

[Cite as *State v. Owens*, 2009-Ohio-6185.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RUSSELL OWENS

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 09 CA 94

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2004 CR 0822D

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 19, 2009

APPEARANCES:

For Plaintiff-Appellee

JAMES J. MAYER, JR.
PROSECUTING ATTORNEY
38 South Park Street
Mansfield, Ohio 44902

For Defendant-Appellant

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Post Office Box 1812
Marion, Ohio 43301-1812

Wise, P. J.

{¶1} Defendant-Appellant Russell Owens appeals from the July 23, 2009, judgment entry denying his motion for jail time credit, entered in the Richland County Court of Common Pleas

{¶2} No brief was filed in this matter by Plaintiff-Appellee State of Ohio.

{¶3} This is an accelerated calendar case, submitted to this Court on the record and the briefs of the parties.

STATEMENT OF THE FACTS AND CASE

{¶4} On April 18, 2005, Appellant Russell Owens was sentenced to five (5) years of community control upon his convictions for forgery, complicity to burglary and breaking and entering. The Sentencing Entry stated that a violation of community control would result in a more restrictive sanction including a prison term of seven (7) years.

{¶5} On or about November 8, 2005, a probation violation was filed.

{¶6} On December 14, 2005, a hearing was held on said probation violation wherein Appellant entered pleas of guilty to the violations and the trial court continued the community corrections with additional conditions.

{¶7} On February 16, 2006, a bench warrant was issued for Appellant for violating the terms of his probation.

{¶8} On May 23, 2006, another bench warrant was issued for Appellant for violating the terms of his probation.

{¶9} By Journal Entry filed July 27, 2006, Appellant's probation was tolled based on information from his probation officer that Appellant had violated the terms of his probation by absconding from supervision.

{¶10} A probation violation hearing was held on November 20, 2006. At said hearing Appellant entered a guilty plea to said violations and was sentenced to eleven (11) months on Count One, four (4) years on Count Two and eleven (11) months on Count Three, with Counts One and Two to run consecutively to one another but concurrent to Count Three, for a total sentence of four (4) years and eleven (11) months. This sentence was also ordered to run concurrent to the sentence on the parole violation for which Appellant was already incarcerated.

{¶11} By Judgment Entry filed June 12, 2007, Appellant was granted Judicial Release and placed on community control for a period of four (4) years.

{¶12} On June 17, 2008, a bench warrant was issued for Appellant for violating the terms of his probation.

{¶13} On August 6, 2008, a hearing was held on said probation violation. Appellant entered pleas of guilty to the community control violations and the trial court re-instated Appellant's sentence as set forth above.

{¶14} On or about October 8, 2008, Appellant sent a letter to the prosecutor's office stating that he believed he was not credited with the proper amount of jail time credit on his case. On October 16, 2008, the prosecutor brought a motion before the court to address Appellant's letter.

{¶15} By judgment entry dated November 10, 2008, the trial court filed a Judgment Entry of Clarification stating:

{¶16} “The Court finds that on June 12, 2007, a Judicial Release Order was filed arising out of a May 21, 2007, hearing. However, defendant was not released at that time and defendant was returned to prison and subsequently released on or about September 17, 2007. Therefore, defendant should be given credit toward his prison sentence from May 21, 2007 through September 17, 2007, as he was in the custody of the Ohio Department of Corrections.”

{¶17} On May 11, 2009, Appellant filed a Motion for Jail Time Credit requesting a total of 148 days of jail time be credited toward his sentence.

{¶18} By Judgment Entry filed July 10, 2009, the trial court denied Appellant’s motion stating:

{¶19} “Defendant was initially sentenced in the within case on April 18, 2005, to community control. At that time defendant was already incarcerated on another case and his community control was to begin upon his release from prison. Defendant was not sentenced to prison in the within case until a November 20, 2006 probation violation. At that time defendant was again already incarcerated at Richland Correctional Institution on another case and this prison sentence was to run concurrently with the case he was already serving and would commence November 20, 2006. Defendant is requesting credit from the date he was initially placed on community control and not from the date he was actually sentenced to prison in this case. Therefore, defendant’s motion is overruled.”

{¶20} Appellant now appeals, raising the following assignment of error:

ASSIGNMENT OF ERROR

{¶21} “I. THE TRIAL COURT COMMITTED PREJUDICIAL PLAIN ERROR AS A MATTER OF LAW TO DEFENDANT/APPELLANT BY MISCALCULATING AND NOT GRANTING THE MOTION FOR JAIL TIME CREDIT PURSUANT TO O.CRIM.R.36, & 52(B); O.R.C. 2911.124, 2913.314, & 2911.13, AND THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.”

I.

{¶22} In Appellant’s sole assignment of error, he argues that the trial court erred in calculating his jail-time credit. We disagree.

{¶23} Appellant argues that he is entitled to jail time credit for the periods of time from April 18, 2005, to May 20, 2005, and from July 24, 2006, to November 20, 2006.

{¶24} R.C. §2967.191, entitled Reduction of prison term for related days of confinement, states:

{¶25} “The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner by the total number of 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, confinement for examination to determine the prisoner's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term.”

{¶26} Upon review, we find that the time periods for which Appellant is requesting credit cannot be charged against the instant case as Appellant was incarcerated on an unrelated case at that time.

{¶27} As explained by the trial court in its entry denying Appellant's motion, Appellant was not sentenced to a prison term in the case sub judice until November 20, 2006, after violating the terms of his probation for the second time. As stated by the trial court, any time Appellant was incarcerated prior to that time was a result of another unrelated case.

{¶28} "R.C. 2967.191 requires that jail credit be given only for the time the prisoner was confined for any reason arising out of the offense for which he was convicted and sentenced. It does not entitle a defendant to jail-time credit for any period of incarceration which arose from facts which are separate and apart from those on which his current sentence is based. *State v. Dawn* (1975), 45 Ohio App.2d 43."

{¶29} Appellant's sole assignment of error is overruled.

{¶30} For the foregoing reasons, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed.

By: Wise, P. J.
Edwards, J., and
Delaney, J., concur.

/S/ JOHN W. WISE

/S/ JULIE A. EDWARDS

/S/ PATRICIA A. DELANEY

JUDGES

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RUSSELL OWENS

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 09 CA 94

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed.

Costs assessed to Appellant.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ PATRICIA A. DELANEY_____

JUDGES