. Armstrong*, 2017-Ohio-8070.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105943

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DARON O. ARMSTRONG

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-16-605289-A and CR-16-608607-A

BEFORE: Kilbane, P.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: October 5, 2017

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MARY EILEEN KILBANE, P.J.:

{¶1} In this delayed appeal, defendant-appellant, Daron O. Armstrong (“Armstrong”), appeals the trial court’s denial of his pro se motion for additional jail-time credit. Armstrong asserts that the trial court failed to properly credit his prison sentence with all jail time served. The state concedes this error and, following our independent review, we sustain Armstrong’s single assignment of error and remand to the trial court for the limited purpose of issuing a nunc pro tunc sentencing journal entry crediting Armstrong with 246 days of jail-time.

{¶2} On April 9, 2016, Armstrong was arrested by Garfield Heights police for drug trafficking, assaulting a police officer, resisting arrest, and carrying a concealed weapon, among other things. This arrest resulted in a 13-count indictment in Cuyahoga C.P. No. CR-16-605289-A. Armstrong was confined for three days in Garfield Heights jail before being transferred to county jail, where he spent 25 days until he was released on bond on May 7, 2016.

{¶3} On August 2, 2016, while out on bond in CR-16-605289-A, Armstrong was arrested by Cleveland police for felonious assault, kidnapping, and domestic violence. This arrest resulted in a three-count indictment in Cuyahoga C.P. No. CR-16-608607-A. After his second arrest, Armstrong spent three days in Cleveland city jail before being transferred back to county jail on August 5, 2016. Armstrong spent 165 days awaiting trial in county jail before entering guilty pleas in both cases on January 17, 2017.

{¶4} After the trial court accepted Armstrong's pleas, it proceeded directly to sentencing, imposing an aggregate two-year prison sentence in CR-16-605289-A and a one-year sentence in CR-16-608607-A. The trial court ran these sentences concurrently and credited Armstrong's prison sentence with 180 days of jail time in each case. Armstrong spent an additional 6 days in county jail awaiting transport to prison.

{¶5} After spending 30 days in the custody of the Ohio Department of Rehabilitation and Correction, the trial court ordered Armstrong back to county jail for resentencing because of a clerical error in the sentencing journal entry in CR-16-605289-A. The trial court resentenced Armstrong on February 23, 2017, and issued a nunc pro tunc entry on February 24, 2017. In this nunc pro tunc entry, the trial court did not update its original calculation of 180 days jail-time credit. Armstrong was confined in county jail for 14 days before he was transferred back to prison on March 8, 2017.

{¶6} On March 27, 2017, Armstrong filed a pro se motion in CR-16-605289-A, requesting jail-time credit. On April 10, 2017, the trial court issued the following entry:

[Armstrong] was given 180 days of jail time credit at the time of sentencing. That time was calculated by the Cuyahoga County Sheriff's Department.

{¶7} That same day, the state filed its reply to Armstrong's pro se motion, conceding that Armstrong should be credited with additional days of jail time.

{¶8} Armstrong filed a delayed notice of appeal, pro se, and moved this court for the appointment of appellate counsel. We granted this motion and appointed him counsel.

{¶9} Armstrong raises the following single assignment of error for our review:

Assignment of Error

The trial court committed plain error by incorrectly limiting [Armstrong's] jail-time credit to 180 days.

{¶10} Armstrong submits that he was confined for and should be given credit for 231 days. The state concedes that the trial court's calculation of jail-time credit was incorrect and maintains that Armstrong should be credited for 246 days of confinement.¹

{¶11} After conducting an independent review, we agree with the state's calculation.

{¶12} R.C. 2967.191 provides, 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, including confinement in lieu of bail while awaiting trial * * * [and] confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term. * * * The department of rehabilitation and correction also shall reduce the stated prison term of a prisoner * * * by the total number of days, if any, that the prisoner previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.

¹ We note that while Armstrong claims he is entitled to credit for only 231 days, he details a chronology of his confinement that is identical to that discussed by the state. It appears that this discrepancy is the result of a miscalculation by Armstrong, and Armstrong and the state are in agreement as to the amount of jail-time credit he should receive.

{¶13} The trial court must determine and document how many days of jail-time credit a defendant is owed. *State v. Clemons*, 8th Dist. Cuyahoga No. 92054, 2009-Ohio-2726, ¶ 6.

{¶14} A review of the record reveals that the trial court only credited Armstrong with the time he spent in county jail prior to his initial sentencing. It failed to credit Armstrong for the time he served in Garfield Heights and Cleveland city jails, the time he spent in county jail awaiting transport to prison, and the time he spent in prison and in county jail prior to his resentencing.

{¶15} Accordingly, Armstrong's sole assignment of error is sustained.

{¶16} Judgment is reversed and the matter is remanded to the trial court for the limited purpose of issuing a nunc pro tunc journal entry to credit Armstrong's prison sentence with 246 days jail-time credit.

It is ordered that appellant recover of 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR