

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 109309
CLE'SHAWN HARRIS,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: September 3, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-636682-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mary M. Frey, Assistant Prosecuting Attorney, *for appellee*.

Timothy Young, Ohio Public Defender, and Abigail Christopher, Assistant State Public Defender, *for appellant*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant Cle'Shawn Harris brings the instant appeal challenging the trial court's judgment denying his motion for recalculation of jail-time credit. Harris contends that he is entitled to credit for the time he was confined

in both of the juvenile cases in which he was charged. After a thorough review of the record and law, this court reverses the trial court's judgment and remands the matter for further proceedings consistent with this opinion.

I. Factual and Procedural History

{¶ 2} The instant matter arose from a March 2, 2018 incident in Maple Heights, Ohio, during which Harris robbed two victims, Z.W. and M.C. Harris was charged in two juvenile cases for his involvement in the robbery.

Cuyahoga J.C. No. DL-18-104720

{¶ 3} On April 12, 2018, the state filed a ten-count complaint against Harris in Cuyahoga J.C. No. DL-18-104720 based on his involvement in a robbery on March 2, 2018, in Maple Heights, Ohio. Harris was alleged to have engaged in conduct which, if he were an adult, would constitute aggravated robbery (two counts), robbery (six counts), and kidnapping (two counts). All ten counts contained one- and three-year firearm specifications. Counts 1-5 pertained to victim Z.W., and Counts 6-10 pertained to victim M.C.

{¶ 4} On August 31, 2018, the juvenile court held a hearing on the complaint. The state requested a continuance to secure a victim. The juvenile court denied the state's request for a continuance, finding that the case "has been continued several times to secure witnesses and victims." The juvenile court dismissed the case, sua sponte, without prejudice.¹

¹ The juvenile court's judgment entry dismissing the case was filed on September 5, 2018.

Cuyahoga J.C. No. DL-18-112443

{¶ 5} On October 10, 2018, the state filed an identical ten-count complaint against Harris in Cuyahoga J.C. No. DL-18-112443 based on his involvement in the March 2, 2018 robbery in Maple Heights. Following a probable cause hearing, the juvenile court transferred the case to the General Division of the Cuyahoga County Court of Common Pleas on January 24, 2019.

Cuyahoga C.P. No. CR-19-636682-A

{¶ 6} On February 8, 2019, a Cuyahoga County Grand Jury returned a ten-count indictment charging Harris for his involvement in the March 2, 2018 robbery in Maple Heights. Harris was charged with two counts of aggravated robbery, six counts of robbery, and two counts of kidnapping. All ten counts contained one- and three-year firearm specifications.

{¶ 7} Harris was arraigned on February 25, 2019. He pled not guilty to the indictment.

{¶ 8} During a pretrial hearing on April 1, 2019, the state proffered a plea agreement on the record. On April 3, 2019, defense counsel notified the trial court that Harris accepted the plea agreement tendered by the state.

{¶ 9} On April 10, 2019, Harris formally entered his guilty plea. Harris pled guilty to an amended Count 1, attempted aggravated robbery, in violation of R.C. 2923.02 and 2911.01(A)(1), with a one-year firearm specification. The remaining counts and specifications were nolle. The trial court accepted Harris's guilty plea and proceeded immediately to sentencing.

{¶ 10} The trial court sentenced Harris to three years in prison: one year on the firearm specification, to be served prior to and consecutively with two years on the attempted aggravated robbery offense. The trial court granted Harris 64 days of jail-time credit and indicated that Harris would “receive full credit for time served.”

{¶ 11} On August 9, 2019, Harris filed a motion for recalculation of jail-time credit, requesting credit for the time he served in relation to DL-18-112443. On August 13, 2019, the trial court granted Harris’s motion for recalculation of jail-time credit. The trial court’s judgment entry provided, in relevant part, “[Harris] is to receive a total of 83 days of credit in this case for time spent in Cuyahoga County Jail and the Cuyahoga County Juvenile Detention Center[.]”

{¶ 12} On November 7, 2019, Harris filed a second motion for correction and recalculation of jail-time credit, requesting credit for the time he served in relation to DL-18-104720 before the case was dismissed. Therein, Harris argued that he was entitled to jail-time credit for the 117 days he spent at Cuyahoga County Juvenile Detention Center and Carrington Youth Academy (“Carrington”). Harris requested credit for 117 days in addition to the 88 days of jail-time credit he received as of the date of the filing of the motion.

{¶ 13} In support of his request for credit for the time he spent at Carrington, Harris submitted an email from Carrington’s executive director Robert Casillo in which Casillo answered nine questions about Carrington. The email provides,

Is there a fence around [Carrington]? Yes

Are [Carrington] doors locked at all times? Staff Secure Units, Perimeter doors lock on outside not inside.

Do only staff have access to unlock and lock the doors? Yes

Is supervision at [Carrington] 24/7? Yes

Is supervision in person? Yes

Does [Carrington] have cameras? Yes

What is your staff-to-youth ratio? 10:1

If a youth were to leave the facility without permission what would happen? Would further charges be pressed? Escape Charges would be placed. Youth would be AWOL and remanded back to Secure Detention

How does your facility receive the youth, e.g. the courts, etc.? Juvenile Court Systems and Department of Children and Family Services

{¶ 14} Based on Casillo's responses, Harris argued that he was not free to come and go as he pleased at Carrington. As a result, Harris contended that he was "confined" for purposes of R.C. 2967.191 during the time he spent at Carrington.

{¶ 15} On November 18, 2019, the trial court denied Harris's second motion for recalculation. The trial court's judgment entry provided, in relevant part, "motion for recalculation of jail time credit denied. [Harris's] motion was already granted on 8/12/19. This court cannot give credit for time spent on [J.C. No. DL-18-104720] as this case was dismissed by juvenile court and not bound over to this court for prosecution. Request for time spent at [Carrington] denied."

{¶ 16} It is from this judgment that Harris filed the instant appeal on December 17, 2019. He assigns one error for review:

I. The trial court erred by denying [Harris] jail time credit for the 115 days he was confined in relation to his case.

II. Law and Analysis

{¶ 17} In his sole assignment of error, Harris argues that the trial court erred by failing to grant him credit for the time he was confined in DL-18-104720, before that case was dismissed by the juvenile court. As noted above, Harris was originally charged in DL-18-104720 on April 12, 2018. DL-18-104720 was dismissed without prejudice by the juvenile court on August 31, 2018. Harris was subsequently charged in an identical complaint in DL-18-112443 on October 10, 2018. Harris contends that both cases — DL-18-104720 and DL-18-112443 — involve the same offenses and arose from the same incident.

{¶ 18} R.C. 2967.191, governing the reduction of a prison term for related days of confinement for adult offenders, instructs the department of rehabilitation and correction to reduce a state prison term “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 a juvenile facility.” (Emphasis added.) Time spent in confinement includes time spent in detention awaiting transfer from the juvenile court to the adult court as well as time spent in the county jail awaiting trial and sentencing. *Id.*; see *State v. Golson*, 2017-Ohio-4438, 93 N.E.3d 238, ¶ 35 (8th Dist.), citing *State v. Curtis*, 3d Dist. Allen No. 1-15-55, 2016-Ohio-6978, ¶ 84.

{¶ 19} R.C. 2152.18(B), governing a juvenile’s entitlement to credit for confinement, states that when a juvenile is committed to the custody of the department of youth services, the juvenile court must determine how much credit the juvenile is entitled to receive for confinement. R.C. 2152.18(B) provides, in relevant part,

When a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this chapter, the court shall state in the order of commitment the total number of days that the child has been confined *in connection with the delinquent child complaint upon which the order of commitment is based*.

(Emphasis added.)

{¶ 20} “The plain language of R.C. 2152.18(B) states that a juvenile is to receive credit for time he or she was ‘confined *in connection with the delinquent child complaint upon which the order of commitment is based*.’” (Emphasis sic.) *In re D.S.*, 148 Ohio St.3d 390, 2016-Ohio-7369, 71 N.E.3d 223, ¶ 15.

{¶ 21} In *State v. Carberry*, 1st Dist. Hamilton No. C-180540, 2019-Ohio-3303, the defendant was convicted of gross sexual imposition in adult court. *Id.* at ¶ 1. The defendant filed an appeal in which he argued, in relevant part, that he was entitled to 354 days of credit for confinement.² *Id.* at ¶ 2. The state conceded that the defendant had not been granted the correct amount of jail-time credit. *Id.* The First District remanded the matter to the trial court to determine the proper amount of jail-time credit with which to grant defendant. *Id.*

² *State v. Carberry*, 1st Dist. Hamilton No. C-170095, 2018-Ohio-1060.

{¶ 22} On remand, the trial court awarded defendant with 188 days of credit. *Id.* at ¶ 3. The defendant filed another appeal challenging the trial court’s award of jail-time credit. *Id.* The defendant argued that the trial court erred by only granting him 13 additional days of jail-time credit because he was also entitled to credit for the time he spent in juvenile confinement before the case was transferred to adult court. *Id.* Although the defendant was sentenced in adult court, the adult court determined how much jail-time credit defendant was entitled to, and R.C. 2967.191 rather than the juvenile confinement statute (R.C. 2152.18) applied, the First District applied the Ohio Supreme Court’s rationale from *In re D.S.*, and reversed the trial court’s award of jail-time credit. *Id.* at ¶ 10. The court concluded, “[t]hough Carberry’s case is slightly different in that he was never returned to the juvenile court [like the defendant in *In re D.S.*], it is clear that he is entitled to credit for some of the time he spent in juvenile detention in connection with the offense for which he was ultimately convicted.” (Emphasis added.) *Id.* The First District reversed the trial court’s judgment and remanded the matter to the trial court “to make a factual determination of the amount of jail-time credit to which [defendant] is entitled[.]” *Id.* at ¶ 15.

{¶ 23} In the instant matter, in his second motion for recalculation of jail-time credit, Harris requested credit for the time he was confined in relation to DL-18-104720. Harris argued that in addition to receiving credit for the time he had been confined in relation to DL-18-112443, he was entitled to jail-time credit for the time he had been confined in relation to DL-18-104720 before that case was

dismissed. Specifically, Harris argued that he was entitled to receive jail-time credit for the following periods of confinement before DL-18-104720 was dismissed: (1) his confinement from April 30, 2018, to July 20, 2018, in Cuyahoga County Juvenile Detention Center (81 days); and (2) his confinement from July 20, 2018, to August 31, 2018, at Carrington (42 days).³

{¶ 24} The trial court denied Harris’s request for jail-time credit pertaining to DL-18-104720, concluding that the trial court could not credit Harris for the time he was confined in DL-18-104720 because, unlike DL-18-112443, this case had been dismissed by the juvenile court and not bound over to the trial court for criminal prosecution. After reviewing the record, and for the reasons set forth below, we find that the trial court erred in denying Harris’s second motion for recalculation of jail-time credit. The record reflects that Harris’s confinement in DL-18-104720 involved the same incident, the same allegedly delinquent acts, and was in connection with the subsequent and identical complaint in DL-18-112443 upon which Harris’s order of commitment is based.

A. Confinement at Cuyahoga County Juvenile Detention Center

{¶ 25} First, it is undisputed that Harris is entitled to receive jail-time credit for the time he spent at the Cuyahoga County Juvenile Detention Center in DL-18-

³ It is unclear how much time Harris spent at Carrington. In his second motion for recalculation of jail-time credit, Harris asserted that he spent 42 days at Carrington, from July 20, 2018, to August 31, 2018. In the same motion, Harris asserted that he was “held at [Carrington] for a total of 5 days.” Harris asserts in his appellate brief that he was confined at Carrington for 42 days. During the oral arguments, the state asserted that Harris was in Carrington for 42 days.

104720 (from April 30, 2018, to July 20, 2018). As noted above, the record reflects that the allegations set forth in the original delinquency complaint in DL-18-104720 and the subsequent delinquency complaint in DL-18-112443 were identical — all arising from the same single incident. The period of detention at Cuyahoga County Juvenile Detention Center in DL-18-104720 was sufficiently linked and in connection with the subsequent complaint in DL-18-112443 upon which Harris’s order of commitment is based. *See In re D.S.*, 148 Ohio St.3d 390, 2016-Ohio-7369, 71 N.E.3d 223, at ¶ 18.

{¶ 26} Accordingly, the trial court’s judgment denying Harris’s motion for recalculation is reversed as it pertains to the time Harris spent in DL-18-104720 at Cuyahoga County Juvenile Detention Center. On remand, the trial court shall determine the number of days that Harris was confined at Cuyahoga County Juvenile Detention Center before DL-18-104720 was dismissed, and credit him for the time served.

B. Confinement at Carrington

{¶ 27} Second, although the state disputes whether Harris was, in fact, “confined” at Carrington, the state concedes that the trial court erred by denying Harris’s motion for recalculation regarding the time he spent in DL-18-104720 at Carrington without holding an evidentiary hearing.

{¶ 28} The only evidence in the record regarding the nature of Carrington is Casillo’s email. Harris submitted Casillo’s email in support of his motion for recalculation, and he supplemented the record on appeal with the email. The trial

court denied Harris's second motion without holding a hearing. The trial court did not take any evidence or make any findings relative to the nature of the Carrington or Harris's time at Carrington before denying Harris credit for the time he served there. *See In re M.F.*, 8th Dist. Cuyahoga Nos. 107452 and 107455, 2019-Ohio-709, ¶ 9. Without evidence regarding (1) the qualities of Carrington, and (2) the specific nature of Harris's experience at Carrington, the trial court could not adequately determine whether Harris was sufficiently restricted or "confined" for purposes of R.C. 2152.18(B), such that he was entitled to credit for the time he spent at Carrington. *See In re M.F.* at ¶ 10.

{¶ 29} After reviewing the record, we find that we do not have an adequate evidentiary record from which we can ascertain whether Harris's time at Carrington constitutes "confinement" for purposes of R.C. 2151.18(B). *See In re M.F.* at ¶ 8. Although Casillo's email generally describes the nature of Carrington, the email does not address the nature of Harris's time spent at Carrington or the conditions affecting his personal liberties. *See In re M.F.* at ¶ 8.

{¶ 30} Based on the limited evidence regarding the qualities of Carrington, and the absence of any evidence regarding Harris's experience at Carrington, we are unable to conduct a meaningful review of whether Harris was "confined" at the Carrington, such that he is entitled to credit for the time he spent there. Accordingly, the trial court's judgment denying Harris's second motion for recalculation of jail-time credit is reversed as it pertains to the time Harris spent in DL-18-104720 at Carrington.

{¶ 31} The matter is remanded to the trial court for an evidentiary hearing during which the court considers (1) evidence regarding the nature of Carrington, in order to determine if it is a secure facility, and (2) evidence regarding the nature of Harris’s time at Carrington and the restrictions on Harris’s freedom to come and go as he pleased, his personal liberties, and whether he was subject to the control of the Carrington staff. The trial court shall determine whether Harris was “confined” pursuant to R.C. 2152.18(B), as the term confinement is interpreted by the Ohio Supreme Court in *State v. Napier*, 93 Ohio St.3d 646, 647, 758 N.E.2d 1127 (2001).

{¶ 32} In determining whether Harris was “confined” for purposes of determining credit for time served at Carrington, the trial court shall consider

whether the [facility] is a secure facility that contains lockups and other measures to ensure the safety of the surrounding community; whether juveniles are secured there in such a way as to prevent them from entering the community without the approval of the [the facilities’ staff members and administration]; and whether the juveniles housed at the [facility] are under secure care and supervision. [*In re J.C.E.*, 11th Dist. Geauga No. 2016-G-0062, 2016-Ohio-7843, ¶ 47]. The court shall also consider the nature of the restrictions on appellant to determine if he [or she] was free to come and go as he [or she] wished or if he [or she] was subject to the control of the staff regarding his personal liberties as contemplated by *Napier*. [*In re J.C.E.* at *id.*]

In re J.D., 5th Dist. Richland No. 17CA42, 2018-Ohio-1823, ¶ 28. *Accord In re M.F.*, 8th Dist. Cuyahoga Nos. 108502 and 108503, 2020-Ohio-109, ¶ 22.

{¶ 33} If the trial court determines that Harris was, in fact, “confined” at Carrington, the trial court shall determine the number of days that Harris was confined and credit him for time served.

{¶ 34} For all of the foregoing reasons, Harris's sole assignment of error is sustained.

{¶ 35} Judgment reversed and remanded.

It is ordered that appellant recover from 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.

FRANK D. CELEBREZZE, JR., JUDGE

ANITA LASTER MAYS, P.J., and
MARY EILEEN KILBANE, J., CONCUR