

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case Nos. 19CA14
	:	19CA16
vs.	:	19CA18
	:	
TERRENCE M. PRICE,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	

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APPEARANCES:

Terrence M. Price, Caldwell, Ohio, Appellant, pro se.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Assistant Athens County Prosecuting Attorney, Athens, Ohio, for Appellee.

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Smith, P.J.

{¶1} These appeals are from three different Athens County Common Pleas Court judgment entries denying Appellant, Terrence Price’s, motions for additional jail-time credit, that were issued in two different cases. The three separate appeals have been consolidated. On appeal, Price contends 1) that the trial court erred and violated his right to due process when it resentenced him to 18 months in prison after this Court voided the sentence and community control in this matter; and 2) that the trial court erred in calculating the appropriate number of days of jail-time

credit. Because we find no merit to either of the assignments of error raised by Price, they are overruled and the trial court's denial of his motions are affirmed.

### FACTS

Underlying Case No. 14CR0190  
Prior Appellate Case No. 17CA30  
Current Appellate Case Nos. 19CA16 and 19CA18

{¶2} Terrence Price was originally indicted in the Athens County Court of Common Pleas on April 28, 2014 in Case No. 14CR0190. The indictment stemmed from an incident where Price dragged his girlfriend by her hair down a series of stairs and then threatened her and a responding police officer. The indictment contained three counts, which included 1) domestic violence, a fourth-degree felony in violation of R.C. 2919.25(A); 2) intimidation, a third-degree felony in violation of R.C. 2921.03(A); and 3) intimidation of an attorney, victim, or witness in a criminal case, a third-degree felony in violation of R.C. 2921.04(B)(1). Price entered into a negotiated plea agreement, pled guilty to all three counts on July 21, 2014, and was sentenced to an 18-month prison term on count 1 and a five-year term of community control on counts 2 and 3, to begin upon his release from prison. Price was given 99 days of jail-time credit, plus all time served while awaiting transport to the State Penal System. Thereafter, on October 15, 2014, Price filed a motion for judicial release, which the trial court

granted on November 4, 2014. Price was placed on community control at that time.

{¶3} Subsequently, on March 16, 2017, the State filed a notice of violation of community control/judicial release, alleging that Price had violated the terms and conditions of his community control/judicial release by 1) operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance (OVI), a first-degree misdemeanor in violation of R.C. 4511.19(A)(1)(j)(ii); 2) operating a vehicle under the influence of alcohol, a drug of abuse or a combination of them (OVI), a first-degree misdemeanor in violation of R.C. 4511.19(A)(1)(a); and 3) unlawfully causing serious physical harm to an individual while operating or participating in the operation of a motor vehicle, as a proximate cause of committing a violation of division (A) of section 4511.19 of the Ohio Revised Code (aggravated vehicular assault), a third-degree felony in violation of R.C. 2903.08(A)(1)(a). These violations stemmed from an incident where Price drove a car too fast around a curve, hit a guardrail, and slammed into a car traveling in the opposite direction, causing minor injuries to the driver of the other car and her two young daughters. Price tested positive for alcohol, cocaine, and opiates at the time of the incident.

{¶4} Price admitted to committing the three violations of his community control arising from his new offenses; and the trial court held a first-stage

revocation hearing at which it found him guilty of violating his community control. In the second-stage revocation hearing, the trial court terminated Price's judicial release on his domestic violence conviction and sentenced him to serve the remainder of his previously suspended 18-month prison sentence on that conviction. On his intimidation convictions, for which the trial court had previously placed him on one lump-sum, five-year term of community control, the court sentenced him to concurrent 36-month prison sentences for each count, to be served consecutively to his previously suspended 18-month prison term for his domestic violence conviction and consecutively to his sentence for his new convictions. The trial court's August 29, 2017 judgment entry provided as follows regarding jail-time credit: "Defendant is given credit for one hundred (100) days served in local jail for Count One, plus all time served while awaiting transport to the State Penal System, plus all prior prison time served." Price appealed the revocation of his community control and imposition of his underlying sentences in Case No. 17CA30, but made no argument regarding the trial court's calculation of jail-time credit.

Underlying Case No. 17CR0094  
Prior Appellate Case No. 17CA31  
Current Appellate Case No. 19CA14

{¶5} Those three community-control/judicial release violations constituted new offenses and Price was indicted on all three offenses in Case No. 17CR0094 in

the Athens County Court of Common Pleas on March 13, 2017. The State dismissed the first count in return for Price's guilty pleas to the remaining counts, and the trial court convicted him upon his pleas. The trial court sentenced him to a mandatory, aggregate 24-month prison term to be served consecutively to his revocation sentence in Case No. 14CR0190. The trial court's August 29, 2017 judgment entry provided as follows regarding jail-time credit: "Defendant is given credit for all jail time previously served, being zero (0) days as all time was applied to Case 14CR0190." Price appealed these criminal convictions and sentences in Case No. 17CA31. He raised no arguments regarding the trial court's calculation of jail-time credit.

#### Facts and Procedural History Common to Both Cases

{¶6} We consolidated Case Nos. 17CA30 and 17CA31 for purposes of appeal. In these prior appeals, Price raised only one assignment of error. His sole argument contended that the trial court erred in sentencing him to a five-year lump-sum of community control for multiple counts when it originally sentenced him in 2014. *State v. Price*, 4th Dist. Athens Nos. 17CA30, 17CA31, 2018-Ohio-2896.

In addressing Price's argument, we noted as follows:

\* \* \* we first note that he does not challenge the trial court's revocation of his community control, termination of his judicial release, and reimposition of the remainder of his previously suspended 18-month sentence for his domestic violence conviction in Case No. 17CA30. Price also does not challenge the trial court's judgment convicting him of operating a motor vehicle while under the influence of alcohol, a

drug of abuse, or a combination of them and aggravated vehicular assault and sentencing him for those convictions in Case No. 17CA31. *State v. Price* at ¶ 14.

{¶7} As a result, we affirmed those convictions and sentences. *Id.*

However, we sustained Price’s assignment of error and found that one lump-sum term of community control for both intimidation convictions was contrary to law and therefore void, and further that the violation of the void sanction “could not support the trial court’s revocation of [Price’s] lump-sum community control.” *Id.* at ¶ 22. Thus, we vacated and reversed the judgment revoking Price’s lump-sum community control for his intimidation convictions and sentencing him to prison after he violated his community control. *Id.* at ¶ 25. We remanded the matter to the trial court for the limited purpose of resentencing Price on the intimidation convictions in underlying Case No. 14CR0190 (17CA30). *Id.* Again, in issuing an order for a limited remand, we affirmed Price’s “conviction and sentence for domestic violence in Case No. 17CA30 and his convictions and sentence in Case No. 17CA31.” *Id.* at ¶ 26.

{¶8} In response to our remand order, the trial court held a resentencing hearing in Case No. 14CR0190 on December 4, 2018. The trial court noted that Price’s domestic violence conviction and sentence had been affirmed and that the “sentence remained unchanged.” The trial court further noted that its prior August 29, 2017 judgment entry provided that Price “was given credit for one hundred

(100) days served in local jail for Count One, plus all time served while awaiting transport to the State Penal System, plus all prior prison time served for Count One.” The trial court then went on to resentence Price to separate five-year terms of community control on Counts 2 and 3, to be served concurrently to one another and to commence after Price’s release from incarceration. Price did not file a direct appeal from his resentencing.

{¶9} Instead, he proceeded to file several motions for jail-time credit in each of his underlying cases. He filed motions for jail-time credit in Case No. 14CR0190 and Case No. 17CR0094 on April 25, 2019. In Case No. 14CR0190, Price argued he was entitled to 99 days of credit from April 24, 2014 to August 1, 2014, for time spent in the county jail. He also argued he was entitled to an additional 122 days for time spent at the Ohio Department of Corrections (hereinafter “ODRC”) prior to his resentencing on December 4, 2018. Thus, he argued he was entitled to a total of 221 days of credit. Price’s motion asked the trial court to amend its December 4, 2018 resentencing judgment entry accordingly. The trial court denied Price’s motion via journal entry dated May 7, 2019, and then subsequently issued a nunc pro tunc journal entry on August 29, 2019, again denying the motion.

{¶10} The motion filed in Case No. 17CR0094 argued Price was entitled to four days of jail-time credit from August 28, 2017, to September 1, 2017, for time

spent in the county jail. He also argued he was entitled to an additional 460 days for time spent at the ODRC between September 1, 2017 and December 4, 2018, prior to his resentencing. Thus, he argued he was entitled to a total of 464 days of credit. The trial court denied the motion on September 5, 2019.

{¶11} Price filed another motion for jail-time credit in Case No. 14CR0190 on June 20, 2019. In that motion, he argued he was entitled to 100 days of jail-time credit in Case No. 14CR0190 and 360 days of jail-time credit in Case No. 17CR0094 for time previously served in the “local jail” and also in “the State Penal System,” prior to his resentencing on December 4, 2019. Price argued that the trial court’s failure to calculate the total number of days resulted in the ODRC having “to sort through the confusion.” The trial court denied the motion on August 29, 2019.

{¶12} Price has now separately appealed the denial of all three of his motions for jail-time credit. The cases were sua sponte consolidated for purposes of appeal on March 2, 2020. In his brief, Price raises two assignments of error for our consideration.

#### ASSIGNMENTS OF ERROR

- I. “THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO EIGHTEEN (18) MONTHS AFTER THIS COURT VOIDED THE SENTENCE AND COMMUNITY CONTROL IN THIS MATTER, IN VIOLATION OF DUE PROCESS.”
- II. “THE TRIAL COURT ERRED IN NOT DISTINGUISHING,

AMONGST ALL OF THIS CONFUSION AT RE-SENTENCING, THE APPROPRIATE NUMBER OF DAYS, JAIL TIME CREDIT, APPELLANT HAD PREVIOUSLY SERVED UNDER THIS CASE.”

#### ASSIGNMENT OF ERROR I

{¶13} In his first assignment of error, Price essentially contends the trial court erred and deprived him of due process on remand when it resentenced him to an 18-month prison term after this Court voided the underlying sentence and community control in this matter in a prior appeal. The State responds by arguing that this Court’s prior limited remand did not include Price’s 18-month prison sentence in Case No. 14CR0190 and thus, there was no error because the trial court did not change the sentence that was previously imposed. The State contends that Price fails to understand that his domestic violence conviction and sentence in the underlying Case No. 14CR0190 was not included in this Court’s prior decision which ordered a limited remand. For the following reasons, we agree with the State.

{¶14} We initially note, however, that Price has filed appeals from three different judgment entries denying motions for jail-time credit that were issued in two separate trial court cases. Decisions denying motions for jail-time credit in Case No. 14CR0190 were issued by the trial court on August 29, 2019<sup>1</sup> and September 5, 2019. The argument raised under this assignment of error, however,

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<sup>1</sup> This was a nunc pro tunc judgment entry relating to a prior judgment entry dated May 7, 2019.

stems from a judgment entry issued by the trial court in Case No. 14CR0190 on December 5, 2018, after it resentenced Price in accordance with a remand order issued by this Court on July 17, 2018. *Price, supra*, at ¶ 25. Price did not file a direct appeal from the December 5, 2018 judgment entry. Instead, his current notices of appeal filed in the underlying Case No. 14CR0190 are from the trial court's August 29, 2019 nunc pro tunc journal entry and the trial court's September 5, 2019 journal entry, both of which denied motions for additional jail-time credit. As such, Price has appealed from the wrong judgment entry. Because Price's first assignment of error relates to a judgment entry that is not properly before us, it would be within our discretion to simply overrule it without any substantive analysis. However, in the interest of justice, and because it appears this argument is simply based upon a misunderstanding of the procedural history of this matter, we will address it.

{¶15} After reviewing the record, it appears Price's argument is based upon the mistaken premise that this Court voided his 18-month prison sentence in addition to his community-control sentence in his first appeal. Although this Court did vacate Price's community-control sentence in his first appeal, our decision noted that Price did not challenge the trial court's revocation of his community control, termination of judicial release, or the "reimposition of the remainder of his previously suspended 18-month sentence for his domestic violence conviction

\* \* \*.” *Price, supra*, at ¶ 14. Thus, we affirmed his domestic violence conviction and 18-month prison sentence. *Id.* Further, our remand order was limited to resentencing with respect to the “lump sum community control for his intimidation convictions.” *Id.* at ¶ 25.

{¶16} On remand, the trial court held a resentencing hearing where it acknowledged Price’s domestic violence conviction had been affirmed on appeal and it simply restated the terms of the sentence that had previously been imposed on that conviction. In fact, the trial court’s judgment entry on resentencing states “[t]his sentence is unchanged.” It then proceeded to resentence Price on both of his intimidation convictions.

{¶17} Therefore, it appears from the record that Price’s underlying 18-month prison sentence for domestic violence in Case No. 14CR0190 was affirmed on appeal and was not part of the limited remand ordered by this Court. Further, the trial court did not resentence Price on that conviction. Accordingly, and contrary to Price’s argument, the trial court did not reimpose an 18-month prison sentence after it had been previously voided on appeal. Because there is no merit to this assignment of error, it is overruled.

#### ASSIGNMENT OF ERROR II

{¶18} In his second assignment of error, Price contends the trial court erred in “not distinguishing” the appropriate number of jail-time credit days to which he

was entitled. More specifically, he argues he is entitled to 460 days of jail-time credit for time spent in the “local jail” and the “State Penal System” under Case No. 14CR0190 as of his resentencing on December 4, 2018, instead of the 100 days stated in the trial court’s December 5, 2018 judgment entry. The State contends that the trial court’s wording in the judgment entry reflects the correct amount of jail-time credit, which the trial court described as follows: “Defendant was given credit for one hundred (100) days served in local jail for Count One, plus all time served while awaiting transport to the State Penal System, plus all prior prison time served for Count One.”

{19} We initially note that Price failed to raise any argument regarding his jail-time credit when he filed his direct appeal from his resentencing. However, R.C. 2929.19(B)(2)(g)(iii) provides that sentencing courts have “ ‘continuing jurisdiction to correct any error not previously raised at sentencing in making a determination [of the appropriate jail-time credit],’ and allows offenders, ‘at any time after sentencing, [to] file a motion in the sentencing court to correct any error made in making a determination [of the appropriate jail-time credit] \* \* \*.’ ” *State v. Butcher*, 4th Dist. Athens No. 15CA33, 2017-Ohio-1544, ¶ 108, quoting R.C. 2929.19(B)(2)(g)(iii). *Accord State v. Thompson*, 147 Ohio St.3d 29, 2016-Ohio-2769, 59 N.E.3d 1264, ¶ 4-5; *State v. Copas*, 2015-Ohio-5362, 49 N.E.3d 755, ¶ 19 (4th Dist.); *State v. Thompson*, 8th Dist. Cuyahoga No. 102326, 2015-Ohio-3882,

¶ 21-22; *State v. Alredge*, 7th Dist. Belmont No. 14BE52, 2015-Ohio-2586, ¶ 10-12. Thus, jail-time credit errors are not limited to correction on direct appeal, but rather they may also be corrected through the filing of a motion with the court pursuant to R.C. 2929.19(B)(2)(g)(iii). *See Butcher* at ¶ 108, citing *Thompson*, 2015-Ohio-3882, *supra*, at ¶ 23; *see also State v. Ponyard*, 8th Dist. Cuyahoga No. 101266, 2015-Ohio-311, ¶ 10-12; *State v. Collins*, 8th Dist. Cuyahoga No. 99111, 2013-Ohio-3726, ¶ 22–25. Accordingly, despite Price’s failure to raise this issue in his prior appeal, it has not been waived.

{¶20} Our analysis begins with an explanation of the appropriate standard of review. Generally, when reviewing felony sentences, appellate courts must apply the standard of review set forth in R.C. 2953.08(G)(2). *See State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1, 22-23. Under R.C. 2953.08(G)(2), “[t]he appellate court's standard for review is not whether the sentencing court abused its discretion.” Instead, R.C. 2953.08(G)(2) provides that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either:

- (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

{¶21} However, sentencing hearings are governed by R.C. 2929.19, which provides in (B)(2)(g)(iii) that the trial court “may in its discretion grant or deny” a motion for jail-time credit made under section (B)(2)(g)(i). *See also State v. Fisher*, 10th Dist. Franklin No. 16AP-402, 2016-Ohio-8501, ¶ 9 (“This court reviews the denial of a motion to correct jail-time credit under the abuse of discretion standard.”). Additionally, in *State v. Miller*, this Court recently observed that Ohio Adm. Code 5120-2-04(B) states that “ ‘[t]he court must make a factual determination of the number of days credit to which a prisoner is entitled by law \* \* \*.’ ” *State v. Miller*, 4th Dist. Scioto No. 19CA3880, 2020-Ohio-745, ¶ 7, quoting *State v. Nutter*, 4th Dist. Hocking No. 18CA1, 2018-Ohio-5368, ¶ 12. In *Miller*, we held that the trial court’s findings of fact will be upheld “ ‘ “if the record contains competent, credible evidence to support them.” ’ ” *Miller* at ¶ 7, quoting *State v. Primrack*, 4th Dist. Washington No. 13CA23, 2014-Ohio-1771, ¶ 5, in turn quoting *State v. Elkins*, 4th Dist. Hocking No. 07CA1, 2008-Ohio-674, ¶ 20. Further, we note that in *State v. Linek*, this Court stated that “ ‘[a] trial court commits plain error when it fails to include the appropriate amount of jail-time credit in the sentencing entry.’ ” *State v. Linek*, 4th Dist. Pickaway No. 17CA6, 2018-Ohio-506, ¶ 16, quoting *State v. Curtis*, 3d Dist. Allen No. 1-15-55, 2016-Ohio-6978, at ¶ 84.

{¶22} We construe the above-cited statutory and case law to direct that although jail-time credit arguments may be raised on direct appeal, they are not waived if they are not raised. When raised on direct appeal, a reviewing court must check the trial court’s calculation of jail-time credit to see if the calculation is supported by competent, credible evidence. If the calculation of jail-time credit is not supported by competent, credible evidence, plain error will be found. Further, if a jail-time credit argument is not raised on direct appeal, it can still be raised later by way of a motion to correct jail-time credit; however, the grant or denial of a motion for jail-time credit is reviewed for an abuse of discretion. Here, Price did not raise the issue of jail-time credit on direct appeal, but rather it was raised in post-appeal motions for jail-time credit. Thus, we will apply an abuse of discretion standard of review. To constitute an abuse of discretion, the trial court's decision must be unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶23} We have explained as follows regarding the practice of awarding 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. *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 7. The rationale for giving jail-time credit ‘is quite simple[;] [a] person with money will make bail while a person without money will not.’ *Id.* at ¶ 25 (Stratton, J., concurring). That means for ‘two equally culpable codefendants who are found guilty of multiple offenses and receive identical concurrent sentences,’

the poorer codefendant will serve more time in jail than the wealthier one who was able to post bail. *Id.* at ¶ 25-26. ‘[T]he Equal Protection Clause does not tolerate disparate treatment of defendants based solely on their economic status.’ *Id.* at ¶ 7.”

*State v. Butcher, supra*, at ¶ 107, quoting *State v. Williams*, 8th Dist. Cuyahoga No. 104155, 2016-Ohio-8049, ¶ 12-14.

The applicable version of R.C. 2929.19(B)(2)(g)(i)<sup>2</sup>, states that:  
 (B)(2) \* \* \* [I]f the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

\* \* \*

(g)(i) Determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the stated prison term under section 2967.191 of the Revised Code. *The court's calculation shall not include the number of days, if any, that the offender previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.* (Emphasis added).

{¶24} Further, R.C. 2967.191 governs jail-time credit and the applicable version provides in pertinent part as follows<sup>3</sup>:

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

<sup>2</sup> Price’s community control/judicial release was revoked and he was sentenced in Case No. 14CR0190 on August 29, 2017. The version of R.C. 2929.19 that was applicable at that time had an effective date of September 28, 2012.

<sup>3</sup> Price’s community control/judicial release was revoked and he was sentenced in Case No. 14CR0190 on August 29, 2017. The version of R.C. 2967.191 that was applicable at that time had an effective date of September 28, 2012.

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, as determined by the sentencing court under division (B)(2)(g)(i) of section 2929.19 of the Revised Code, and confinement in a juvenile facility. The department of rehabilitation and correction also 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, if any, that the prisoner previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.

Thus, the plain language of the applicable versions of R.C. 2929.19(B)(2)(g)(i) and R.C. 2967.191 suggests that trial courts must calculate the days a prisoner actually spends in jail, while ODRC must reduce the prisoner's prison term by those days, plus any additional days of confinement pending transport, as well as any related time the prisoner has spent in the custody of ODRC.

{¶25} As set forth above, although these matters have been consolidated on appeal, Price filed three separate appeals from two different underlying criminal cases. In Case No. 17CR0094, on October 3, 2019, Price appealed a journal entry dated September 5, 2019, which denied his April 25, 2019 motion for jail-time credit. The motion argued Price was entitled to 464 total days (four days in jail and 460 days spent at the Ohio Department of Corrections prior to his resentencing), and claimed the 464 days should be credited against the prison terms imposed in Case No. 17CR0094. This appeal was assigned Case No. 19CA14.

{¶26} In Case No. 14CR0190, on September 23, 2019, Price appealed a nunc pro tunc journal entry dated August 29, 2019, which denied his April 25, 2019 motion for jail-time credit. That motion argued Price was entitled to 221 total days (99 days in jail and 112 days spent at the Ohio Department of Corrections). This appeal was assigned Case No. 19CA16.

{¶27} He filed a second notice of appeal in Case No. 14CR0190 on October 3, 2019. This appeal was from the trial court's September 5, 2019 journal entry denying Price's June 20, 2019 motion for jail-time credit. That motion argued Price was entitled to 460 total days (100 days of jail-time credit in Case No. 14CR0190 and 360 days of jail-time credit in Case No. 17CR0094). This appeal was assigned Case No. 19CA18.

{¶28} However, as set forth above, Price appears to have condensed his argument on appeal to contend that he is entitled to 460 days of jail-time credit for time spent in the "local jail" and the "State Penal System" under Case No. 14CR0190 as of his resentencing on December 4, 2018, instead of the 100 days stated in the trial court's December 5, 2018 judgment entry. The State contends the trial court's judgment entry correctly stated the "jail-time credit" to which Price was entitled, arguing that "the department of rehabilitation and corrections must determine the number of days an inmate serves under their care independent of the time that a sentencing court gives for pretrial incarceration."

{¶29} In light of the foregoing and for the following reasons, we agree with the State. In its December 5, 2018 judgment entry, the trial court acknowledged that Price had been given jail-time credit when he was sentenced in Case No. 14CR0190 on August 29, 2017. For example, the trial court’s December 5, 2018 judgment entry stated, in pertinent part, as follows: “Defendant was given credit for one hundred days served in local jail for Count One, plus all time served while awaiting transport to the State Penal System, plus all prior prison time served for Count One.” Further, when Price was originally sentenced in Case No. 17CR0094 on August 29, 2017, the trial court specifically stated as follows: “Defendant is given credit for all jail time previously served, being zero (0) days as all time was applied to Case 14CR0190.”

{¶30} Price does not argue that he is entitled to more than 100 days of credit for time served in the local jail. Instead, he argues that that trial court was required to calculate the number of days he was additionally confined while awaiting transport, as well as the number of days he served in the custody of ODRC during the pendency of his prior appeal and while awaiting resentencing. He further appears to contend that the trial court was required to include the specific total of those days in its judgment entry. However, this contention is contrary to the plain language of R.C. 2929.19 and 2967.191.

{¶31} Additionally, the Tenth District Court of Appeals has addressed this specific question and it held that a trial court did not abuse its discretion “by failing to include prison time in the [jail-time credit] calculation.” *State v. Fisher, supra*, at ¶ 17. In reaching its decision, the *Fisher* court noted as follows:

Under R.C. 2929.19(B)(2)(g)(i), “the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced,” otherwise known as jail time, “shall not include the number of days, if any, that the offender previously served in the custody of the department of rehabilitation and correction,” otherwise known as prison time. R.C. 2929.19(B)(2)(g)(i), therefore, precludes a sentencing court from calculating the number of days appellant previously served in prison when determining jail-time credit.

*Fisher* at ¶ 14.

{¶32} The *Fisher* court further explained as follows regarding the trial court’s duties in calculating jail-time credit versus ODRC’s duties in reducing a prisoner’s stated prison time:

Though R.C. 2967.191 imposes a duty on DRC to apply jail-time credit to reduce an inmate's stated prison term, it is the sentencing court's responsibility to make the factual determination as to the number of days of jail-time credit. *Williams v. Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-77, 2009-Ohio-3958, ¶ 15, citing *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, ¶ 7. Conversely, DRC's obligation to reduce a stated prison term by the number of days an inmate previously served in DRC's custody is independent of the sentencing court's duty to determine jail-time credit. *See Stroud v. Dept. of Rehab. & Corr.*, 10th Dist. No. 03AP-139, 2004-Ohio-580 (DRC has an independent duty to follow self-executing provisions of the Ohio Revised Code pertaining to multiple sentences and to calculate a prisoner's sentence expiration date accordingly). If appellant is entitled to a reduction in his stated prison term for any days

he previously served in DRC's custody, DRC is required to make the necessary adjustment in determining appellant's release date. *Id.* at ¶ 32, citing former R.C. 2929.41(A) and Ohio Adm. Code 5120-2-03.

*Fisher* at ¶ 16; see also *State v. Guiser*, 9th Dist. Summit No. 29456, 2019-Ohio-5421, ¶ 8, relying on *State v. Fisher*.

{¶33} We find the reasoning of *State v. Fisher*, although non-binding, to be persuasive and instructive on the question presently before us. Thus, we find that here, the trial court did not err or abuse its discretion in failing to specifically include Price's days served in the custody of ODRC in its jail-time credit calculation. Rather, it is the duty of ODRC to determine that figure and reduce Price's prison sentence in accordance with R.C. 2967.191.

{¶34} Because we cannot find the trial court abused its discretion in denying Price's motions for jail-time credit, we find no merit to his second assignment of error. As such, it is overruled.

{¶35} Having found no merit to either of Appellant's Assignments of Error, the judgment of the trial court is affirmed.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

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Jason P. Smith  
Presiding 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.**