

[Cite as *State v. Pennington*, 2017-Ohio-1271.]

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
LAWRENCE COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Case No. 16CA19  
 :  
 vs. :  
 :  
 MICHAEL PENNINGTON : DECISION AND JUDGMENT ENTRY  
 :  
 Defendant-Appellant. :

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APPEARANCES:

Warren N. Morford, Jr., Ironton, Ohio, for appellant<sup>1</sup>

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and C. Michael Gleichauf,  
Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee

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CRIMINAL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 3-24-17

ABELE, J.

{¶ 1} This is an appeal from a Lawrence County Common Pleas Court re-sentencing.

Michael Pennington, defendant below and appellant herein, raises the following assignment of error for review:

"THE TRIAL COURT ERRED, TO THE MATERIAL PREJUDICE OF THE DEFENDANT/APPELLANT, WHEN IT FAILED TO GIVE CREDIT FOR ALL OF THE DAYS SERVED BY DEFENDANT/APPELLANT, INCARCERATED." (SIC)

{¶ 2} On January 12, 2015, a jury found appellant guilty of burglary in violation of R.C.

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<sup>1</sup>Different counsel represented appellant during the trial court proceedings and during the appellant's direct appeal.

2911.12(A)(2). The trial court sentenced appellant to serve seven years in prison.

{¶ 3} In appellant's direct appeal of the trial court's judgment of conviction and sentence, this court affirmed the judgment in part, reversed the judgment in part, and remanded the matter to the trial court for further proceedings. See *State v. Pennington*, Lawrence App. No. 15CA5, 2016-Ohio-2792. The reason for the reversal of the judgment involved the imposition of post release control and jail time credit for time previously served. On remand, the trial court re-sentenced the appellant.

{¶ 4} In the present appeal, appellant again asserts that he did not receive full credit for the number of days that he was incarcerated prior to sentencing. However, our review of the trial court's May 18, 2016 re-sentencing entry and order reveals that the trial court did award appellant increased credit for six hundred nineteen (619) days (from September 9, 2014 to May 18, 2016). This amount of jail credit appears to be an accurate count of the days for which appellant is entitled.<sup>2</sup> Thus, we overrule appellant's assignment of error.

{¶ 5} Accordingly, based upon the foregoing reasons we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

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<sup>2</sup>We note that in appellant's brief, more particularly in his statement of the case, appellant raises three additional issues (speedy trial, discovery and ineffective assistance) that counsel acknowledges are time barred and are not properly before the court at this time. Additionally, appellee further points out that these particular claims were not raised in appellant's direct appeal and, thus, are barred under the doctrine of res judicata. We agree with both parties that those issues are not properly before this court.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.