

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

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2019-T-0024
ROBERT LEE ANDERSON, II,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2017 CR 00279.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, *Gabriel M. Wildman* and *Ashleigh Musick*, Assistant Prosecutors, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Michael A. Partlow, 112 South Water Street, Suite C, Kent, OH 44240 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, Robert Lee Anderson, II, appeals the decision of the Trumbull County Court of Common Pleas awarding him jail-time credit. For the following reasons, we affirm the decision of the court below.

{¶2} On October 24, 2017, following a jury trial, Anderson was found guilty of Domestic Violence.

{¶3} On November 20, 2017, the trial court ordered Anderson to serve a

twenty-four-month prison sentence for Domestic Violence and imposed a consecutive twelve-month prison sentence for violating post release control in Mahoning County C.P. No. 08 CR 625 for an aggregate sentence of thirty-six months.

{¶4} Anderson appealed his sentence. In *State v. Anderson*, 11th Dist. Trumbull No. 2017-T-0116, 2018-Ohio-5067, this court affirmed the aggregate prison sentence but remanded the case “for the sole purpose of determining the proper amount of jail time credit to which Anderson is entitled.” *Id.* at ¶ 21.

{¶5} On February 19, 2019, Anderson filed a pro se Motion for Jail-Time Credit, although he was represented by counsel at the time.

{¶6} On March 19, 2019, a hearing was held to determine the amount of jail-time credit to which Anderson was entitled. Anderson argued that he was entitled to 285 days of jail-time credit. The principal issue was whether Anderson was entitled to credit for time spent in the Mahoning County Jail in connection with Mahoning County C.P. No. 08 CR 625.

{¶7} On March 26, 2019, the trial court issued a Judgment Entry, awarding Anderson 11 days of jail-time credit for time served in the Trumbull County Jail only.

{¶8} On April 24, 2019, Anderson filed a Notice of Appeal. On appeal, he raises the following assignment of error:

{¶9} “[1.] The trial court erred, as a matter of law, by failing to give Appellant credit for jail time for all time served during the pendency of this matter.”

{¶10} “[I]f the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall * * * [d]etermine, notify the offender of, and include in the sentencing entry the total number of days, including the

sentencing date but excluding conveyance time, that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the definite prison term imposed on the offender as the offender's stated prison term * * *." R.C. 2929.19(B)(2)(g)(i); see also R.C. 2967.191(A).

{¶11} When reviewing the sentencing court's jail-time credit determination, this court has adopted the "clearly and convincingly" contrary to law standard set forth in R.C. 2953.08(G)(2). *State v. Perkins*, 11th Dist. Lake Nos. 2018-L-084 and 2018-L-098, 2019-Ohio-2288, ¶ 12; but note R.C. 2929.19(B)(2)(g)(iii) ("[t]he offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under division (B)(2)(g)(i) of this section, and the court may in its discretion grant or deny that motion").

{¶12} On appeal, Anderson reiterates his claim that he is entitled to 285 days of jail-time credit. The evidence in the record consists of the proceedings in the present case and the docket in Mahoning County C.P. No. 08 CR 625, submitted at the March 19, 2019 hearing. At the hearing, counsel for Anderson referred to the calculations contained in Anderson's pro se Motion.¹ According to the Motion:

In this case, Defendant was arrested in the City of Hubbard, Ohio for domestic violence, felonious assault and robbery, on March 16, 2017.² He posted bail on March 20, 2017. The case was bound over to the Trumbull County Grand Jury on March 31, 2017. Because of this case, Defendant violated the conditions of his post-release control imposed in Mahoning County Common Pleas No.

1. The Motion does not contain a sworn statement and the trial court refused Anderson permission to "address the Court" at the hearing. Although not, strictly speaking, evidence, we may consider the Motion as argument in support of Anderson's claim for jail-time credit. The Rules of Evidence, per Evidence Rule 101(C)(3), do not apply to sentencing and other miscellaneous proceedings and the State did not object to counsel's reference to the "very specific calculation indicating 285 days" in the Motion.

2. According to the Girard Municipal Court docket, the arrest warrant was returned on March 17, 2017.

16-CR-183. Consequently, Defendant was ordered by his Parole Officer * * * to turn himself in. On April 14, 2017, Defendant appeared at the Adult Parole Authority in Trumbull County * * * and was subsequently arrested and served with a sanction. That same day Defendant was transported to the Mahoning County Jail * * *. Because of a parole violation he was unable to post bail [in Mahoning County] and remained in custody until he was transported to the reception center on January 19, 2018, to begin serving his sentence [in the present case.³]

{¶13} As argued by counsel, the “only true evidence” is that “the only basis of the probation violation [in Mahoning County] were the charges brought in the case at bar.” Therefore, the time spent in the Mahoning County Jail arose out of the charges for which Anderson was sentenced in the present case and he is entitled to have that time credited. It is also argued that the “alleged probation violation was eventually dropped and, therefore, all time for which Appellant was held should be credited in the case at bar.” Appellant’s brief at 3.

{¶14} The State counters that, as mentioned at the jail-time credit hearing, it was its “understanding” that there were “independent bases” for the post release control violation, that Anderson “was testing dirty for cocaine and things that came up in the trial that we had.”

{¶15} The following events and dates are of significance in the determination of jail-time credit:

On August 16, 2016, Anderson was sentenced in Mahoning County C.P. No. 08 CR 625 to “three (3) years of community control with the Adult Parole Authority.”

On March 17, 2017, Anderson was arraigned on the underlying

3. See *State v. Smith*, 11th Dist. Ashtabula No. 2016-A-0059, 2017-Ohio-4123: “the trial court has the duty to determine the number of days the prisoner was confined **before he was sentenced to prison**” while “it is the duty of the department of rehabilitation and correction to reduce the prisoner’s prison term by, inter alia, the number of days he was confined **while awaiting transportation to the place where he is to serve his prison term.**” (Emphasis added.) *Id.* at ¶ 27.

charges and held in Trumbull County Jail.

{¶16} On March 20, 2017, Anderson posted bond and was released from jail.

On April 17, 2017, in Mahoning County a “motion to extend or revoke [was] filed by plaintiff.”

On April 19, 2017, in Mahoning County a Judgment Entry was issued which reads: “The Defendant waived his right to [a probable cause] hearing and stipulated to probable cause. The Court found that probable cause exists.”

On June 19, 2017, Anderson was arraigned on the Trumbull County charges and bond was set at “\$50,000.00 C/S.”

On October 25, 2017, Anderson was convicted of Domestic Violence in Trumbull County.

On November 20, 2017, Anderson was sentenced in Trumbull County.

On January 19, 2018, Anderson was conveyed to the Lorain Correctional Institution.

On January 3, 2019, in Mahoning County a Judgment Entry was issued which reads: “Upon agreement of parties the motion to revoke is withdrawn. CCS terminated negative.”

{¶17} The trial court in the present case awarded Anderson 11 days of jail-credit. Although the court did not provide an explanation for this award, it appears to correspond to the time that Anderson was physically detained in Trumbull County following his arrest and during his trial on the charges.

{¶18} Anderson seeks 285 days of jail-credit representing the time between his arrest and posting bond, and the time from his detention in Mahoning County until his transportation to Lorain Correctional.

{¶19} The State, in its Appellee’s Brief, suggests that Anderson could be awarded 158 days of jail-credit. The State would allow Anderson credit for the time

between his arrest and posting bond and the time following the imposition (or modification as described by the State) of bond by the common pleas court until he was sentenced.

{¶20} The record before this court does not permit this court to properly review the award of jail-time credit. The principal issue to be determined is whether Anderson’s confinement in Mahoning County during the majority of the time the present case was pending was “for any reason arising out” of the Domestic Violence charge. The record, however, is silent as to the reason for that confinement. The State filed a “motion to extend or revoke” in Mahoning County but this motion is not in the record and is unavailable online. Neither is the probable cause to which Anderson stipulated nor the agreement whereby the motion to revoke was withdrawn. We further note that Mahoning County never issued any sort of *capias*, warrant, or parole holder and that even the inception of Anderson’s confinement in Mahoning County is unattested except for the statements contained in his February 19, 2019 Motion for Jail-Time Credit.

{¶21} When the record before this court is insufficient to demonstrate error, this court has affirmed and has done so in the context of jail-time credit determinations. In *State v. Smith*, 11th Dist. Ashtabula No. 2016-A-0059, 2017-Ohio-4123, this court stated:

Appellant failed to file in the trial court any evidence supporting his motion for jail-time credit, such as records from the Lake County Court, the Lake County Sheriff’s Office, or the department of corrections. Thus, the trial court had no evidence before it concerning the exact amount of jail-time credit to which appellant was entitled or whether he had already been credited with that time by the department of corrections. “An appellate court in determining the existence of error is limited to a review of the record.” *State v. Dudas*, 11th Dist. Lake No. 2007-L-169, 2008-Ohio-3261, ¶ 16. On appeal, it is the appellant’s responsibility to

support his argument by evidence in the record that supports his assigned errors. *Id.* Because appellant failed to do so, his argument lacks merit.

Id. at ¶ 29.

{¶22} Similarly, in *State v. Moore*, 2016-Ohio-3510, 67 N.E.3d 68 (11th Dist.), this court rejected a request that, since “the record is unclear,” “there should be a remand for the trial court to make a specific finding whether Moore had been held on a probation violation holder.” *Id.* at ¶ 22. This court found no basis for remanding since the issue had been argued at a hearing “characterized as an evidentiary hearing” and “scheduled for the specific purpose of allowing Moore to prove his entitlement to jail-time credit.” *Id.* at ¶ 24.

{¶23} The sole assignment of error is without merit.

{¶24} For the foregoing reasons, the Trumbull County Court of Common Pleas’ award of jail-time credit is affirmed. Costs to be taxed against the appellant.

THOMAS R. WRIGHT, J.,

MARY JANE TRAPP, J.,

concur.