

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NOS. 2019-P-0047
	:	2019-P-0048
	:	2019-P-0049
DENNIS W. HAWORTH,	:	
Defendant-Appellant.	:	

Criminal Appeals from the Portage County Court of Common Pleas, Case Nos. 2016 CR 00824, 2016 CR 00827, and 2017 CR 00646.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Theresa M. Scahill*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, Ohio 44266 (For Plaintiff-Appellee).

Thomas Rein, 820 West Superior Avenue, Suite 800, Cleveland, Ohio 44113 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Dennis W. Haworth (“Mr. Haworth”), appeals from the March 20, 2019 judgment entry of the Portage County Court of Common Pleas, which denied his “Motion for Reconsideration/Credit Time Served” for the days he served in jail in consolidated trial court case nos. 2016 CR 0824, 2016 CR 0827, and 2017 CR 646.

{¶2} The trial court found Mr. Haworth had already properly been given all for credit to which he was entitled.

{¶3} Mr. Haworth raises four assignments of error on appeal. Since three of his assignments of error are not related to the court's judgment entry being appealed, we lack jurisdiction to consider them. In addition, they are identical to the assignments of error Mr. Haworth raised in his companion consolidated appeal before this court in case nos. 2019-P-0042, 2019-P-0043, 2019-P-0044, and 2019-P-0045, which we have already decided and thus, they are also moot.

{¶4} To summarize our determinations in those cases as they pertain to his first three assignments of error: in the first assignment of error, Mr. Haworth attempted to attack the validity of his plea for the underlying offense in 2017 CR 646, i.e., possession of methamphetamine. We overruled this assignment of error for lack of jurisdiction since his appeal concerned the trial court's revocation of his community control sanctions and imposition of a prison term in its 2019 judgment. We cannot consider his challenge to the voluntariness of his plea enter in 2017, which should have been raised via direct appeal.

{¶5} In his second assignment of error, Mr. Haworth challenged the trial court's determination that he violated his community control sanctions. A review of the revocation hearing transcript revealed Mr. Haworth had admitted to felonious drug use, i.e., methamphetamine, which is an offense that is "criminal in nature" and a violation of his community control restrictions.

{¶6} Lastly, in his third assignment of error, Mr. Haworth challenged the trial court's imposition of consecutive sentences following the revocation of his community control. He contended and the state conceded that the trial court erred when it imposed five consecutive one-year sentences without making the requisite R.C. 2929.14(C)

findings, both at the sentencing hearing and in its judgment entry. Thus, we reversed and remanded for the trial court to resentence Mr. Haworth.

{¶7} In regard to his fourth assignment of error, which we do have jurisdiction to consider, Mr. Haworth challenges the trial court's denial of his "Motion for Reconsideration/Credit Time Served." He contends the trial court erred by failing to give him credit for all of the time of his confinement in jail prior to imposing a prison sentence.

{¶8} A review of the record reveals Mr. Haworth's assignment of error is without merit since the trial court properly credited him with all time served. Firstly, the trial court credited Mr. Haworth with 140 days at the time his community control sanctions were revoked and a prison sentence was imposed. The trial court then denied the March 2019 "Motion for Reconsideration/Credit Time Served" that Mr. Haworth is now appealing. Several months later, Mr. Haworth filed a second "Motion for Credit for (RIP) 120 Days" for the time he spent at Oriana House, a community corrections and chemical dependency treatment agency that participates in Ohio's residential institutional probation program ("RIP"). The trial court granted this motion in October 2019, crediting him with 120 days.

{¶9} Finding the trial court properly credited Mr. Haworth with all jail-time served, we affirm the judgment of the Portage County Court of Common Pleas.

Substantive and Procedural History

{¶10} In January 2017, Mr. Haworth pleaded guilty to offenses in two separate cases. In case no. 2016 CR 0824, Mr. Haworth pleaded guilty to four counts of receiving stolen property, fifth-degree felonies, in violation of R.C. 2913.51. In case no. 2016 CR 0827, Mr. Haworth pleaded guilty to one count of possession of drugs, a fifth-degree

felony, in violation of R.C. 2925.11(A) and (C)(1)(a). The trial court subsequently imposed a term of community control.

{¶11} In October 2017, in case no. 2017 CR 646, Mr. Haworth pleaded guilty to one count of aggravated possession of drugs, a fifth-degree felony, in violation of R.C. 2925.11. He was sentenced in December 2017 to a term of community control. Subsequently, the trial court consolidated all three cases.

{¶12} The trial court held two revocation of sanction hearings in March 2018 and January 2019, respectively. At the first hearing, the trial court found Mr. Haworth violated the terms of his community control but continued his community control sanctions. At the second revocation hearing, Mr. Haworth admitted to felonious drug use, i.e., the use of methamphetamine. The court revoked his community control sanctions and imposed five, one-year consecutive sentences. We remanded this sentence in Mr. Haworth's companion appeal, noted above, for the trial court to resentence Mr. Haworth, since the trial court failed to make the requisite R.C. 2929.14(C) findings.

{¶13} Mr. Haworth filed a "Motion for Reconsideration/Credit Time Served" in March 2019. The trial court denied Mr. Haworth's motion, finding, in relevant part, that it had properly credited him with 140 days when it revoked his community control sanctions and imposed a prison term.

{¶14} Mr. Haworth filed the instant appeal of the judgment denying his "Motion for Reconsideration/Credit Time Served."

{¶15} In October 2019, Mr. Haworth filed a second "Motion for Credit for (RIP) 120 Days." Later that month, the trial court granted this motion, crediting Mr. Haworth with an

additional 120 days for the time he spent in RIP, for a total of 260 days of credited jail-time.

{¶16} Mr. Haworth now appeals, raising four assignments of error:

{¶17} “[1.] Appellant did not enter his guilty plea knowingly, intelligently, or voluntarily because the trial court failed to act in strict compliance by not properly informing him of his constitutional rights as required by Crim.R. 11(C).

{¶18} “[2.] The trial court erred by not following the mandates of R.C. 2929.15 when it sentenced Appellant to five years in prison.

{¶19} “[3.] The trial court erred by ordering Appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and HB 86.

{¶20} “[4.] The trial court erred by denying Appellant’s motion for reconsideration and failing to give him credit for all the time of his confinement, including the confinement while awaiting transportation to the place where he is to serve his prison term.”

{¶21} As noted above, the only assignment of error addressed in this opinion is Mr. Haworth’s assignment of error related to the judgment entry he is appealing, i.e., the trial court’s denial of Mr. Haworth’s “Motion for Reconsideration/Credit Time Served.” We lack jurisdiction to consider the first three assignments of error. In addition, they are moot since this court addressed them in Mr. Haworth’s companion appeal, consolidated court of appeals case nos. 2019-P-0042, 2019-P-0043, 2019-P-0044, and 2019-P-0045.

Jail-time Credit

{¶22} We review the trial court's determination as to the amount of jail-time credit to which Mr. Haworth is entitled under the “clearly and convincingly” contrary to law standard. *State v. Perkins*, 11th Dist. Lake Nos. 2018-L-084 & 2018-L-098, 2019-Ohio-

2288, ¶12, citing *State v. Smith*, 11th Dist. Geauga No. 2014-G-3185, 2014-Ohio-5076, ¶15; R.C. 2953.08(G)(2); *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶1.

{¶23} As the Supreme Court of Ohio has explained, the practice of awarding jail-time credit has its roots in the Equal Protection Clauses of the Ohio and United States Constitutions. *Id.* at ¶13, citing *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, ¶7. Since the Equal Protection Clause does not tolerate disparate treatment of defendants based solely on their economic status, the United States Supreme Court has repeatedly struck down rules and practices that discriminate against defendants based solely on their inability to pay fines and fees. *Id.* Accordingly, when a prisoner is unable to make bail because of indigency, the Equal Protection Clause requires that all time spent in any jail prior to trial and commitment must be credited to his sentence. *Id.*

{¶24} The practice of awarding jail-time credit is now covered by state statute. *Id.* at ¶14, citing *Fugate* at ¶14. Specifically, R.C. 2929.19(B)(2)(g)(i)¹ requires the trial court to “[d]etermine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced * * *.” The trial court’s duty to calculate the amount of jail-time credit only extends to the date of the sentencing judgment. *Perkins* at ¶14, citing *State v. Caccamo*, 11th Dist. Lake No. 2015-L-048, 2016-Ohio-3006, ¶25, citing Ohio Adm.Code 5120-2-04(D).

{¶25} R.C. 2967.191² provides that “[t]he department of rehabilitation and correction shall reduce the stated prison term of a prisoner * * * by the total number of

¹ Now R.C. 2929.19(B)(2)(h)(i), effective March 22, 2019.

² Now R.C. 2967.191(A), effective March 22, 2019.

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, * * * as determined by the sentencing court under division (B)(2)(g)(i) of section 2929.19 of the Revised Code * * *.”

{¶26} With respect to offenders serving concurrent sentences, Ohio Adm.Code 5120-2-04(F) states that “the department [of rehabilitation and correction] shall independently reduce each sentence or stated prison term for the number of days confined for that offense.” By contrast, for offenders serving consecutive terms, jail-time credit is applied only once, to the total term. *Perkins* at ¶16, citing *Fugate* at ¶10, citing Ohio Adm.Code 5120-2-04(G).

{¶27} The overall objective of the statutes and rules is to comply with the requirements of equal protection by reducing the total time that offenders spend in prison after sentencing by an amount equal to the time that they were previously held. *Id.* at ¶17, citing *Fugate* at ¶11.

{¶28} Despite the above authorities, we are mindful of the fact that crediting time served can be complicated, especially when a defendant is charged with multiple crimes committed at different times. *Id.* at ¶18; see *State v. Maddox*, 8th Dist. Cuyahoga No. 99120, 2013-Ohio-3140, ¶41.

{¶29} On appeal, Mr. Haworth fails to identify with any specificity the trial court’s error in calculating his jail-time credit. The burden is on Mr. Haworth to establish the court erred in its jail-time award. (Citations omitted.) *State v. Corpening*, 11th Dist. Ashtabula Nos. 2018-A-0094 & 2018-A-0095, 2019-Ohio-4833, ¶27.

{¶30} A review of the record reveals that when the trial court revoked Mr. Haworth's community control and imposed a prison sentence at the January 2019 revocation hearing, the court credited Mr. Haworth for 140 days.

{¶31} Mr. Haworth then filed a "Motion for Reconsideration/Credit Time Served," in which he erroneously claimed he was awarded zero days of credit. He argued that the trial court should have credited him with 365 days of jail-time credit, including 120 for RIP. The caption of the motion included a separate trial court case no. that was before a different trial judge (case no. 2017 CR 0649C). In his request for jail-time credit, Mr. Haworth listed a time period that he served in jail on that case (83 days from 3/7/18 – 5/29/18). The state filed, and we granted, a motion to supplement the record with the trial court's jail-time credit calculations that were included in the file for 2017 CR 0649C with the time periods the court used in awarding Mr. Haworth 156 days in that case.

{¶32} Mr. Haworth is not entitled to jail-time credit for the time spent facing separate and unrelated charges. *Perkins* at ¶38, citing *State v. Lane*, 11th Dist. Lake No. 2017-L-046, 2017-Ohio-9335, ¶17. As we stated in *Corpening*, "the reason for which a defendant is incarcerated is paramount in determining jail-time credit. This court has consistently held that 'jail-time credit is appropriate only when the facts and circumstances giving rise to the incarceration are the result of the charge for which the offender is eventually sentenced.'" (Citations omitted.) *Id.* at ¶25; see also *State v. Cupp*, 156 Ohio St.3d 207, 2018-Ohio-5211, ¶21 ("[A]n offender is only entitled to credit for time spent incarcerated on the offense for which he was convicted").

{¶33} The other time periods Mr. Haworth requested in his motion, with the exception of the 120 days Mr. Haworth spent in RIP, were included in the trial court's 140

days jail-time credit (62 days from 11/16/16 to 1/17/17; 58 days from 8/28/17 to 10/25/17; 20 days from 12/13/18 to 1/2/19). Mr. Haworth actually requested that the trial court calculate the last time period from 12/13/18 to 1/9/19, but the court correctly calculated Mr. Haworth's time up to the day of sentencing on 1/2/19.

{¶34} As noted above, pursuant to R.C. 2929.19(B)(2)(g)(i), a sentencing court is required to “[d]etermine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced * * *.” The trial court's duty to calculate the amount of jail-time credit *only extends to the date of the sentencing judgment.*” (Emphasis added.) Mr. Haworth may have been conveyed on 1/9/19, but he was sentenced on 1/2/19. It is up to the Department of Rehabilitation and Correction to include conveyance time.

{¶35} After Mr. Haworth filed the instant appeal from the trial court's judgment denying his “Motion for Reconsideration/Credit Time Served,” Mr. Haworth filed another motion with the trial court for jail-time credit, again requesting the 120 days he spent in RIP while on community control, which he served at Oriana House. The trial court granted this motion and credited him with the 120 days. In total, Mr. Haworth was credited with 260 days jail-time credit.

{¶36} Thus, it appears from the record that the trial court properly calculated Mr. Haworth's jail-time credit and included all of the time that he requested in his Motion for Reconsideration/Credit Time Served, with the exception of the time Mr. Haworth spent in jail on a separate offense.

{¶37} The judgment of the Portage County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

MATT LYNCH, J.,

concur.