[Cite as *In re V.M.*, 2020-Ohio-6746.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE V.M.	:	
	:	
A Minor Child		No. 109725
	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: December 17, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL18107528

Appearances:

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

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, Nora Bryan, Assistant Prosecuting Attorney, *for appellee*.

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant, V.M., appeals from the juvenile court's judgment denying his motion for recalculation of confinement credit that denied him credit for 139 days that he spent at Carrington Youth Academy ("Carrington"). He assigns the following errors for our review:

> I. The juvenile court erred when it failed to grant V.M. credit for the 139 days he was confined at [Carrington] in relation to the offense for which he was committed * * *.
>
> II. The lower court abused its discretion by failing to hold a hearing at which it could consider evidence relating to the nature of [Carrington] to determine if it is a secure facility for purpose of granting confinement credit. R.C. 2151.18(B); the Fifth and Fourteenth Amendments to the [United States] Constitution; and Article I, Section 16, Ohio Constitution.

{¶ 2} Having reviewed the record and the controlling case law, we reverse and remand for proceedings consistent with this opinion.

{¶ 3} In October 2018, V.M., who was born in January 2002, was adjudicated delinquent in connection with two counts of felonious assault with one-year and three-year firearm specifications. The following month, he was committed to the Ohio Department of Youth Services ("ODYS") for a minimum period of 2 years and a maximum term ending on his 21st birthday. The court suspended the term and ordered V.M. to be committed to Applewood Centers.

{¶ 4} Following a hearing in June 2019, the trial court determined that V.M. violated the terms of the suspended commitment, and it ordered the suspended sentence into execution. The court committed V.M. to ODYS for two consecutive one-year terms, plus terms for the gun specifications, but not to exceed

his 21st birthday. During his ODYS commitment, V.M. was held at the Juvenile Detention Center, Applewood Centers, and Carrington.

{¶ 5} V.M. subsequently filed a motion for recalculation of confinement credit, seeking credit for the time during which he was held at the Juvenile Detention Center, Applewood Centers, and Carrington. In response, the state argued that based upon the security conditions at Carrington, V.M. was not "confined" there, and it also asked the court to hold a hearing. Without holding an evidentiary hearing, the trial court determined that V.M. was entitled to 202 days of confinement credit for the periods during which he was held at the Juvenile Detention Center and Applewood Centers, but the trial court rejected V.M.'s additional claim that he was entitled to 139 days credit for the time at which he was held at Carrington, noting that the facility keeps its doors unlocked.

Confinement Credit

{¶ 6} In the assigned errors, V.M. argues that the trial court erred by denying his motion for recalculation to credit him for the time he spent at Carrington without holding an evidentiary hearing. He additionally argues that he was actually "confined" at Carrington within the meaning of R.C. 2152.18(B). V.M. urges this court to consider this court's recent decision in *In re C.H.*, 8th Dist. Cuyahoga No. 109446, 2020-Ohio-5188, which addressed whether time at Carrington constitutes "confinement" for purposes of R.C. 2152.18(B). While not conceding that V.M. was "confined" at Carrington within the meaning of R.C. 2152.18(B), the state agrees that

the trial court erred in denying the motion without first holding an evidentiary hearing.

{¶ 7} Our standard of review was set forth in *In re C.H.* as follows:

> 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-Ohio7843, ¶ 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.

Id. at ¶ 16.

{¶ 8} Pursuant to R.C. 2152.18(B), when a juvenile court commits a delinquent child to the custody of the ODYS, "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." Then, ODYS must "reduce the minimum period of institutionalization that was ordered * * * by the total number of days that the child has been so confined as stated by the court in the order of commitment." *Id.*

{¶ 9} R.C. Chapter 2152 does not define the term "confined," but courts define this term broadly. *See In re J.K.S.*, 8th Dist. Cuyahoga Nos. 101967 and 101968, 2015-Ohio-1312, ¶ 10. In undertaking the relevant analysis, 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.

Id. at ¶ 10, quoting *In re D.P.*, 1st Dist. Hamilton No. C-140158, 2014-Ohio-5414, ¶ 18.

{¶ 10} In *In re M.F.*, 8th Dist. Cuyahoga Nos. 107452 and 107455, 2019-Ohio-709 ("*In re M.F. I*") and *State v. Harris*, 8th Dist. Cuyahoga No. 109309, 2020-Ohio 4303, this court recently considered the situation presented herein and held that an evidentiary hearing is required in order to determine whether an individual was sufficiently restricted or "confined" for purposes of R.C. 2152.18(B), such that he was entitled to credit for this time. The *In re M.F. I* Court explained that the evidentiary hearing must address the "qualities of the [facility] and [the individual's] experience there" in order to "conduct a meaningful review of whether [the individual] was 'confined' * * * as to be entitled to credit for the time * * * spent there." *Id.* at ¶ 11.

{¶ 11} Following this court's decision and remand in *In re M.F. I*, the juvenile court held the required evidentiary hearing, and testimony from the executive director of Carrington was presented. *See In re C.H.*, 2020-Ohio-5188, ¶ 14. This record was also introduced into the record in *In re C.H.*, which described the evidence 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 bedtime. 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
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> Shelter Care program at Carrington are charged with the offense of Escape and a warrant is issued for their arrest.

Id., citing *In re M.F. I,* Cuyahoga J.C. No. DL-16-109093, Judgment Entry of Feb. 28, 2020 ("*In re M.F. II*").

{¶ 12} Evaluating this information, the *In re C.H.* Court held:

> 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.

> [Turning to the second prong,] * * * 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.
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> * * *
>
> [T]he 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, 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.

Id. at ¶ 18-24.

{¶ 13} Having evaluated the relevant information about an individual's time at Carrington, the *In re C.H*. Court held that both prongs of the test were been met and for purposes of R.C. 2152.18(B), C.H. was "confined" during his time at Carrington, and therefore entitled to confinement credit. *Id*. at ¶ 25. The *In re C.H*. Court remanded the matter with instructions to the juvenile court to recalculate his confinement credit allowing him to receive credit for his time at Carrington.

{¶ 14} Applying all of the foregoing, we likewise conclude that both prongs of the test for "confinement" have been met herein and V.M. is therefore entitled to confinement credit for his time at Carrington. Accordingly, we remand the matter for recalculation of V.M.'s confinement credit in order to allow him to receive credit for his time at Carrington.

{¶ 15} The second assigned error is well taken, and the first assigned error is moot.

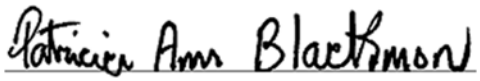
{¶ 16} Judgment reversed and remanded.

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.



PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and
EILEEN A. GALLAGHER, J., CONCUR