

ORIGINAL

IN THE SUPREME COURT OF OHIO

KENNETH PRUITT, #A635780,
Petitioner,

Case No. 13-0341
Trial Case No. B0901851

v.

BRIAN COOK, WARDEN,
Respondent.

REQUEST FOR JUDICIAL NOTICE
(Habeas Corpus)

Now comes, Kenneth Pruitt, hereinafter "Pruitt", acting in Pro se and without the benefit of counsel, hereby request that this Honorable Court take Judicial Notice that Respondent's Records Office currently has Pruitt credited with 965 days of jail time credit. Whereas, even this determination (currently in Respondent's Records Office) has Pruitt deprived of his liberty, as of this date, because a proper re calculation of Pruitt's sentence (EDS) date would have changed his release date to on or about November 26th, 2012, [including the 965 days of jail time credit currently in their records, and earned credit awarded during Pruitt's incarceration]. However, Exhibit (H) paragraph 4 displays Respondent's refusal to enforce the Re sentencing Entry filed by the trial court on November 14th, 2011, as well. It also displays that after the trial court stated the amount of credit for time served in that particular entry, Respondent contacted the judge's office "again" and a Bailiff stated: "the amount in the entry was total credit and his release date should not change", which is plainly and unequivocally contrary to law.

The reasons for this request are more fully stated in the Memorandum In Support, Exhibit (H) and (I), which is attached to and made apart of this action.

Respectfully Submitted,
Kenneth Pruitt
KENNETH PRUITT, #A635780
Pickaway Correctional Institution
P.O. Box 209
Orient, Ohio 43146

RECEIVED
MAY 08 2013
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

FILED
MAY 08 2013
CLERK OF COURT
SUPREME COURT OF OHIO

The fact remains that Pruitt was unambiguously granted 1,530 days of local jail credit in the Entry Granting Motion For Jail Time Credit filed on February 17th, 2011, and the prison did not credit him with the time. Pruitt's petition shall be **GRANTED**, as Warden, Brian Cook lacked authority to refuse to enforce that particular Order. Respondent shall be advised of his limitations in interpreting court judgments. See, **State ex rel. Dailey v. Morgan, 761 N.E. 2d 140, 144.**

Pruitt's sentence was affirmed on Direct Appeal by the First District Court of Appeals on September 30th, 2011, and he wasn't re-sentenced until November 7th, 2011, which was almost 6months after his original sentence expired. See, **State v. Pruitt, 1st Dist. No. C-100587 (Sept. 30, 2011).** The original sentence was then upheld as the sentenced imposed was affirmed on remand. Pruitt, the State, and the Judge was bound by Pruitt's original sentence and jail time credit previously granted in his case. See, **People v Farrar, 52 NY2d 302, 305; People v Maldonado (70 AD2d 308).**

According to law, once the court entered its final order granting Pruitt 1,530 days of jail time credit, the burden was upon Pruitt to seek judicial redress of this determination if he believed it to be in error. The Prosecutor responsible for prosecuting the underlying offenses did not object to the jail time credit that was granted to Pruitt in the Entry Granting Motion For Jail Time Credit filed on February 17th, 2011, which contained the 1,530 days , and therefore waived any error associated therewith.

This Honorable Court has stated that an adequate remedy exists at law by way of appeal to review sentencing errors, including erroneous calculations of jail time credit. **State ex rel. Jones v. O'Connor (1999), 84 Ohio St. 3d 426, 1999 Ohio 470, 704 N.E. 2d 1223 (denying petition for writ of mandamus compelling trial court to rule on defendant's motion for additional jail time credit.**

A Motion can be filed in the sentencing court to correct any error in making a determination under division (B)(2)(g)(i) of section 2929.19 of the O.R.C; the court may in its discretion grant or deny that motion. If the Court changes the number of days in its determination or Re- determination, the →

Court shall cause the entry granting that change to be delivered to the Department of Rehabilitation and Correction without delay. An inaccurate determination under division (B)(2)(g)(i) of this section is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.

In this case the trial court did just that, on February 17th, 2011, and evidence was presented in the petition for writ of habeas corpus that the Respondent received the entry granting 1,530 days on the very same day and refused to enforce the order. See Exhibit (H). The law has been clear for decades and even familiar to practitioners involving these types of situations. As stated in 1981 Op. Atty. Gen. No. 81-053 at 2-210; where a court has issued an order within its jurisdiction or power, disobedience of such order is contempt.

In State v. Hawk (1992) 81 Ohio App.3d 296, 300, 610 N.E. 2d 1082. The Appellate Court considered the circumstances under which a motion to correct an order pursuant to Crim. R. 36 would be appropriate: "In order to correct an error in the record, including an omission, there must be some indication of the court's previous intent. Somewhere that intent, which was incorrectly recorded or omitted, must be manifested in the record." As applied to motions to correct calculations of jail time credit, a motion to correct would be appropriate where a trial court has granted some credit for time served, but there is evidence in the record that the trial court intended to grant a different amount of credit. Pruitt's Motion under Crim. Rule 36 was filed on December 13th, 2010 and the Entry Granting Motion for Jail Time Credit, in response to that Motion, was filed on February 17th, 2011, Granting Pruitt 1,530 days of Jail Time Credit.

In the case sub judice, Pruitt did not appeal from the trial court's original August 24th, 2010 order granting him only 11 days of credit for time served. Rather, he moved the trial court to clarify the intended credit for time served in a Motion under Crim. R. 36. In the past, the Ninth District Court of Appeals has held that a motion requesting the trial court to correct its

determination of the number of days to be credited towards a sentence is a proper way for a defendant to seek a remedy for what he believes is an erroneous calculation. See, e.g., State v. King (Apr. 6 1994), 9th Dist. No. 16512, 1994 Ohio App. LEXIS 1490, *5.

The State's failure to Appeal the entry granting motion for jail time credit, filed on February 17th, 2011, or file a Motion to Dismiss the order, however, shall compel this Court to visit this determination in light of the principles that a trial court has no authority to reconsider its final judgment in a criminal case, and even if filed, such a motion cannot be used to extend the time for filing a notice of appeal. See State ex rel. Hansen v. Reed (1992), 63 Ohio St.3d 597, 599, 589 N.E.2d 1324; State ex rel. Pendell v. Adams Cty. Bd. Of Elections (1988), 40 Ohio St.3d 58, 60, 531 N.E.2d 713; State v. Inge (Apr. 7, 1999), 9th Dist. No. 97 CA006864, 1999 Ohio App. LEXIS 1614, *4.

The Ninth District Court of Appeals in King, as well as numerous other courts in other cases, has cited State ex rel. Corder v. Wilson (1991), 68 Ohio App.3d 567, 589 N.E.2d 113, for the proposition that a motion in the trial court to correct a calculation of jail time credit is a proper avenue to challenge an incorrect calculation. See King, Supra 1994 Ohio App. LEXIS 1490, at *5. In Corder, the court stated: "Implicit in [respondents'] contentions is the possibility that the sentencing judge may make an erroneous determination [of the amount of time served for which a prisoner is entitled to credit]. This is always a possibility as to any determination, and the proper remedy is either direct appeal or a motion for correction by the trial court, if it be a mistake rather than an allegedly erroneous legal determination." (Emphasis added.) Corder, 68 Ohio App.3d at 573.

Any order or entry filed after the Order dated February 17th, 2011, clarifying the intended credit, is Moot, Void, and of no legal effect according to law. A scrupulous reading of Corder, therefore, supports the proposition that where a party challenges a trial court's

calculation of jail time credit on some basis other than an erroneous legal determination, a Motion For Correction in the trial court is appropriate. Corder's limitation on the availability of motions to correct comports with well- settled principles regarding the inability of trial courts to reconsider final judgments, and the proscription against using motions to reconsider to extend the time for filing a notice of appeal. See, State v. Shinkle (1986), 27 Ohio App.3d 54, 56 27 Ohio B. 57, 499, N.E. 2d 402 ("The general rule is that a Nunc Pro Tunc Entry cannot operate to extend the period within which an appeal may be prosecuted."); Hansen, 63 Ohio St.3d at 599; Pendell, 40 Ohio St.3d at 60.

Pruitt further asserts that the most current commitment papers are barred by res judicata, as Re sentencing was barred by res judicata. The trial court did not have authority to change the length of Pruitt's sentence or modify any aspect of the sentence except for a merger of the Allied Offenses in his case. Those parts of the Re sentencing Entries that addressed anything other than a merger of the Allied Offenses has to be vacated. See, State v. Fischer, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332. also See, State v. Gibson, 2011 Ohio 566.

As a general proposition, even if the most current sentencing entries, journalized on November 14th, 2011 and October 4th, 2012, were not Void on their face, as they are Void on their face, and barred by res judicata and the Double Jeopardy Clause, those entries granted Pruitt 964 days of Credit For Time Served, which would still have Pruitt deprived of his Liberty at Pickaway Correctional Institution as of this date, because his release date would have been on or about November 26th, 2012. Wherefore, even the trial court's barred determination of 964 days of credit for time served, would have still been the basis of granting jail time credit pursuant to R.C. 2967.191, and the Respondent would still have a duty to reduce the stated prison term of Pruitt by the total number of days stated in those entries, and by the total number of days, if any, that Pruitt previously served in the custody of the Respondent arising out of the offenses for which he was convicted and sentenced. The trial court's calculation shall not include the number of days, if any, that Pruitt previously served in the custody of the Respondent

arising out of the offenses for which he was convicted and sentenced, under division (B)(2)(g)(i) of section 2929.19 of the Ohio Revised Code.

NOTE: Pruitt arrived at "CRC" on August 4th, 2010, inmate number (#A635780).

The Respondent's Records Office has Pruitt starting this **NEW** sentence on November 9th, 2011, which would be considered Double Jeopardy and contrary to law. The Respondent's Records Office shows Pruitt's release date started as "2016", and indicates that the 965 days of jail time credit, (currently in their records), reduces Pruitt's sentence to "2014", which is clearly incorrect and contrary to law. *See: Exhibit (I).*

The Respondent has not been afforded any discretion to decide what amount of credit must be given; instead, the Respondent's role is limited to enforcing the credit as determined by the trial court. The Respondent has established rules, set forth primarily in Ohio Admin. Code 5120-2-04, to be utilized when jail time credit is an issue in a case.

In this case, the Respondent continues to ignore the trial courts authority, and continues to confine Pruitt despite the knowledge that the initial privilege justifying that confinement no longer exist. The main issue in this case is whether the Respondent had the authority to interpret, or question the February 17th, 2011 Entry Granting Motion For Jail Time Credit, or whether the Respondent must abide by the clear and unambiguous language of court entries. It is clear from **Exhibit (H) paragraph 3 & 4**, that the Respondent refused to enforce the February 17th, 2011 Entry Granting Motion For Jail Time Credit that awarded Pruitt 1, 530 days of jail time credit, and refused to enforce the November 14th, 2011 journal entry that granted Pruitt 964 days of Credit For Time Served, filed by the trial court. Prison wardens have no authority to interpret or alter the clear and unambiguous statement contained in a court judgment. It is not the Respondent's prerogative, nor within its authority, to refuse to enforce the unambiguous terms of a sentence contained in a court judgment. The Respondent must carry out the order of the court and nothing more. To permit otherwise would be to destroy the sanctity and finality of judgments, which this Honorable Court stands on.

Therefore, Petitioner, Kenneth Pruitt, Prays that this Honorable Court take Judicial Notice of these facts, and Order the Respondent to immediately release Pruitt from confinement as a matter of law, subject only to such sanctions of Post Release Control as previously determined by the Ohio Adult Parole Authority on February 17th, 2011. The Respondent shall be advised of his limitations in interpreting Court Judgments.

Respectfully Submitted,


KENNETH PRUITT #A635780
Pickaway Correctional Institution
P.O. Box 209
Orient, Ohio 43146
Petitioner-Pro se

CERTIFICATE OF SERVICE

I, Kenneth Pruitt, hereby certify that the foregoing "Request For Judicial Notice" was mailed, by regular U.S. Mail, to Brian Cook, Warden, located at 11781 State Route 762, Orient, Ohio 43146 and the Ohio Attorney General's Office, located at 150 East Gay Street, 16th, Floor, Columbus, Ohio 43215, on this 6th day of May 2013.


KENNETH PRUITT, #A635780
Petitioner-Pro se



Ohio Department of Rehabilitation and Correction

Bureau of Sentence Computation
P.O. Box 2650
Columbus, OH 43216

John F. Kasich, Governor

www.drc.ohio.gov

Gary C. Mohr, Director

TO: Linda Hill, Legal Assistant
Criminal Justice Section
Office of Ohio Attorney General Mike DeWine

FROM: Lora Heiss, Corr. Records Mgt. Supervisor *L Heiss*
Bureau of Sentence Computation

DATE: June 22, 2012

RE: Kenneth Pruitt, A635-780

Pursuant to your request for sentence computation on the above offender, I can provide the following.

Pruitt was admitted to ODRC on 8/4 10. He was sentenced on Hamilton Co. case B0901851 on 7/28/10. Judge Nadel sentenced him to a 5 years sentence on count 1, Possession, Felony 3; count 2 Trafficking, Felony 2; count 3 and 6, Possession, Felony 1; counts 4 and 5, Trafficking, Felony 1; and count 7, Having Weapon While Under Disability, Felony 3. The counts were ordered concurrent to each other for an aggregate sentence of 5 years. The entry was silent to jail credit so 7 days convey was applied from the day of sentencing up to his admission date. His computed release date was 7/26/15.

Our office received a jail time credit filed 8/24/10 granting 11 days credit as of the date of sentencing. Pruitt was resentenced 9/22/10 on B0901851 for PRC notification with no change to his sentence of 5 years. No credit was listed in the resentencing entry. His 5 years sentence was reduced by 11 days credit plus 6 days convey for a total of 17 days credit. His computed released was 7/15/15 which included 1 day of earned credit.

Our office received an entry filed 2/17/2011 granting 1530 day credit on his sentence. The judge's office was contacted and the bailiff informed our office that amount was incorrect and he would re-do the entry. We received an entry filed 2/18/11 granting 553 days as of 9/22/10 to which 4 days of conveyance time was added for a total of 557 days. His 5 years sentence was computed effective his return from court date of 9/27/10 and reduced by 557 days of credit for an Expiration of Stated Term of 3/15/14 which included 2 days earned credit.

Pruitt's sentence was reversed and remanded by the appellate court. He was resentenced on 11/7/11 to serve 5 years concurrently on counts 2, 3, 5, and 7. The resentencing entry granted 964 days credit plus 1 day convey was added for a total credit of 965 days. Again, the judge's office was contacted and the bailiff confirmed the amount in the entry was total credit and his release date should not change. His sentence was computed effective his return from court date of 11/9/11 and reduced by 965 days credit for a release date of 3/11/14 which included 6 days earned credit.

Due to receiving 6 more days of earned credit, Pruitt's Expiration of Stated Term is 3/5/14 as of this date.

I hope this information is helpful.

(8)

EXHIBIT

H



Ohio Department of Rehabilitation and Correction

Exhibit(I)

770 West Broad Street
Columbus, Ohio 43222

John R. Kasich, Governor

www.drc.ohio.gov

Gary C. Mohr, Director

Thursday, January 17, 2013 3:26 PM

PCI [BOSC - UPDATE & CORRECTION]

BY: POND

INMATE # : A635780
NAME : PRUITT, KENNETH
INST : PICKAWAY CORRECTIONAL INSTITUTION
ENTERED : 01/17/2013

COMMENTS: CORRECTED SENTENCE ON COUNT 7. NO
CHANGE TO RELEASE DATE

ADMISSION DATE: 08/04/2010 FBI#: [REDACTED] BCI#: [REDACTED] SSN#: [REDACTED]

- INACTIVE
** - OFFENSE INFORMATION: Att. = 1; Con. = 2; Com = 3

START	OFFENSE			LK	C/L	FEL	ORC/ORN	CNTY	CASE #	C	**	##
GUN	DEF/TERM	MIN FULL	MAX	AI/MAN	RVO MDO	JUDGE	PROSECUTOR			L	JTC	
11/09/2011	DRUG TRAFFICKING			1	C	2	2925.03 4	HAMI	B0901851	C		
0	5.00	0	0	0/0	/0	NORBERT A NADEL	JOSEPH T DETERS				965	
11/09/2011	POSS. OF DRUGS			1	C	1	2925.11 4	HAMI	B0901851	C		
0	5.00	0	0	0/0	/0	NORBERT A NADEL	JOSEPH T DETERS				965	
11/09/2011	DRUG TRAFFICKING			1	C	1	2925.03 4	HAMI	B0901851	C		
0	5.00	0	0	0/0	/0	NORBERT A NADEL	JOSEPH T DETERS				965	
11/09/2011	WEAPON UNDER DISABILITY			1	C	3	2923.13 4	HAMI	B0901851	C		
0	5.00	0	0	0/0	/0	NORBERT A NADEL	JOSEPH T DETERS				965	

AGGREGATE SENTENCE: 5.00 TERM

REMARKS:

DATES: *E*

HEARING DATE	2/3 HD	AGG DEF SENT YEARS	
ACTUAL HD	2/3 ACTUAL	AGG STATED TERM SENT YRS	5.00
MAX SENT EXP DATE		AGG MIN/FULL SENT YEARS	
EXPIRATION DEF SENT		AGG AI SENT YEARS	
2/3 EDS		AGG MANDATORY YEARS	
		AGG MAX SENT YEARS	
		AGG MDO YEARS	

STATED TERM EXP DATE	02/27/2014	AGG RVO YEARS	
CUN EXPIRATION DATE		AGG JAIL TIME CRE (days)	965
EXP OF MANDATORY TERM		EXPIRATION OF EST HB86-1 SENTENCE	
EXPIRATION OF EST HB86-5 SENTENCE		EXPIRATION OF EST HB86-0 SENTENCE	
EXPIRATION OF EST SB2 SENTENCE	02/27/2014	RISK REDUCTION RELEASE DATE	
80% RELEASE ELIGIBILITY DATE		92% EARN CREDIT CAP HB86-1 SENTENCE	
92% EARN CREDIT CAP HB86-5 SENTENCE			

Handwritten signature or initials