

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE C.H.	:	
	:	No. 109446
A Minor Child	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: November 5, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. DL-19-103151 and DL-19-104697

Appearances:

Mark A. Stanton, Cuyahoga County Public Defender, and
Britta Barthol, Assistant Public Defender, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Karen Greene, Assistant Prosecuting
Attorney, *for appellee.*

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant C.H. (“appellant”) brings the instant appeal challenging the juvenile court’s judgment denying him credit for time served in confinement. Specifically, appellant argues that the juvenile court erred in concluding that he would not receive credit for the time he spent at the Carrington Youth Academy (“Carrington”). 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 two different juvenile cases in which appellant was charged and adjudicated delinquent. On March 14, 2019, appellant was charged in a six-count complaint in Cuyahoga J.C. No. DL-19-103151 with offenses which, if committed by an adult, would constitute telecommunications harassment, assault, and aggravated menacing. On April 19, 2019, appellant was charged in a five-count complaint in Cuyahoga J.C. No. DL-19-104697 with offenses which, if committed by an adult, would constitute burglary, grand theft, and theft; each charge also carried a firearm specification.

{¶ 3} On July 15, 2019, appellant admitted in DL-19-103151 to amended Count 1, attempted menacing; Count 3, telecommunications harassment; and Count 5, assault. Counts 2, 4, and 6 were dismissed. In DL-19-104697, appellant admitted to Count 1, burglary; Count 2, grand theft; and Count 3, theft. None of the counts carried the firearm specification, and Counts 4 and 5 were dismissed. Appellant was adjudicated delinquent on all of the above counts.

{¶ 4} On August 21, 2019, the juvenile court committed appellant to the Ohio Department of Youth Services ("DYS") for a minimum period of six months and a maximum of up to age 21 in DL-19-103151. In DL-19-104697, the court committed appellant to DHS for a period of one year up to the age of 21. The sentence in DL-19-103151 was ordered to be served consecutively to the sentence imposed in DL-19-

104697. The court suspended the commitment and placed appellant in the custody of the juvenile court for placement at a community correctional facility.

{¶ 5} A motion for violation of probation was subsequently filed alleging that appellant failed to follow the terms of probation because he had been unsuccessfully discharged from Hocking Valley Community Residential Center (“Hocking Valley”). At a probation violation hearing held on November 21, 2019, appellant was found to be in violation of his probation, and the court terminated the Hocking Valley placement. Appellant was permitted to go to shelter care, which was at Carrington, until his next placement was determined.

{¶ 6} On December 20, 2019, the court imposed the suspended six-month commitment in DL-19-103151 and ordered that it be served consecutively with the one-year commitment ordered in DL-19-104697. The court noted that appellant would receive credit for the time spent at Hocking Valley. At the conclusion of the hearing, counsel for appellant inquired as to whether appellant would receive credit for both his time at Hocking Valley and Carrington. The court replied, “Not Carrington, but definitely for Hocking and the supplant [sic] issue has been decided by the Court of Appeals, I’m gonna maintain my opinion about Carrington.” It is from this denial that appellant now appeals, assigning one error for review:

I. The trial court erred when it failed to give confinement credit for time served at a secure facility in accordance with R.C. 2152.18(B).

II. Law and Analysis

{¶ 7} In his sole assignment of error, appellant argues that the trial court erred by failing to grant him credit for the time he was confined at Carrington.

{¶ 8} R.C. 2152.18(B), governing a juvenile's entitlement to credit for confinement, requires 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 the number of days the child was "confined in connection with the delinquent child complaint upon which the order of commitment is based."

{¶ 9} The term "confined" is not defined in R.C. Chapter 2152. Nevertheless, this court and others have recognized that the term is to be defined broadly. *In re J.K.S.*, 8th Dist. Cuyahoga Nos. 101967 and 101968, 2015-Ohio-1312, ¶ 10, citing *In re D.P.*, 1st Dist. Hamilton No. C-140158, 2014-Ohio-5414, ¶ 18; *In re K.A.*, 6th Dist. Lucas No. L-12-1334, 2013-Ohio-3847, ¶ 23. In considering whether a juvenile is "confined" in a facility for purposes of R.C. 2152.18(B),

"juvenile courts must review the nature of the facility, to see if it is a secure facility with measures sufficient to ensure the safety of the surrounding community. They must also review the nature of the restrictions on the juvenile at the facility to determine if the juvenile was 'free to come and go as he wished' or if he was 'subject to the control of the staff regarding personal liberties * * * .'"

In re J.K.S. at ¶ 10, quoting *In re D.P.* at ¶ 18, quoting *State v. Napier*, 93 Ohio St.3d 646, 648, 758 N.E.2d 1127 (2001).

{¶ 10} In the instant matter, the juvenile court did not take any evidence or make any findings relative to the nature of Carrington or appellant's time at Carrington before denying appellant credit for the time he served there. This would generally render us without an evidentiary record to review. However, both appellant and the state moved to supplement the record with filings from an unrelated matter, which this court granted.

{¶ 11} Specifically, appellant supplemented the record with the transcript from *In re M.F.*, 8th Dist. Cuyahoga Nos. 108502 and 108503 ("*In re M.F. II*"), and the state supplemented the record with the February 28, 2020 judgment entry in *In re M.F.*, Cuyahoga J.C. No. DL-16-109093. In the dispositional hearing in the instant matter, the juvenile court referred to a case that had been heard by this court dealing with the issue of confinement credit at Carrington, but did not identify the case by name. However, both appellant and the state agree that the court was referring to *In re M.F.*, 8th Dist. Cuyahoga Nos. 107452 and 107455, 2019-Ohio-709 ("*In re M.F. I*").¹

{¶ 12} In granting the respective motions to supplement the record, this court noted that whether the transcript and judgment entry would ultimately be considered by the appellate court would be determined by the panel deciding the case on its merits.

¹ Following remand of *In re M.F. I*, the juvenile court held an evidentiary hearing, and the matter was again appealed. On appeal, the case was remanded again because the juvenile court had used the incorrect definition of "secure facility" in its judgment entry denying confinement credit. See *In re M.F. II*.

{¶ 13} On September 1, 2020, after conducting oral argument in this matter, the panel sua sponte allowed the record in this case to be supplemented with the record already before this court in *In re M.F. II*, pursuant to App.R. 9(E). Thus, the record from *In re M.F. II* will be considered in our analysis of the instant appeal.

{¶ 14} On remand following *In re M.F. I*, the juvenile court held the required evidentiary hearing, and testimony from the executive director of Carrington was presented. In determining that appellant was *not* entitled to confinement credit, the juvenile court held as follows:

In the instant matter Robert Casillo, Executive Director of Carrington Youth Academy (hereinafter Carrington), testified that Carrington has two programs: Shelter care for males and females sent from Cuyahoga County Juvenile Court and residential programs for children referred by several Ohio county Children and Family services departments. He stated that there are equivalent security measures for both programs. He further stated that the youth are monitored by staff twenty-four (24) hours, which means either physical observance or via a video monitor by administration. Staff members control how youth advance throughout Carrington. There was a regiment for waking time, eating time, study time, free time, shower time and bed time. Youth, however, could refuse to move and staff's only remedy is to draft an incident report and advise presiding jurist of their defiant behavior; staff cannot force someone to move and participate in programming. The doors to each youth's room is locked from the outside, but the youth can open the door at any time and leave the room without resistance. The doors are not monitored by staff and an alarm will notify staff that a door is ajar. The doors to the facility are locked from the outside as well and again the youth, may leave the facility without any resistance. Staff can attempt to encourage the youth to return, but cannot physically restrain or return a child to Carrington. There is a fence that surrounds the facility that is locked on the outside and prevents unauthorized individuals from accessing the property, but it doesn't permit [sic] a youth from leaving the property. The fence has an opening that allows vehicles to ingress and egress that is only closed via remote when there is a threat from the outside to the individuals inside Carrington. Juveniles who are absent without leave (hereinafter AWOL) from the

Shelter Care program at Carrington are charged with the offense of Escape and a warrant is issued for their arrest.

In re M.F., Cuyahoga J.C. No. DL-16-109093, Judgment Entry of Feb. 28, 2020.

{¶ 15} Based on the above, the juvenile court determined that Carrington only met one of the prongs of the test to determine confinement credit — that M.F.’s personal liberties were controlled by staff. The court was unconvinced that the first prong was met in that it did not find that Carrington’s safety measures ensured the safety of the surrounding community. The court explained in its judgment entry:

Carrington does not put locks on the inside of a youth’s room, or the doors that lead to the outside area of the facility. Also, there is no one monitoring the doors. Moreover, the fence that surrounds the facility has an area, where the cars traverse, that is always open and only closes when there is a threat from the community. This Court finds that the lack of security measures fails to ensure the safety of the surrounding community. A child has the ability to leave their room due to the lack of a locked door, then travel to the facility’s door and open it without resistance, since no one monitors said door. A staff member, due to the alarm, may approach the youth who is attempting to exit but, due to Carrington’s licensing requirements, can only encourage the youth to stay and[/]or return. The youth can decide to leave the facility through the open area of the fence and staff cannot close it because the youth is not posing a threat to the facility, but instead is a potential threat to the surrounding community. Although, the youth may be subjected to a warrant and/or a charge for Escape, that measure does not equate with a physical barrier to that youth and the community at large. The youth is free to engage in acts that could put the safety of the community at risk.

Id.

{¶ 16} An appellate court generally reviews the trial court’s calculation of confinement credit for an abuse of discretion. *In re J.K.S.*, 8th Dist. Cuyahoga Nos. 101967 and 101968, 2015-Ohio-1312, at ¶ 8, citing *In re H.V.*, 138 Ohio St.3d 408,

2014-Ohio-812, 7 N.E.3d 1173, ¶ 8. “However, where the facts are not in dispute and the appellate court is thus faced with the purely legal question of whether the juvenile court correctly applied the law to the facts in determining whether time spent at a [facility] constitutes ‘confinement,’ such question is a matter of law that we review de novo.” *In re J.C.E.*, 11th Dist. Geauga No. 2016-G-0062, 2016-Ohio-7843, ¶ 9, citing *In re T.W.*, 2016-Ohio-3131, 66 N.E.3d 93, ¶ 4 (1st Dist.). Thus, we review de novo the issue of whether appellant was entitled to confinement credit for his time at Carrington.

{¶ 17} After reviewing the record in the instant matter in conjunction with the record in *In re M.F. II*, we find that we have an adequate evidentiary record from which we can ascertain whether appellant’s time at Carrington constituted “confinement” for purposes of R.C. 2152.18(B).

{¶ 18} With regard to the personal liberties prong of the test for confinement credit, we find that the testimony elicited at the evidentiary hearing following remand of *In re M.F. I* supports a finding that juveniles at Carrington were not free to come and go as they pleased and that their personal liberties were controlled by the staff. Both appellant and the state acknowledged that all juveniles at Carrington are treated the same, so there is no need for individualized evidence relating to appellant, and the evidence from the record in *In re M.F. II* may be utilized in the case sub judice. Accordingly, we find that this prong of the test has been met with regard to appellant.

{¶ 19} We therefore move to the second prong and must determine if the safety measures at Carrington ensure the safety of the surrounding community.

{¶ 20} This matter is similar to *In re T.W.*, 2016-Ohio-3131, 66 N.E.3d 93, which involved the issue of confinement credit for time spent at a children's residential center called Hillcrest School. *T.W.* at ¶ 1. In assessing whether Hillcrest had measures in place to ensure the safety of the surrounding community, the court found that "[t]he presence or absence of a fence is not dispositive of this factor." *Id.* at ¶ 13. The court noted that the youths were not free to leave the grounds without permission and if they did so, law enforcement was contacted, and a warrant was issued for the child's arrest. *Id.* While Hillcrest differs from Carrington in that staff members will attempt to physically stop a juvenile trying to leave the facility, it is nonetheless significant that staff at Carrington will approach a juvenile trying to leave and attempt to dissuade them from doing so. Further, juveniles who attempt to leave Carrington face legal consequences for their actions; they are therefore not free to come and go as they please.

{¶ 21} Another case from the First District is also instructive in this matter. In *In re A.S.*, 1st Dist. Hamilton Nos. C-180045 and C-180046, 2019-Ohio-2558, the court had to determine whether time spent at a facility called Abraxas Youth Center ("Abraxas") should have been credited under R.C. 2152.18(B). Like Carrington, staff members at Abraxas were not permitted to physically restrain a child who was attempting to leave, but would counsel them to return and contact law enforcement if the child chooses to leave. A.S. left Abraxas without permission and faced a

probation violation and commitment to DYS. The court therefore found that the safety measures used at Abraxas weighed in favor of a finding that youths there were confined. *Id.* at ¶ 34.

{¶ 22} Like the facility in *In re A.S.*, juveniles at Carrington cannot be physically prevented from leaving; however, Mr. Casillo testified that there are alarms on the doors that can be heard throughout the building to alert supervisors and staff. *See* Transcript, *In re M.F.* Hearing on Confinement Credit held Mar. 20, 2019, p. 14-16.

{¶ 23} Mr. Casillo was asked to describe the steps or barriers between a youth leaving their room and getting outside the facility and stated as follows:²

[Y]ou would have to walk out of your bedroom, walk down the stairwell, which is — you would have to go out of a door, which an alarm will sound, you will have to go down three flights of stairs to another set of doors that an alarm will sound, through the front door.

Id. at p. 14.

{¶ 24} Thus, the facility has measures in place to alert the staff when a juvenile attempts to leave and enable the staff to counsel them otherwise. Further, while the juvenile court stated in its judgment entry denying confinement credit to M.F. that youths at Carrington are “free to engage in acts that could put the safety of the community at risk,” this disregards the consequences faced by the juveniles should they choose to leave Carrington. If a juvenile did decide to leave Carrington,

² Mr. Casillo was describing the female shelter care unit but had previously testified that all of the program security measures were the same.

staff notifies the police and a report is made. In addition, the youth's guardian is notified, as is the juvenile court. Finally, an escape warrant is issued, and once the youth is located, they are sent to DYS. We therefore find that Carrington has sufficient measures to ensure the safety of the surrounding community.

{¶ 25} Thus, we have determined that both prongs of the test have been met. Appellant was "confined" for purposes of R.C. 2152.18(B) during his time at Carrington, and he is entitled to confinement credit for the days spent there. We remand this matter with instructions to the juvenile court to recalculate appellant's confinement credit allowing him to receive credit for his time at Carrington.

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

{¶ 27} Judgment reversed and remanded.

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, juvenile division, 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
KATHLEEN ANN KEOUGH, J., CONCUR