

[Cite as *State v. Coyle*, 2010-Ohio-2130.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23450
vs.	:	T.C. CASE NO. 97CR3454
MARK E. COYLE	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 14th day of May, 2010.

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GRADY, J.:

{¶ 1} On November 19, 1998, Defendant, Mark E. Coyle, was
 convicted on his pleas of no contest of fifteen counts of rape
 of a child under thirteen years of age in violation of R.C.
 2907.02(A)(1)(b). On November 30, 1998, the trial court imposed
 sentences of incarceration for those offenses that together total

fifteen years. The court's Crim.R. 32(C) judgment of conviction and sentence, captioned "Termination Entry," contains the following statement: "The defendant is to receive credit for _____ days spent in confinement." (Dkt 48).

{¶ 2} Defendant filed no direct appeal from his 1998 conviction and sentence. On March 16, 2009, Defendant filed a "Motion To Correct Jail Time Credit," asking the trial court to find that he is entitled to "jail-time credit" against his sentence for 365 days he was incarcerated in the Montgomery County Jail following his arrest on the charges of which he was convicted and until he was later delivered into state custody. (Dkt. 49). Defendant supported his motion with copies of court and jail records.

{¶ 3} The court referred Defendant's motion to its Division of Court Services. On April 27, 2009, the court approved and filed a report prepared by that office finding that Defendant is entitled to 344 days of jail-time credit on his claim. (Dkt. 50). Defendant filed a written objection to that report on May 1, 2009, contending that he is instead entitled to 365 days of jail-time credit. (Dkt. 51). The court ordered a "non-oral hearing" on Defendant's objection set for June 19, 2009. (Dkt. 52). On May 28, 2009, Defendant filed a Notice of Appeal "from the final judgment rendered in the above-captioned case by this Court." (Dkt. 55).

FIRST ASSIGNMENT OF ERROR

{¶ 4} "THE LOWER COURT ERRED BY FAILING TO CREDIT MR. COYLE WITH ALL DAYS SERVED IN JAIL DURING PRETRIAL CONFINEMENT."

{¶ 5} "[W]here, for whatever reason, a defendant remains in jail prior to his trial, he must be given credit on the statutorily fixed sentence ultimately imposed for all periods of actual confinement." *White v. Gilligan* (S.D. Ohio 1972), 351 F.Supp. 1012, 1014. The requirement enforces the Fourteenth Amendment right to equal protection of the law. *Workman v. Cardwell* (N.D. Ohio 1972), 31 Ohio Mis. 99, 338 F.Supp. 893.

{¶ 6} R.C. 2967.191 implements the equal protection right by imposing on the department of rehabilitation and correction the specific responsibility to "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 [,] . . . and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's term."

{¶ 7} "Although the [department of rehabilitation and correction] has a mandatory duty pursuant to R.C. 2967.191 to credit an inmate with the jail time already served, it is the trial court that makes the factual determination as to the number of days of

confinement that a defendant is entitled to have credited toward his sentence." *State ex rel. Rankin v. Ohio Adult Parole Authority*, 98 Ohio St.3d 476, 2003-Ohio-2061, at ¶7. Furthermore, any error in the determination the court makes "may be raised by way of a direct appeal of his criminal case." *Id.*, at ¶10, citing *State ex rel. Jones v. O'Connor* (1999), 84 Ohio St.3d 426.

{¶8} The State argues that Defendant's 2009 claim asking the court to determine that he spent 365 days in confinement is barred by res judicata, because Defendant failed to take a direct appeal from the 1998 judgment of conviction and sentence which failed to find that Defendant had spent any number of days in confinement.

The State relies on the holding of the Tenth District Court of Appeals in *State v. Spillan*, Franklin App. Nos. 06-AP-50, 51, 52, 750, 2006-Ohio-4788. We do not agree.

{¶9} "A valid, final judgment rendered upon the merits bars all subsequent actions based on any claims arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Township* (1995), 73 Ohio St.3d 379, at syllabus. The bar applies to a point or a fact which was actually and directly in issue in a former action and was there passed upon and determined by a court of competent jurisdiction. *Norwood v. McDonald* (1943), 142 Ohio St. 299.

{¶10} The number of days Defendant had spent in confinement

for purpose of any reduction of his sentence to which Defendant would be entitled pursuant to R.C. 2967.191 was not a point or fact in issue in the prior criminal action between these same parties that was terminated by the November 30, 1998 judgment of conviction and sentence. Rather, it was a matter collateral to the judgment of conviction and sentence the court journalized. Furthermore, the court therein did not pass upon whether Defendant had spent any time at all in confinement. The court instead omitted any finding regarding that point or fact when it left blank the open space in its preprinted "Termination Entry." Had the court entered "0" or "none" before the word "days," then Defendant's current claim would be barred by res judicata, but the court made no such finding. Defendant's claim for jail-time credit, or the number of days he spent in confinement for purposes of R.C. 2967.191, in the motion he filed on March 16, 2009, is therefore not barred by res judicata.

{¶ 11} Defendant's particular contention on appeal is that he is entitled to more days of jail-time credit than the 344 days to which the court found he is entitled. We are unable to resolve that issue on the record before us.

{¶ 12} The Fourteenth Amendment to the Constitution of the United States and Section 10, Article I of the Ohio Constitution provides that persons shall not be deprived of life, liberty, or

property without due process of law. Notice of any deprivation and a right to be heard before judgment is entered affecting the person's interests in that regard is an essential element of due process of law. *New York Central Railroad Co. v. Public Utilities Commission of Ohio* (1952), 157 Ohio St. 257; *Gallagher v. Harrison* (1949), 86 Ohio App.73.

{¶ 13} By providing for a reduction of a prisoner's stated sentence, R.C. 2967.191 affects that person's liberty interests.

The finding the trial court must make concerning the number of days a prisoner spent in confinement, by which his sentence is then reduced, is a necessary predicate to the reduction. Therefore, the person concerned is entitled to prior notice of and an opportunity to be heard concerning the number of days he spent in confinement before the court makes its finding and enters its judgment on that matter.

{¶ 14} The trial court referred Defendant's motion and request to its Division of Court Services, which after examining the relevant records returned a report to the court indicating that Defendant is entitled to 344 days. Defendant was entitled to notice of that determination and an opportunity to be heard concerning it before its adoption by the court. Instead, the court "approved" and filed the report as an order of the court. The court erred in so doing.

{¶ 15} A court that journalizes a judgment of conviction and sentence required by Crim.R. 32(C) must, as a collateral matter, also make the factual determination as to the number of days of confinement by which the department of rehabilitation and correction must reduce the sentence the court imposed. *State ex rel. Rankin*. When that finding is made in the sentencing proceeding, the Defendant has an opportunity to object to it. However, the necessary facts concerning a defendant's confinement are often not then known to the court. In that circumstances, the court must make a delayed determination, and due process then requires that the defendant have notice of and an opportunity to be heard concerning the finding the court proposes to make.

{¶ 16} In the present case, the required notice and opportunity could have been provided through an order giving Defendant a stated period of time within which to show cause why the court should not adopt the report of its Division of Court Services as an order of the court. Defendant could then have filed the objections he subsequently filed, permitting a proper resolution of the issue by the court as well as a direct appeal of the court's determination by either party. Appellate review of the determination would then be possible in relation to the record on which the court relied. The present record does not permit that review.

{¶ 17} The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

{¶ 18} "THE LOWER COURT ERRED BY FAILING TO PROVIDE A HEARING TO DETERMINE THE CORRECT NUMBER OF DAYS OF PRETRIAL CONFINEMENT."

{¶ 19} The notice of appeal that Defendant filed on May 28, 2009, deprived the court of jurisdiction to proceed to the hearing on Defendant's objections which had been set for June 19, 2009.

Therefore, we cannot find that the court erred by not holding the hearing. The issue is nevertheless rendered moot by our determination of the first assignment of error. Therefore, we decline to determine the error assigned. App.R. 12(A)(1)(c).

Conclusion

{¶ 20} Having sustained Defendant's first assignment of error, we will reverse and vacate the trial court's order of April 27, 2009 finding that Defendant is entitled to 344 days of jail-time credit. The case will be remanded to the trial court for further proceedings on the motion Defendant filed on March 16, 2009, consistent with this opinion.

DONOVAN, P.J. And FAIN, J., concur.

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