

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009 CA 00201
JAMES RICHARD PATTON	:	
	:	NUNC PRO TUNC
	:	SIGNATURE PAGE
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas Case No. 2007CR2010

JUDGMENT: DISMISSED

DATE OF JUDGMENT ENTRY: November 23, 2009

APPEARANCES:

For Plaintiff-Appellee:

JOHN D. FERRERO
STARK COUNTY PROSECUTOR

RENEE M. WATSON
Assistant Prosecutor
110 Central Plaza South – Suite 510
Canton, OH 44702-1413

For Defendant-Appellant:

BARRY T. WAKSER
STARK COUNTY PUBLIC
DEFENDER'S OFFICE
200 W. Tuscarawas St., Suite 200
Canton, OH 44702

Delaney, J.

{¶1} Defendant-Appellant James Richard Patton appeals the July 6, 2009 judgment entry of the Stark County Court of Common Pleas denying Appellant's second motion for jail time credit. Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE¹

{¶2} On January 7, 2008, the Stark County Grand Jury indicted Appellant on one count of Domestic Violence, in violation of R.C. 2919.25(A). Appellant pleaded guilty to the charge on March 3, 2008. On April 15, 2008, following a pre-sentence investigation, the trial court sentenced Appellant to three years of community control. As part of his sentence, Appellant was ordered to comply with the Intensive Supervision Probation Program for one year. If Appellant violated any condition of his sentence, the trial court stated that Appellant would be subject to a prison term of seventeen months.

{¶3} On July 16, 2008, Appellant's probation officer filed a Motion to Revoke Probation. The motion stated that Appellant was non-compliant with ISP in that he removed his electronically monitored house arrest bracelet without permission and left his approved address. An evidentiary hearing was held on July 21, 2008. On July 31, 2008, the trial court issued its sentencing entry wherein Appellant's community control was revoked and Appellant was sentenced to seventeen months in prison. In the entry, the trial court found that Appellant was entitled to jail time credit to be calculated by the Sheriff. Appellant did not file an appeal of this judgment.

¹ Based on the issue presented, the underlying facts are unnecessary for the disposition of this appeal.

{¶4} The trial court filed its judgment entry on August 19, 2008 finding that Appellant was entitled to twenty-five days jail time credit. Appellant did not appeal this judgment entry.

{¶5} On March 12, 2009, Appellant filed a *pro se* Motion for Additional Jail-Time Credit. In his motion, Appellant argued that he was entitled to an additional 120 days of jail time credit. Appellant stated that he was under electronically monitored house arrest for 120 days before he removed his house arrest bracelet and his community control was revoked. The trial court denied Appellant's motion on March 30, 2009. Appellant did not appeal this judgment entry.

{¶6} Appellant, through counsel, filed a second Motion for Jail Time Credit on June 29, 2009. The trial court denied the motion on July 6, 2009. It is from this decision Appellant now appeals.

ASSIGNMENT OF ERROR

{¶7} Appellant raises one Assignment of Error:

{¶8} "I. THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR JAIL TIME CREDIT FOR TIME SERVED ON ELECTRONICALLY MONITORED HOUSE ARREST."

{¶9} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶10} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in

brief and conclusory form. The decision may be by judgment entry in which case it will not be published in any form."

{¶11} One of the important purposes of accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶12} This appeal shall be considered in accordance with the aforementioned rules.

{¶13} Appellant claims the trial court erred in failing to grant him jail time credit for the time Appellant spent while under electronically monitored house arrest. Upon review of the procedural history of this case, we must dismiss Appellant's appeal for being untimely filed and for lack of final appealable order.

{¶14} This Court has previously addressed the issue of whether a motion for jail time credit is a final, appealable order. See *State v. Tulley*, Stark App. No. 2001CA00313, 2002-Ohio-1290; *State v. Magee*, Guernsey App. No. 04-CA-13, 2005-Ohio-483. In *State v. Tulley*, the defendant alleged that the trial court had erred when it failed to correctly grant jail time credit. The defendant did not appeal from the conviction and sentence. Instead, years later, the defendant attempted to correct the alleged error by filing a motion for jail time credit. The trial court denied the motion. This Court concluded that the defendant's right to appeal the calculation of jail time credit arose when the trial court granted the credit for time served to the defendant. We held that the order awarding the jail time credit was the final appealable order pursuant to R.C. 2505.02(B). It was from that entry that appellant should have appealed. We

noted that the defendant had not appealed from that order nor pursued the possibility of a delayed appeal from the entry. Further, this Court held that the order overruling appellant's subsequent motion for credit for jail time was not a final, appealable order, pursuant to R.C. 2505.02(B). Consequently, the defendant's appeal was dismissed for lack of jurisdiction. *Tulley*, supra. See also *State v. Harbert*, Summit App. No. 20955, 2002-Ohio-6114; *State v. McLain*, Lucas App. No. L-07-1164, 2008-Ohio-481; *State v. Keith*, Lorain App. No. 08CA009362, 2009-Ohio-76.

{¶15} In the present case, the trial court stated in its July 31, 2008 sentencing entry that it found Appellant was entitled to jail time credit to be calculated by the Sheriff. On August 19, 2008, the trial court issued its judgment entry calculating Appellant's jail time credit to be 25 days. We find the August 19, 2008 judgment entry was a final, appealable order. Appellant did not file an appeal from the July 31, 2008 judgment entry nor the August 19, 2008 judgment entry. Further, the present appeal was taken from the denial of a motion for credit of jail time, which is not a final, appealable order.

{¶16} Accordingly, Appellant's appeal is dismissed.

By: Delaney, J.

Gwin, P.J. concur and

Hoffman, J. dissents

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

Hoffman, J., dissenting

{¶17} I respectfully dissent from the majority opinion.

{¶18} Unlike the majority, I find the trial court's July 6, 2009 judgment, denying Appellant's Motion for Jail Time Credit was a final appealable order. I believe this Court's holdings in *Tulley* and *Magee*, finding to the contrary, should be overruled.

{¶19} I also find the fact Appellant failed to timely appeal the trial court's August 19, 2008 judgment does not mean this Court does not have jurisdiction over the instant appeal. Because this appeal is a collateral attack upon that judgment, it should be analyzed under res judicata principles rather than dismissal as an untimely appeal.

{¶20} I would affirm the trial court's judgment.

HON. WILLIAM B. HOFFMAN

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

STATE OF OHIO	:	
	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JAMES RICHARD PATTON	:	
	:	
	:	Case No. 2009 CA 00201
Defendant-Appellant	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the appeal of the judgment of the Stark County Court of Common Pleas is dismissed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN