

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	
-vs-	:	
	:	Case No. 2010-CA-0053
WILLIAM E. POWELL	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Richland County Court of Common Pleas, Case No. 2004-CR-863H

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 4, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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WILLIAM E. POWELL
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Gwin, P.J.

{¶1} Defendant-appellant William E. Powell appeals a judgment of the Court of Common Pleas of Richland County, Ohio, which overruled his motion for jail time credit for time appellant spent at the Community Alternative Center. Appellant assigns a single error to the trial court:

{¶2} “I. THE TRIAL COURT ABUSED ITS DISCRETION IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHERE IT FAILED TO PROPERLY CALCULATE THE TOTAL CREDIT THAT MR. POWELL IS ENTITLED (sic) AND FAILED TO HOLD A HEARING TO DETERMINE THE NATURE OF MR. POWELL’S PARTICIPATION IN TREATMENT CENTER PROGRAM TO DETERMINE WHETHER THE PROGRAM QUALIFIED FOR JAIL TIME CREDIT.”

{¶3} The record indicates the trial court ordered appellant to be placed in Cross Roads Center for Change, a halfway house providing substance abuse treatment. While waiting for a bed at Cross Roads, appellant spent fourteen days in the Richland Community Alternative Center.

{¶4} Appellant asked the court to give him credit against his sentence for the time he spent at the Richland Community Alternative Center. The trial court found appellant was not entitled to credit for the fourteen days at Richland Community Alternative Center because the time appellant spent was not “confinement” within the meaning of the jail credit statute.

{¶5} The trial court did not hold a hearing on the matter, although it reviewed an affidavit from Thomas Trittschuh, the Program Director of the Community Alternative

Center. Appellant did not submit an affidavit to the trial court, although he unsuccessfully attempted to supplement the record on appeal with an affidavit to this court.

{¶16} In *State v. Napier* (2001), 93 Ohio St. 3d 646, 758 N.E. 2d 1127, the Ohio Supreme Court held a community based correctional facility constitutes confinement for purposes of computing credit for jail time if it is a secure facility that contains lockups and other measures sufficient to insure the safety of the surrounding community. The Director's affidavit states: "Unless a committing court orders otherwise, the residents at the Community Alternative Center are permitted to go to work each day or to leave the facility to look for work or to attend other approved errands. There are no bars, locked doors, or perimeter fencing to keep the residents in the facility and no armed guards***." The Director noted appellant was not restricted to the facility during the time he spent at the Community Alternative Center.

{¶17} The State cites us to *State v. Keeton*, Cuyahoga App. No. 85390 &. 95392, 2005-Ohio-2546, wherein the Eighth District Court of Appeals found if an inmate does not attach an affidavit to his motion, the record will not demonstrate a trial court errs in overruling a motion for jail time credit. *Keeton* at paragraph 10.

{¶18} We find the trial court did not abuse its discretion in finding appellant was not entitled to credit for fourteen days he spent at the Richland Community Alternative Center.

{¶19} The assignment of error is overruled.

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

By Gwin, P.J.,

Hoffman, J., and

Farmer, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

