

[Cite as *Horn v. Hall*, 2009-Ohio-6559.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DAMON HORN

Petitioner

-vs-

RICHARD HALL, WARDEN

Respondent

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 09CA117

OPINION

CHARACTER OF PROCEEDING:

Writ of Habeas Corpus

JUDGMENT:

Petition Denied

DATE OF JUDGMENT ENTRY:

December 10, 2009

APPEARANCES:

For Petitioner

For Respondent

DAMON HORN, PRO SE
c/o Richland Correctional Institution
Inmate No. A532596
1001 Olivesburg Road, P.O. Box 8107
Mansfield, Ohio 44901

No Appearance

Hoffman, P.J.

{¶1} Petitioner, Damon Horn, filed a Petition for Writ of Habeas Corpus alleging he is entitled to immediate release from prison. Horn was convicted in Cuyahoga County Common Pleas Court of One Count of Robbery in Case Number CR-07-493515-A. The trial court sentenced Horn to a term of two years in prison. Additionally, Horn was convicted in the same court of Drug Possession and Possessing Criminal Tools in Case Number CR-05-470236-B. He received a one year sentence for these convictions. Both sentences were ordered to be served consecutive to one another.

{¶2} Horn suggests he is entitled to the same jail time credit applied to both cases for his incarceration in the Cleveland Police Jail System and the Cuyhoga County Jail from February 19, 2007 through August 16, 2007. This time period totals 178 days. If Petitioner is entitled to have the 178 days deducted from each sentence, then his sentence would have expired.

{¶3} Habeas Corpus is an extraordinary remedy available only if the petitioner is entitled to the immediate release from confinement, *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 1995-Ohio-228, 652 N.E.2d 746; R.C. 2725.01 et seq. *Parson v. Hall* 2009 WL 3491143, 1 (Ohio App. 5 Dist.).

{¶4} The Supreme Court has explained the fundamentals of jail time credit, “The practice of awarding jail-time credit, although now covered by state statute, has its roots in the Equal Protection Clauses of the Ohio and United States Constitutions. . . This principle is codified in Ohio at R.C. 2967.191, which states that “[t]he department of rehabilitation and correction shall reduce the stated prison term of a 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 * * *.'

{¶15} The Ohio Administrative Code provides additional details regarding when a prisoner is entitled to jail-time credit and how to calculate a prison term, taking the credit into account. . .The Administrative Code provides a different rule for calculating jail-time credit for offenders serving consecutive terms. In such cases, the code instructs that jail-time credit be applied only once, to the total term. See Ohio Adm.Code 5120-2-04(G).” *State v. Fugate* 117 Ohio St.3d 261, 264, 883 N.E.2d 440, 442 (Ohio,2008).

{¶16} Here, Petitioner’s total term is three years, and the Ohio Administrative Code requires the 178 days to be deducted one time from the total aggregate sentence. Petitioner is not entitled to have the 178 days deducted from each sentence, therefore, the instant Petition for Writ of Habeas Corpus is denied.

{¶17} PETITION DENIED.

{¶18} COSTS TO PETITIONER.

{¶19} IT IS SO ORDERED.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

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

DAMON HORN

Petitioner

-vs-

RICHARD HALL, WARDEN

Respondent

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JUDGMENT ENTRY

Case No. 09CA117

For the reason stated in our accompanying Memorandum-Opinion, the Petition for Writ of Habeas Corpus is denied.

PETITION DENIED.

COSTS TO PETITIONER.

IT IS SO ORDERED.

s/ William B. Hoffman _____
HON. WILLIAM B. HOFFMAN

s/ John W. Wise _____
HON. JOHN W. WISE

s/ Julie A. Edwards _____
HON. JULIE A. EDWARDS