

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE A.T. :
: No. 109668
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 No. DL-19110769

Appearances:

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

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

FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} Defendant-appellant A.T. (“appellant”) brings the instant appeal challenging (1) the discrepancy between the journalized terms for his commitment and the term stated at the dispositional hearing; and (2) the juvenile court’s failure to hold a hearing to determine whether he was entitled to confinement credit. Appellant further argues that he was denied due process and his right to effective

assistance of counsel. After a thorough review of the record and law, this court reverses the judgment of the trial court and remands the matter for further proceedings.

I. Factual and Procedural History

{¶ 2} On September 6, 2019, appellant was charged with improperly handling firearm in a motor vehicle, in violation of R.C. 2923.16(B); carrying a concealed weapon, in violation of R.C. 2923.12(A)(2); receiving stolen property, in violation of R.C. 2913.51(A), with a one-year gun specification under R.C. 2941.141(A); and drug possession, in violation of R.C. 2925.11(A), with a one-year gun specification under R.C. 2941.141(A).

{¶ 3} On January 10, 2020, appellant pled to an amended complaint of Counts 1 and 3. During the plea hearing, the court notified appellant that he could be confined for a minimum of six months up to the time he turned 21 years old. The court further stated that if he decided to commit appellant to the Ohio Department of Youth Services (“ODYS”), that the one-year gun specification would run consecutive to the six-month sentence, for a total of a year and a half at ODYS.

{¶ 4} Appellant was subsequently sentenced to confinement of six months on Count 1 (improper handling of firearm in a motor vehicle), and six months on Count 3 (receiving stolen property), to be run concurrently. The court further sentenced appellant to one year on the gun specification. Appellant requested credit for the time he spent at Cleveland Christian Home (“CCH”) between his adjudication

hearing and dispositional hearing, but the court denied appellant's request without holding an evidentiary hearing.

{¶ 5} It is from this judgment that appellant now appeals, assigning three errors for our review:

I. The lower court abused its discretion by failing to hold a hearing at which it considered evidence relating to the nature of Cleveland Christian Home to determine if it is a secure facility for the purpose of granting confinement credit. R.C. 2152.18(B); the Fifth and Fourteenth Amendments to the U.S. Constitution; and Article I, Section 16, Ohio Constitution.

II. A.T. was denied his right to due process when the juvenile court failed to properly explain the length of A.T.'s DYS commitment during his disposition hearing. Fifth and Fourteenth Amendments to the U.S. Constitution; Article I, Section 16, Ohio Constitution.

III. A.T. was denied his right to effective assistance of counsel. Sixth and Fourteenth Amendments to the U.S. Constitution; Section 10, Article I, Ohio Constitution.

II. Law and Analysis

A. Confinement Credit

{¶ 6} In his first assignment of error, appellant argues that the trial court erred by failing to hold a hearing to determine whether he was entitled to confinement credit for the time he spent at CCH. The state concedes this error.

{¶ 7} 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 confinement.

{¶ 8} 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).

{¶ 9} At appellant’s dispositional hearing, appellant’s counsel requested credit for the time appellant served at CCH, and the court responded as follows:

The Court of Appeals and I have gone back and forth on this issue. So they’ll tell me whether or not I’m accurate or I’m inaccurate in terms of whether or not you can get credit for your stay at shelter care.

There’s [sic] two prongs the Court of Appeals and I agree on and that is one, whether or not an individual’s liberties are restrained. They’re in shelter care and to an extent they are monitored. Most of the time when moved from place to place (inaudible) escorted by staff.

The issues that I have in terms of making that determination of should we give you credit is whether or not the surrounding community is safe and if the doors are open to bedrooms and if the doors are open to the outside community and kids could leave without being stopped, then there’s nothing that convinced them from accessing the community. And there’s nothing that ensures that individual from being able to cause any potential harm to anybody in the community. So that prong

(inaudible) not satisfied with shelter care. And shelter care has to have certain restrictions and then certain restrictions aren't appropriate. Otherwise, (inaudible) shelter care facility. Their license would be taken away because they aren't supposed to be as restricted as the Detention Center or as the Ohio Department of Youth Services or as a Community Correctional Facility.

And so I have not been giving credit.

(Tr. 15-16.)

{¶ 10} The trial court did not take any evidence or make any findings relative to the nature of CCH or appellant's time at CCH before denying appellant credit for the time he served there. Without evidence regarding (1) the qualities of CCH; and (2) the specific nature of appellant's experience at CCH, the trial court could not adequately determine whether appellant was sufficiently restricted or "confined" for purposes of R.C. 2152.18(B) and consequently whether he was entitled to credit for the time he spent at CCH. *See id.* at ¶ 10.

{¶ 11} Although the juvenile court may be aware of the nature of CCH from prior matters before it, there is nothing in the record reflecting this knowledge. Furthermore, the record does not address the nature of appellant's time spent at CCH or the conditions affecting his personal liberties.

{¶ 12} This matter is therefore remanded to the trial court for an evidentiary hearing during which the court shall consider (1) evidence regarding the nature of CCH, in order to determine if it is a secure facility; and (2) evidence regarding the nature of appellant's time at CCH and the restrictions on appellant's freedom to come and go as he pleased, his personal liberties, and whether he was subject to the

control of the CCH staff. The juvenile court shall determine whether appellant was “confined” pursuant to R.C. 2152.18(B), as the term confinement was interpreted by the Supreme Court of Ohio in *Napier*, 93 Ohio St.3d at 647, 758 N.E.2d 1127.

{¶ 13} In determining whether appellant was “confined” for purposes of determining credit for time served at CCH, 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 [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 was free to come and go as he wished or if he 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.

{¶ 14} If, after conducting a hearing, the trial court determines that appellant was, in fact, “confined” at CCH, the trial court shall determine the number of days that appellant was confined and credit him for time served.

{¶ 15} For all of the foregoing reasons, appellant’s first assignment of error is sustained.

B. Due Process

{¶ 16} In his second assignment of error, appellant argues that he was denied his right to due process when the court stated different lengths of his commitment in open court and subsequently in its judgment entry.

{¶ 17} Appellant contends that the juvenile court mentioned three different lengths of commitment, to wit: six months, one year, and fifteen months, and ultimately sentenced him to eighteen months in the court's judgment entry. Appellant states that the court should have asked him if he understood the commitment, and any changes to the length of his commitment should have been made in his presence. Appellant asks us to vacate his commitment and remand the case to the juvenile court for a new dispositional hearing wherein the court explains the length of his commitment to him in open court.

{¶ 18} The state contends that the trial court did, in fact, explain appellant's sentence to him. Further, the state maintains that when the juvenile court mentioned different commitment lengths, it was simply outlining the possibilities and when he would be eligible for early release. At oral argument, while not conceding the claimed error, the state acknowledged that if this case were to be remanded for a hearing to determine confinement credit, it would not object to the trial court also conducting a new dispositional hearing.

{¶ 19} The juvenile court stated at the dispositional hearing as follows:

the Improperly Handling of a Firearm in a Motor Vehicle it's going to be a six-month commitment to the Ohio Department of Youth Services, minimum period of confinement, maximum is until he turns 21.

(Tr. 14.)

On the Receiving Stolen Property, that's six months. That will run concurrently with Improperly Handling the Firearm in the Motor Vehicle minus the 10 days that you served in the Detention Center. (Inaudible) one-year gun spec and the Court — there's an allegation of having a gun.

(Tr. 17.)

(Inaudible) advise you of the penalties that you face. Three years in prison for Agg Rob by itself. And then you have this three-year gun spec as well. That's six years.

The fine on these two is \$300, (inaudible) suspended it. There's going to be a finding of indigency so the Court costs will be suspended.

So you got a year at ODYS. Now, what is beneficial for him is that if there was a resolution to that matter and at the county, the Adult Court, he does get credit for the time that he's at ODYS. That one year.

If that matter resolves (inaudible), he's placed on probation, he does one year for this Court on the gun spec and then for the six months I believe he will be eligible within three months for a consideration, a year and three months for consideration of early release. * * *

(Tr. 18-19.)

{¶ 20} After reviewing the record, we find that it was not clear what term of commitment was being imposed upon appellant at the dispositional hearing. At no time was there a definitive statement as to what term of commitment appellant was being sentenced to on each count.

{¶ 21} Although a court generally speaks through its journal entries, a defendant is entitled to know his sentence at the sentencing hearing. *State v. Gay*, 8th Dist. Cuyahoga No. 101749, 2015-Ohio-1832, ¶ 27, citing *State v. Quinones*, 8th Dist. Cuyahoga No. 89221, 2007-Ohio-6077, ¶ 5, and *State v. Robinson*, 6th Dist. Lucas No. L-10-1369, 2012-Ohio-6068.

{¶ 22} This court has held that if there exists a variance between the sentence pronounced in open court and the sentence imposed by a court's judgment entry, a remand for resentencing is required. *Quinones* at ¶ 5, citing *State v. R.W.*, 8th Dist.

Cuyahoga No. 80631, 2003-Ohio-1142; *State v. Carpenter*, 1st Dist. Hamilton No. C-950889, 1996 Ohio App. LEXIS 4434 (Oct. 9, 1996). This analysis has been applied to juvenile court judgments in delinquency proceedings. *See R.W.* at ¶ 25-27.

{¶ 23} Because the sentence imposed at the dispositional hearing was unclear, we find there is a variance between the term of commitment pronounced in open court and the term imposed by the court's judgment entry. Accordingly, a remand for resentencing is required, and appellant's second assignment of error is sustained.

C. Ineffective Assistance of Counsel

{¶ 24} In his third assignment of error, appellant argues that he was denied his right to the effective assistance of counsel when his attorney did not ask the juvenile court for a hearing to determine appellant's credit for his time at CCH. The state maintains that this assignment of error is moot because it has conceded that the juvenile court erred by failing to hold a hearing.

{¶ 25} Our resolution of the first assignment of error renders this assignment of error moot.

III. Conclusion

{¶ 26} After thoroughly reviewing the record, we reverse the judgment of the trial court. This matter shall be remanded to the juvenile court to conduct a hearing regarding whether appellant is entitled to confinement credit for his time at CCH. The juvenile court shall also conduct a new dispositional hearing.

{¶ 27} 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, 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., PRESIDING JUDGE

LARRY A. JONES, SR., J., and
RAYMOND C. HEADEN, J., CONCUR