ORIGINAL

IN THE SUPREME COURT OF OHIO

KENNETH PRUITT, Petitioner-Appellant, vs. BRIAN COOK, Warden, Respondent-Appellee.	: : : : : : : : :	Case No. 2013-0341 **HABEAS CORPUS** **Original Action**

RESPONDENT BRIAN COOK'S RETURN OF WRIT

Respectfully submitted,

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Petitioner pro se

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SUPREME COURT OF OHIO

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STATEMENT OF THE CASE

Petitioner Kenneth Pruitt, state prisoner number A635-780, is in the custody of Brian Cook, Warden of the Pickaway Correctional Institution, pursuant to his convictions for trafficking in cocaine, possession of cocaine, and having weapons while under disability. (Petition, Attachment J.)

Pruitt pled guilty to and was convicted of possession of cocaine, trafficking in cocaine, and having weapons while under a disability in Hamilton County Common Pleas Court case number B-0901851. The trial court sentenced Pruitt to 5 years in prison for each conviction and ordered the sentences to be served concurrently, resulting in a 5-year aggregate prison sentence. (Petition, Attachment A.)

On August 11, 2010, Pruitt filed a motion for credit for time served. Pruitt argued that R.C. 2945.71(E)'s triple-count provision entitled him to triple the amount of jail time credit he would receive for an approximate total of 1500 days. Pruitt acknowledged that he was only confined from March 18, 2009 to July 28, 2010; however, he sought more than 4 years of jail time credit. (Exhibit 1, Case No. B-0901851.) The trial court awarded Pruitt 11 days of jail time credit, plus conveyance time to the institution and any credit previously given. (Exhibit 2.)

On September 22, 2010, the trial court resentenced Pruitt in order to properly notify him of post release control. There was no change in Pruitt's aggregate 5-year prison sentence. (Petition, Attachment B.)

On December 13, 2010, Pruitt filed a motion to clarify entry granting motion for jail time credit. Pruitt asked the court to grant him 1,511 days of jail time credit. (Petition, Attachment C.) On February 17, 2011, the trial court issued an order granting Pruitt 1530 days of jail time credit. (Petition, Attachment D.) However, on February 18, 2011, the trial court issued an order

stating that the February 17, 2011 "Entry Granting Motion for Jail Time Credit" was inadvertently entered by the Court and is set aside. The trial court granted Pruitt credit for jail time served for a total of 553 days as of the date of Pruitt's September 22, 2010 resentencing. (Exhibit 3.)

On September 30, 2011, the First District Court of Appeals affirmed Pruitt's convictions, but determined that the trafficking in cocaine and possession of cocaine charges were allied offenses and should have been merged at sentencing. The matter was remanded for resentencing. (Exhibit 4.)

Pursuant to the remand order, on November 7, 2011, the trial court dismissed the possession of cocaine charges in counts one and six and the trafficking in cocaine conviction in count 4. The trial court sentenced Pruitt to 5 years in prison for each possession and trafficking conviction and 3 years in prison for having weapons while under a disability. The trial court ordered the sentences to be served concurrently, resulting in a 5-year aggregate prison sentence. The trial court also granted Pruitt 964 days jail time credit. (Petition, Attachment I.)

On June 5, 2012, Pruitt filed a petition for a writ of habeas corpus in the Pickaway County Court of Common Pleas. Pruitt argued that he was entitled to the 1,530 days of jail time credit awarded in the trial courts February 17, 2011 entry. According to Pruitt, the trial court's subsequent entry on February 18, 2011 and his resentencing on November 7, 2011 had no effect to correct the award of jail time credit. Pruitt argued he should have been released on post release control on May 23, 2011. (Exhibit 5, Case No. 2012CI245.) The court dismissed Pruitt's petition finding his claims were not cognizable in habeas corpus because he had an adequate remedy, he failed to attach copies of his most current commitment papers, and he failed to show that he was entitled to immediate release. (Exhibit 6.) The Fourth District Court of Appeals,

Pickaway County, Ohio, dismissed Pruitt's subsequent appeal because Pruitt had not complied with R.C. 2969.25. (Exhibit 7, Case No. 12CA22.)

On August 3, 2012, the First Appellate District Court, Hamilton County, Ohio, reversed the trial court's judgment and remanded the matter to the trial court to properly notify Pruitt of his post release control obligations associated with the felonies in counts two, three, and five. The appellate court also ordered the trial court to correct the sentencing entry to reflect that Pruitt was serving a 5-year prison term for having weapons under a disability because the trial court did not have the authority at the resentencing hearing to change this prison term. (Exhibit 8, Case No. C-110768.)

On September 27, 2012, the Hamilton County Court of Common Pleas notified Pruitt of his post release control obligations and corrected the sentence for the having weapons under disability conviction. Pruitt was also given 964 days of jail time credit for time served as of November 7, 2011 and all additional time served. (Petition, Attachment J.) Pruitt has not appealed this sentence.[1]

Pruitt's release date is set for February 27, 2014. *See* http://www.drc.state.oh.us/OffenderSearch/Search.aspx.

On February 25, 2013, Pruitt filed this petition for a writ of habeas corpus again arguing that he is entitled to jail time credit of 1,530 days granted by the trial court on February 17, 2011. (Petition, Attachment D.) Pruitt argues that this was a final order which was not appealed by either party. Pruitt argues that because he should have been released on May 23, 2011, if the 1530 days of jail time credit were credited, the trial court no longer has jurisdiction to resentence

[1] Pruitt also filed a motion to correct his jail time credit seeking the 1530 days given by the February 17, 2011 entry. The court overruled the motion, Pruitt appealed, and the First District Court of Appeals affirmed the trial court's judgment. (Exhibit 9, Case No. C-120092.)

him. (Petition pp. 6-8.) Pruitt seeks to require this Court to enforce the trial court's error, which it corrected the next day, and award him more than 1530 days of jail time credit when Pruitt admittedly has not served 1530 days in jail/prison.

ARGUMENT

I. Standard of Review

R.C. Chapter 2725 prescribes a basic, summary procedure for bringing a habeas corpus action. *Gaskins v. Shiplevy*, 76 Ohio St. 3d 380, 381, 667 N.E.2d 1194 (1996); *see also Chari v. Vore*, 91 Ohio St. 3d 323, 327 (2001). "First, application is by petition that contains certain information. R.C. 2725.04. Then, if the court decides that the petition states a facially valid claim, it must allow the writ. R.C. 2725.06; *see also Chari v. Vore*, 91 Ohio St. 3d 323, 327 (2001). The granting of the writ would merely cause the court to order respondent to make a return pursuant to R.C. 2725.12 and 2725.14. *See Hammond v. Dallman*, 63 Ohio St. 3d 666, 667 (1992) (treating respondent's motion to dismiss as a return of the writ and remanding petitioner to custody). Conversely, if the petition states a claim for which habeas corpus relief cannot be granted, the court should not allow the writ and should dismiss the petition." *See Chari v. Vore*, 91 Ohio St. 3d 323, 327 (2001); *Pegan v. Crawmer*, 73 Ohio St. 3d 607, 609 (1995).

In habeas corpus cases, the burden of proof is on the petitioner to establish his right to release. *Halleck v. Koloski*, 4 Ohio St. 2d 76, 77 (1965); *Yarbrough v. Maxwell*, 174 Ohio St. 287, 288 (1963). More specifically, in a habeas corpus proceeding, "where the return sets forth a justification for the detention of the petitioner, the burden of proof is on the petitioner to establish his right to release." *Yarbrough v. Maxwell*, 174 Ohio St. 287, 288 (1963).

In satisfying this burden of proof, the petitioner must first introduce evidence to overcome the presumption of regularity that attaches to all court proceedings. *Id.* at 288. In *McGorray v. Sutter*, 80 Ohio St., 400, 408 (1909), this Court said:

> But by resorting to a suit in *habeas corpus*, she has elected to meet the presumption, which the present record does not exclude, that the trial court

> regularly and properly exercised whatever authority it had in the premises; and she has assumed the burden of showing that the order of commitment is void, because the court was without authority to make it in view of her claim that her answers to the questions propounded would incriminate her. This distinction results obviously from the essential differences between a proceeding in error and a suit in habeas corpus.

Obviously the burden of proving his right to release is on the petitioner. Although the difficulty of producing evidence to substantiate a petitioner's claim may be recognized, it is clear that unsupported and uncorroborated statements of the petitioner, standing alone, are not sufficient to overcome the presumption of regularity of the court's judgment. *Yarbrough v. Maxwell*, 174 Ohio St. 287, 288 (1963).

II. Pruitt's petition should be denied because his claim is not cognizable in a habeas corpus action as he has an adequate alternative legal remedy in which to raise his claim.

Habeas corpus is an extraordinary remedy and normally is appropriate only when there is no alternative legal remedy. *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 1995-Ohio-228. Habeas relief is available only when the petitioner is entitled to immediate release from confinement. *Id.*; *Pewitt v. Superintendent, Lorain Correctional Inst.*, 64 Ohio St.3d 470, 1992-Ohio-91; *Rollins v. Haskins*, 176 Ohio St. 394 (1964); R.C. 2725.01, et seq.; R.C. 2725.17. The burden of proof is on the petitioner to show that he is illegally detained and, therefore, entitled to immediate release. *Halleck v. Koloski*, 4 Ohio St.2d 76 (1965).

Habeas corpus may not be used as a substitute for other forms of action, such as direct appeal, post-conviction relief, or mandamus. *Adams v. Humphreys*, 27 Ohio St.3d 43 (1986), *Beard v. Williams Cty. Dept. of Social Services*, 12 Ohio St.3d 40 (1984); *Walker v. Maxwell*, 1 Ohio St.2d 136 (1965). The Supreme Court of Ohio, in *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 1995-Ohio-228, held as follows:

> [H]abeas corpus will lie in certain extraordinary circumstances where there is an

> unlawful restraint of a person's liberty . . . but only where there is no adequate legal remedy, *e.g.*, appeal or post-conviction relief.

Id. at 186. The existence of an alternative remedy is enough to remove a petitioner's allegations from habeas consideration, whether the remedy is still available or not, as long as the petitioner could have taken advantage of it previously. *See Luna v. Russell*, 70 Ohio St.3d 561, 1994-Ohio-264; *State v. Perry*, 10 Ohio St.2d 175 (1967). Habeas corpus is not a substitute for appeal. *Cornell v. Schotten*, 69 Ohio St.3d 466 (1994).

In the context of a criminal conviction, habeas corpus normally may be used only to challenge the jurisdiction of the sentencing court.[2] *Wireman v. Ohio Adult Parole Authority*, 38 Ohio St.3d 322 (1988). Habeas corpus is not the proper mode of redress where the petitioner has been convicted of a criminal offense and sentenced to imprisonment therefor by a court of competent jurisdiction; if errors or irregularities have occurred in the proceedings or sentence, a writ of error, *i.e.*, appeal, is the proper remedy. *Ex Parte VanHagan*, 25 Ohio St. 426 (1874), paragraph 2 of the syllabus; *see also Burch v. Morris*, 25 Ohio St.3d 18 (1986).

In *Walker v. Maxwell*, 1 Ohio St.2d 136, 137-38 (1965), the court stated as follows:

> The General Assembly has provided an adequate post-conviction remedy by appeal for the review of alleged errors in the conviction of an accused, and, once a conviction is had, prior irregularities merge into the judgment and must be raised by appeal. The validity of such judgment cannot be questioned by collateral attack. *State v. Wozniak*, 172 Ohio St. 517; and *Perry v. Maxwell, Warden*, 175 Ohio St. 369. This remedy is available to all persons as a matter or right within 30 days after conviction and by motion for leave to appeal at any time. Where an accused has failed to pursue his appeal within the statutory period for appeals as a matter or right, he had available to him the motion for leave to appeal. This is not an empty right. If the accused can show reasonable grounds for his delay in pursuing his appeal as a matter of right within the statutory period or if the failure

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[2] The sentencing court (the Hamilton County Court of Common Pleas) had jurisdiction over Pruitt's case pursuant to Revised Code § 2931.03, which gives the courts of common pleas jurisdiction over criminal cases.

> to grant such appeal would result in a clear miscarriage of justice, to deny such motion would constitute an abuse of discretion.
>
> That habeas corpus is not the proper remedy after conviction for the review of errors or irregularities has been pointed out many times.

If a direct appeal is or was available, relief in habeas corpus is not available. *Davie v. Edwards*, 80 Ohio St.3d 170 (1997). As long as the petitioner had adequate legal remedies for the issues of which he complains through direct appeal and petitions for post-conviction relief, the issues may not be addressed in a petition for habeas corpus. *Cornell v. Schotten*, 69 Ohio St.3d 466 (1994). "Habeas corpus 'is not and never was a postconviction remedy for the review of errors or irregularities of an accused's conviction or for a retrial of the guilt or innocence of an accused.'" *Bellman v. Jago*, 38 Ohio St.3d 55, 56 (1988).

Under the doctrine of res judicata, a convicted defendant is barred from litigating, in a collateral proceeding, any claim which either was raised or which could have been raised at his trial or in his direct appeal. *State v. Perry*, 10 Ohio St.2d 175 (1967); *State v. Szefcyk*, 77 Ohio St.3d 93, 1996-Ohio-337. If another remedy exists or existed at one time, habeas relief should not be granted. *Luna v. Russell*, 70 Ohio St.3d 561, 1994-Ohio-264.

Pruitt seeks to enforce the trial court's February 17, 2011 despite the fact that the entry was set aside the next day. (Exhibit 3.) Prewitt has raised this issue in a variety of state court proceedings. (Exhibits 5-7, 9.) Where, as here, a Petitioner possessed the adequate legal remedies of appeal and post-conviction to raise his claims, a petition for habeas corpus may properly be dismissed. *See State ex rel. Massie v. Rogers*, 77 Ohio St.3d 449, 450, 1997-Ohio-258.

The Hamilton County Common Pleas Court had subject matter jurisdiction to act and Pruitt had an adequate remedy of law. Because Pruitt had an adequate alternative legal remedy, his claims are not cognizable, and, therefore, he is not entitled to a writ of habeas corpus.

III. Pruitt is not entitled to a writ of habeas corpus because he has not demonstrated that he is entitled to immediate release from confinement.

An inmate is not entitled to release after serving his minimum sentence, but an inmate may petition for a writ of habeas corpus if his maximum sentence has expired and that individual is being held unlawfully. *Heddleston v. Mack*, 84 Ohio St. 3d 213, 214, 1998-Ohio-320; *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St. 3d 344, 346, 1994-Ohio-380; *Hoff v. Wilson* (1986), 27 Ohio St.3d 22, 500 N.E.2d 1366. The burden of proof is on the petitioner to show that he is illegally detained and, therefore, entitled to immediate release. *Halleck v. Koloski*, 4 Ohio St. 2d 76 (1965).

On September 27, 2012, Pruitt was re-sentenced to serve an aggregate sentence of 5 years in prison. Pruitt was given 964 days of jail time credit for time served as of November 7, 2011, and credit for all additional time served. (Petition, Attachment J.) Pruitt's sentence is scheduled to expire on February 27, 2014. *See* http://www.drc.state.oh.us/OffenderSearch/Search.aspx.

In *State ex rel. Freshour v. State*, 39 Ohio St. 3d 41 (1988), this Court held that R.C. 2945.71(E) requires that each day an accused is held in jail in lieu of bail pending trial be counted as three days for purposes of computing the time in which the accused must be brought to trial under other provisions of that section. It does not require that each day of jail time be credited as three for purposes of reducing sentence. R.C. 2967.191 requires the Adult Parole Authority to reduce the minimum and maximum sentences of a prisoner by the total number of days that the prisoner was confined before trial, but that statute has no relation to the three-for-one provision of R.C. 2945.71(E). *State ex rel. Freshour v. State*, 39 Ohio St. 3d at 42 (1988).

Therefore, Ohio law provides that Pruitt is not entitled to triple the amount of jail time credit under this provision.

As a result, Pruitt is not entitled to immediate release from confinement. Therefore, he is not entitled to a writ of habeas corpus.

IV. Pruitt is not entitled to a writ of habeas corpus because res judicata precludes Petitioner from filing successive habeas corpus petitions.

Res judicata applies to successive habeas corpus petitions because habeas corpus petitioners can appeal adverse judgments on habeas corpus cases. *Hudlin v. Alexander,* 63 Ohio St.3d 153, 155-156 (1992); *see also McCleskey v Zant*, 499 U.S. 467, 479 (1991) ("As appellate review became available from a decision in habeas [corpus] refusing to discharge the prisoner, courts began to question the continuing validity of the common-law rule allowing endless successive [habeas corpus] petitions"). The doctrine of res judicata has been "consistently applied" to preclude the filing of successive habeas petitions. *State ex rel. Rash v. Jackson*, 102 Ohio St. 3d 145, 2004-Ohio-2053, ¶11; *Turner v. Ishee*, 98 Ohio St. 3d 411, 2003-Ohio-1671, ¶6; *Childs v. Lazaroff*, 90 Ohio St. 3d 519, 520-21, 2001-Ohio-9; *Hudlin v. Alexander*, 63 Ohio St.3d 153, 156 (1992).

Pruitt previously filed a petition for writ of habeas corpus on June 5, 2012, in the Pickaway County Court of Common Pleas raising the same claims presented in the instant petition for writ of habeas corpus. (Exhibit 5, Case No. 2012-CI-0245.) The court dismissed Pruitt's petition finding his claims were not cognizable in habeas corpus because he had an adequate remedy, he failed to attach copies of his most current commitment papers, and he failed to show that he was entitled to immediate release. (Exhibit 6.)[3]

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[3] The appellate court dismissed Pruitt's subsequent appeal because Pruitt had not complied with R.C. 2969.25. (Exhibit 7, Case No. 12CA22.)

Res judicata bars Pruitt from filing a successive habeas corpus petition when he could have raised the claim in his previous petition. *State ex .rel. Rash v. Jackson,* 102 Ohio St. 3d 145, 2004-Ohio-2053,¶ 10; *State ex. Rel. Johnson v. Ohio Dept. of Rehab & Corr.,* 95 Ohio St. 3d 70, 71 (2002). Therefore, Respondent is entitled to judgment as a matter of law, and the instant petition should be denied.

V. Pruitt should be required to pay the filing fee as required by R.C. 2969.22.

R.C. 2969.22(A)(1)(b) requires prisoners to pay the filing fee in virtually all actions or appeals commenced in any state court, except the Court of Claims. The Supreme Court of Ohio has held that the provisions in R.C. 2969.21, et seq. apply to state habeas corpus actions. *Fuqua v. Williams*, 100 Ohio St. 3d 211, 2003-Ohio-5533, ¶6. R.C. 2969.22(A)(1)(b) requires the following:

> The clerk of the court in which the civil action or appeal is filed shall charge to the inmate either the total payment of the requisite fees that are described in section 2303.20 of the Revised Code or that otherwise are applicable to actions or appeals filed in that court or, if the inmate has submitted an affidavit of indigency, all funds in the inmate account of that inmate in excess of ten dollars, and shall notify the inmate of the charge.

R.C. 2969.22(A)(1)(b). Thus, prisoners must pay the entire filing fee, except in the Court of Claims, or that amount in their prison account which is greater than ten dollars. Specifically, prisoners now will have their prison accounts charged such that,

> all income in the inmate account of the inmate shall be forwarded to the clerk of the court during each calendar month following the month in which the inmate filed the civil action or appeal until the total payment of the requisite fees occurs.

R.C. 2969.22(A)(1)(c). When the prisoner's account balance is insufficient to pay the entire filing fee, the amount above ten dollars is to be deducted from the prisoner's account until the fee is paid in full. R.C. 2969.22(B). The full payment requirement is made clear in R.C. 2969.22(B):

> An inmate who commences a civil action or appeal against a governmental entity or employee on or after October 17, 1996, shall be considered to have authorized payment as the plaintiff in the civil action or the appellant in the appeal of the requisite fees that are described in section 2303.20 of the Revised Code or that otherwise are applicable to actions or appeals filed in the court in which the action or appeal is filed, using the procedures set forth in this section, until total payment of the requisite fees.

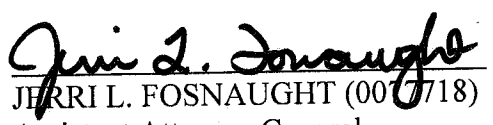
R.C. 2969.22(B). "[U]nder Ohio law, state writ actions are civil actions." *Fuqua v. Williams*, 100 Ohio St. 3d 211, 2003-Ohio-5533, ¶7. Further, in *Rash v. Anderson*, 80 Ohio St. 3d 349, 351, 1997-Ohio-338, the Supreme Court of Ohio held that the application of R.C. 2969.22 to indigent inmates is constitutional. By statute, the Clerk of this Court must require payment as set forth in R.C. 2969.22(A).

III. CONCLUSION

For the reasons set forth herein, the relief requested by Pruitt should be denied, and the Court should rule accordingly.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio



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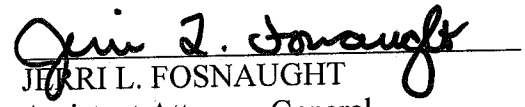
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing ***Respondent Brian Cook's Return of Writ*** has been forwarded to Petitioner Kenneth Pruitt, #A635-780, Pickaway Correctional Institution, P.O. Box 209, Orient, Ohio 43146, via U.S. mail, postage prepaid, this 13th day of May, 2013.



JERRI L. FOSNAUGHT
Assistant Attorney General

APPENDIX

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION

HAMILTON COUNTY, OHIO

D89530663

STATE OF OHIO

CASE No. B0901851

EXHIBIT 1

JUDGE: NADEL

V/S.

KENNETH PRUITT - Pro se

MOTION FOR CREDIT TIME SERVED

PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH
2010 AUG 11 A 11:04
FILED

Now comes the defendant, Kenneth Pruitt, pursuant to section 2967.191 of the O.R.C., move this Honorable Court to reduce the defendant's sentence by the total number of days that the defendant was confined in the Hamilton County Justice Center, in lieu of bail on the above numbered case, and pursuant to Section 2945.71(E) of the O.R.C., on the grounds that the defendant served 500x3 days, in lieu of bail, before being found guilty and sentenced. Note: For both misdemeanors and felonies, each day of confinement shall be counted as 3 days (Three days). March 18th. 2009 - July 28th. 2010. Approx. 1,500 days

Wherefore, the defendant prays that this Honorable Court, along with the adult parole authority, grant appropriate credit for timed served.

CERTIFICATE OF SERVICE

I hereby certify that copies of this foregoing motion was mailed, by U.S. Mail, to the Hamilton County Clerk of Courts on the 29th day of July 2010.

a-1

Respectfully Submitted,

Kenny Pruitt 7/29/10

KENNETH PRUITT - DATE

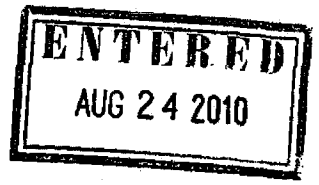
8-5-10
Kenneth Pruitt
#635780
C.R.C
P.O.BOX 300
Orient, Oh. 43146

Dear Clerk of Court:

I, Kenneth Pruitt, arrived at the Prison reception center and found that I had been credited with only 7 days of Jail-time credit. I've spent approximately 500 days confined, on case number B0901851, prior to being sentenced and delivered to the State. I served 14 months, in lieu of bail, in the Hamilton County Justice Center. I was taken to federal Prison for 18 months for the Supervised Release Violation, which ran Concurrent with the State time, then extrodited back to the Hamilton County Justice Center prior to being sentenced. Note: I was arrested on March 18th 2009, taken to federal Prison on May 20th 2010, released from federal Prison July 8th 2010, extrodited back to Hamilton County Justice Center and sentenced on July 28th 2010. R.C. 2967.191 must be applied toward each concurrent prison term, and R.C. 2945.71(E) shall be considered for each day of confinedment shall be counted as 3 days from the date of arrest up until sentencing. Will you please take the necessary steps to see that I recieve the credit to which I am entitled? A motion was filed.

Sincerely, Kenny Pruitt

ENTERED
AUG 24 2010



THE STATE OF OHIO, HAMILTON COUNTY

COURT OF COMMON PLEAS

STATE OF OHIO	:	**NO. B0901851**
Plaintiff	:	(Judge Nadel)
vs.	:	
KENNETH PRUITT	:	**ENTRY GRANTING MOTION FOR JAIL TIME CREDIT**
Defendant	:	

This matter is before the court on the motion for the defendant for jail time credit, and the court, being fully advised by the records in the above-captioned case and the records of the Hamilton County Sheriff, hereby finds the motion to be well taken and hereby grants the defendant credit for time served for a total of 11 days credit (as of the date of sentencing), plus conveyance time to the institution. This credit includes any credit previously given.

Norbert A. Nadel, Judge
Hamilton County Court of Common Pleas

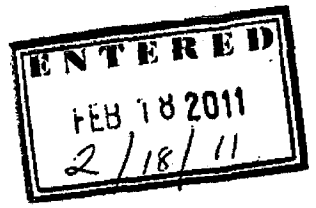
James M. Keeling /ckt
James Michael Keeling, 0068810P
Assistant Prosecuting Attorney

EXHIBIT
2

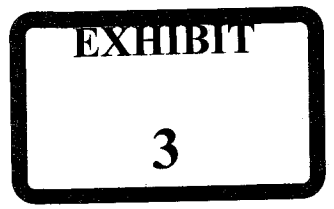
Kenneth Pruitt
A635-780
Correctional Reception Center
P. O. Box 300
11271 State Route 762
Orient, Ohio 43146

D89732717

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



STATE OF OHIO	:	CASE NO. B0901851
	:	Judge Norbert A. Nadel
-vs-	:	***ORDER***
KENNETH PRUITT	:	
Defendant.	:	



It is hereby ordered as follows:

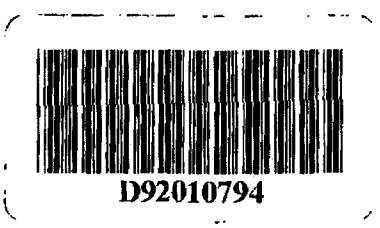
1) The Order dated February 17, 2011 "Granting Plaintiffs' Motion for Jail Time Credit" is hereby set aside. The previous entry was inadvertently entered by the Court.

2) As of Defendant Pruitt's date of sentencing on September 22, 2010, the Court grants the Defendant credit for Jail Time served for a total of **553 days credit.** This credit includes any credit previously granted.

Norbert A. Nadel, Judge

2/18/11
Date

A TRUE COPY OF THE ORIGINAL
ENTERED 2/18/11
ATTEST PATRICIA M. CLANCY
CLERK.
BY _____ DEPUTY
DATE 2/18/11



IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-100587 TRIAL NO. B-0901851
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
KENNETH PRUITT,	:	ENTERED SEP 30 2011
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

The judgment of the trial court is affirmed for the reasons set forth in the Opinion filed this date.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty and orders that costs are taxed under App. R. 24.

The Court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To The Clerk:

Enter upon the Journal of the Court on September 30, 2011 per Order of the Court.

By: Patricia Ann Blackmon
Presiding Judge

EXHIBIT
4

D94796735

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-100587 TRIAL NO. B-0901851
Plaintiff-Appellee,	:	*OPINION.*
vs.	:	
KENNETH PRUITT,	:	PRESENTED TO THE CLERK OF COURTS FOR FILING
Defendant-Appellant.	:	SEP 30 2011
		COURT OF APPEALS

Criminal Appeal From: Hamilton County Common Pleas Court

Judgment Appealed From Is: Affirmed in part and reversed in part, and cause remanded.

Date of Judgment Entry on Appeal: September 30, 2011

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *James Michael Keeling*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Michaela Stagnaro, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Presiding Judge.

{¶1} In three assignments of error, defendant-appellant Kenneth Pruitt challenges his convictions and sentences for numerous counts of drug possession and trafficking.

{¶2} Pruitt was indicted on seven counts for conduct that occurred on March 18, 2009. The first, third, and sixth counts alleged possession of cocaine in violation of R.C. 2925.11(A). The second count alleged trafficking in cocaine in violation of R.C. 2925.03(A)(1). The fourth and fifth counts alleged trafficking in cocaine in violation of R.C. 2925.03(A)(2). The seventh count alleged that Pruitt had possessed a weapon while under a disability. After a complete hearing held in accordance with Crim.R. 11, Hayden entered pleas of guilty to all counts. Prior to sentencing, he filed a motion to withdraw his pleas, claiming that he had been promised a lenient sentence, and presenting affidavits from friends that attested to his innocence. The trial court conducted a full hearing and denied his motion. Pruitt now appeals.

Motion to Withdraw Pleas

{¶3} In his first assignment of error, Pruitt claims that the trial court abused its discretion when it denied his motion to withdraw his guilty pleas. But the trial court conducted a complete hearing on the matter, considering all the factors outlined in *State v. Xie* (1992), 62 Ohio St.3d 521, 584 N.E.2d 715, and concluded that it would not be appropriate to allow Pruitt to withdraw the plea. The record supports the trial court's determination. We hold that the trial court did not abuse its discretion in denying Pruitt's motion to withdraw his plea. Pruitt's first assignment of error is overruled.

Allied Offenses

{¶4} In his second assignment of error, Pruitt claims that he was improperly convicted of trafficking and possession charges where they were allied offenses of similar import and, as such, should have been merged at sentencing. We agree. *See State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061. Pruitt was sentenced to five years in prison on each count, with the terms to be served concurrently. Pruitt was charged in counts one and two for possessing and trafficking in cocaine involved in a "controlled buy" with law enforcement. Counts three and four involved the possession and trafficking of crack cocaine found in his residence. And counts five and six involved the possession and trafficking of "cocaine that was not crack cocaine," also found in his residence. Imposing sentences for each of the six counts, even concurrent sentences, was improper.

{¶5} Pruitt's second assignment of error is sustained, and we remand this case to the trial court to allow the state to elect between counts one and two, counts three and four, and counts five and six. See *State v. Whitfield*, 124 Ohio St. 3d 319, 2010-Ohio-2, 922 N.E.2d 182. The trial court should then sentence Pruitt on only those three counts upon which the state has elected to proceed.

Ineffective Assistance

{¶6} In his third assignment of error, Pruitt claims that he was afforded ineffective assistance of counsel when his trial attorney did not object to his being sentenced separately for allied offenses. In light of our disposition of his second assignment of error, this argument is moot.

Conclusion

{¶7} The judgment of the trial court is affirmed in part and reversed in part, and this cause is remanded for proceedings consistent with our disposition of the second assignment of error.

Judgment affirmed in part and reversed in part, and cause remanded.

CUNNINGHAM and **FISCHER, JJ.**, concur.

Please Note:
The court has recorded its own entry this date.

FILED CRIMINAL PLEAS

IN THE COURT OF COMMON PLEAS

PICKAWAY COUNTY, OHIO

2012 JUN -5 PM 2:17

CLERK OF COURTS
PICKAWAY COUNTY

KENNETH PRUITT
Petitioner

-VS-

BRIAN COOK, WARDEN
Respondent

Trial Case No. B-0901851

Court No. 2012CI245

PETITION FOR WRIT OF

HABEAS CORPUS

In the interest of justice, and pursuant to Ohio Revised Code 2725.01, Petitioner, Kenneth Pruitt, a Prisoner in the Pickaway Correctional Institution, is unlawfully restrained of his Liberty, of which custody such person is unlawfully deprived, due to the fact that his ESD, and Post Release Control, Tentative Start Date of May 23rd, 2011, has expired.

In accordance with Ohio Revised Code 2725.04, The Petitioner "Pruitt" states that: (A) The Petitioner, is being restrained of his Liberty based on Local Jail Credit awarded from the Trial Court, and the based on the attached Memorandum In Support and Supporting documents; (B) Brian Cook. Warden of Pickaway Correctional Institution, is restraining Pruitt of his Liberties based on the attached Memorandum; (C) At Pickaway Correctional Institution; (D) A copy of the commitment papers or cause of detention of Petitioner is attached with this application for Writ of Habeas Corpus.

Respectfully Submitted,

Kenny Pruitt KP

KENNETH PRUITT, Pro se

EXHIBIT

5

VERIFICATION CLAUSE

Undersigned Petitioner, Kenneth Pruitt, verifies the truth and accuracy of the allegations made in this Petition for Writ of Habeas Corpus, pursuant to Ohio Revised Code 2725.04.

Respectfully Submitted,

KENNETH PRUITT, Pro se

Sworn to and Subscribed in my presence, a Notary Public for the State of Ohio, in the County of Pickaway, this 15 day of May, 2012.

NOTARY PUBLIC STATE OF OHIO

Carl Bridgeforth
Notary Public, State of (
My Commission Expires 06-

MEMORANDUM IN SUPPORT

On or about March 26th, 2009, Petitioner was indicted by the Hamilton County Grand Jury in three counts for violation of R.C. 2925.11 (A), Possession of Cocaine, One third degree felony and two first degree felonies, in One count for violation of R.C.2925.03 (A) (1), Trafficking in Cocaine, a second degree felony, in Two counts for violation of R.C.2925.03 (A) (2), Trafficking in Cocaine, first degree felonies, and in One count for violation of R.C.2923.13 (A) (2), Having Weapons While Under Disability, a third degree felony.

On March 22nd, 2010, Petitioner, as part of a Plea Bargain, plead guilty to all counts set forth in the indictment.

On July 28th, 2010, Petitioner was sentenced to five (5) years in prison to be served in the Ohio Department of Rehabilitation and Correction. However, the Sentencing Entry filed on August 3rd, 2010, was vague as to the amount of credit for time served the petitioner was promised to be credited towards his sentence. **See Attachment A.**

On August 11th, 2010, Petitioner filed a Motion For Jail Time Credit in the Common Pleas Court, and On August 24th, 2010, the Sentencing Judge, Granted Petitioner's Motion as filed.

Note: There was no Memorandum's In Opposition filed by the Prosecuting Attorney.

On September 22nd, 2010, Petitioner was Re sentenced for Post Release Control Notification, following the granting of Petitioner's Motion. However, the Entry filed on December 13th, 2010, was also vague, and omitted the number of days Petitioner was granted to be credited towards his sentence. **See Attachment B.**

On December 13th, 2010, after correspondence with the Bureau of Sentence Computation, Petitioner filed a second Motion, seeking clarification of the specific amount of local jail credit the Petitioner was entitled to have credited towards his sentence. **See Attachment (C).**

On February 17th, 2011, the Trial Court forwarded its determination of local jail credit, in an Entry Granting Motion For Jail Time Credit, to the Respondent, for a total of 1,530 days of local jail credit, which included any credit previously granted. **See Attachment D.**

On February 17th, 2011, the Adult Parole Authority acknowledged the Trial Courts determination of local jail credit, and made their determination that the Petitioner, "as a result of the 02/17/2011 assessment", will be placed under Post Release Control, with the Tentative Start Date of 05/23/2011.

Note: The Notification was signed by the Parole Hearing Officer and "CC" to all parties listed on the PRC Notification. **See Attachment E.**

The respondent neglected its statutory duty to ascertain accurate expiration of the Petitioner's sentence date (ESD), failing to follow the original Sentencing Court's Entry of February 17th ,2011, signed by the Sentencing Judge Nadel.

The Respondent's Records office is required to reduce an inmate's sentence by number of days specified in the Sentencing Court's Entry, plus the number of days the offender was confined between the date of the entry and the date he was committed to the institution. **Ohio Adm. Code 5120-2-04(D). See: Stroud v. Dept. of Rehabilitation and Correction, Not Reported in N.E.2d, 2003 WL 220549, Ohio Ct. Cl.,2003.**

Crim. R. 32.2(D) provides that: In addition, if the defendant is committed to a penal or reformatory institution, the Court shall forward a statement of the number of days confinement which the defendant is entitled to have credited to his minimum or maximum sentence. Furthermore, the respondent cannot ignore the determination of the Common Pleas Court and make their own determination based upon inquiries rather than any type of more formal administrative *** 117 determination.

The law has been and is still clear that, " although the Adult Parole Authority has a mandatory duty pursuant to **R.C. 2967.191**, to credit and inmate with jail time already served, it is the Trial Court that makes the factual determination as to the number of days confinement that a defendant is entitled to have credited towards his sentence." **State ex rel. Rankin v. Ohio Adult Parole Authority,98 Ohio St. 3d 476,786 N.E.2d 1286,2003-Ohio-2061,¶ 7.**

The Respondent is required to obey any order issued by a Court within its jurisdiction or power. 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**.

If the situation were to arise where the Respondent questions a Court's authority to issue a particular order, or where a particular order is unclear as to the specific duties it imposes upon the

Respondent, it would be necessary for a Defendant or Counsel to contact the Court or the Prosecutor who handled the case, and request or seek a modification or clarification from the Sentencing Court. **Note**: When the Petitioner's, Entry Granting Motion For Jail- Time Credit was unclear, as to the exact amount of local jail credit the Petitioner was to receive,(in the Entry filed on August 24th , 2010), Petitioner, upon request from the Respondent, filed an additional Motion on December 13th ,2010, seeking Clarification of the intended Credit for Time Served. The Sentencing Judge Nadel, then confirmed that Credit in another Entry Granting Motion For Jail- Time Credit, filed on February 17th , 2011. That order became the Judgment of the case and it was not appealed by any party, which made it a Final Judgment. **See Attachment (D).**

Even after the Court provided the Respondent with an Entry to clarify its erroneous interpretation of local jail credit and the intended sentence of Petitioner, which was personally handwritten and signed by the sentencing Judge, the Respondent refused to acknowledge the Court's authority, as well as the Adult Parole Authority's decision and Notification, both filed on February 17th ,2011. **See Attachment's (D) and (F).**

Petitioner filed a writ of Mandamus on March 8th ,2012, which was dismissed on May 9th ,2012, and Petitioner was advised that Habeas Corpus rather than Mandamus was the proper action, by both, the Assistant Attorney General and the Ohio Supreme Court. See: **State ex rel. Rudolph v. Horton, 119 Ohio St.3d 350, 2008-Ohio-4476,894, N.E.2d 49,¶ 3.**

Pursuant to **State ex rel. Dailey v. Morgan, 761 N.E.2d 140 (Ohio Com. Pl. 2001),** which is attached to and made apart of this petition: The Respondent "did not have authority to interpret or alter the clear and unambiguous statement in the trial court's judgment that awarded petitioner 1,530 days of local jail credit, even if the stated credit was contrary to law". See Attachment G.

It is neither the prerogative of the Respondent, nor within its authority, to refuse to enforce the unambiguous order of the Common Pleas Court, which clearly stated the amount of credit for time

served the Petitioner was entitled to have credited towards his sentence. The entry dated February 17th, 2011, became the judgment of the case and was not appealed by any party. Indeed, the Respondent is not even a party of the Hamilton County Case and Appeal would necessarily need to be initiated by the local prosecutor's office that was responsible for prosecuting the underlying criminal offenses. In this case, the Prosecutor did not file a Memorandum In Opposition to either Motion for Jail Time Credit filed in this case, nor did he appeal the Final Order filed on February 17th ,2011, because the credit granted to the petitioner was honored as part of a plea bargain.

The duty of the Respondent was to carry out the judgment of the court, and nothing more. To permit the Respondent to do otherwise would be to destroy the sanctity and finality of judgments. In this case, instead of carrying out the Order of the Common Pleas Court, the Respondent ignored the Court's Order and the court's determination of local jail credit, and made their own determination, by calling the court, to question the clear and unambiguous sentencing entry filed on February 17th, 2011, speaking with the Court's Bailiff, who is not even a party of the Hamilton County Case, and has no authority to interpret or alter the clear and unambiguous statement in the Trial Court's Judgment. For that reason, the Respondent was in **Contempt** once the Respondent received the clear and unambiguous Order from the trial court, and instead of entering the amount of local Jail credit into the computer, the Respondent made a phone call. It is from the Respondent's interpretation of that Sentence and Entry (Order) that the problem arises. **See Attachment (F).**

The principle of finality of judgments has always been to protect the courts. " A final judgment brings closure, certainty, and possibly a commitment to changed future behavior. These are societal benefits as well as benefits to the parties. **Wrongs are Righted through Judgments**".

Respectfully, if the Respondent would have simply complied with the Trial Court's Original (Order) Sentencing Entry filed on February 17th, 2011, which was properly forwarded to their office, and exercised their clear legal duty to ascertain accurate expiration of the Petitioner's sentence, as the Adult Parole Authority did, the Petitioner would have been released, May 23rd , 2011, subject to only

the sanctions of Post Release Control, as previously imposed by the Ohio Adult Parole Authority on February 17th, 2011. **See Attachment (E).**

Therefore, based on the foregoing, Petitioner respectfully request that this Honorable Court Grant Writ of Habeas Corpus, and Order, Adjudge, and Decree that the Respondent immediately release Petitioner, Kenneth Pruitt, from confinement subject to only such sanctions of Post Release Control, as previously determined and imposed by the Ohio Adult Parole Authority, or issuance of any alternative Writ this Honorable Court deems necessary and just by this Honorable Court for adequate relief.

Respectfully Submitted,

Kenny Pruitt KP

Kenneth Pruitt, Pro se

CERTIFICATE OF SERVICE

I, Kenneth Pruitt, certify that a copy of the foregoing Petition for the Writ of Habeas Corpus, was mailed by regular U.S. Mail to the Warden of Pickaway Correctional Institution's Office, at 11781 State Route 762, Orient, Ohio 43146 or at the designated location in the Pickaway County Clerk of Courts Office, on the filed stamp date.

Kenny Pruitt KP

Kenneth Pruitt #635-780

AFFIDAVIT OF VERITY

I, Kenneth Pruitt, being competent to testify in a court of law and being able to do so with personal knowledge of the facts , do hereby deposes and state, having first been duly sworn and cautioned as to penalty of perjury, that in acordane with Ohio Revised Code 2969.25; that I have filed other civil actions in the last five (5) years; (1) A brief description of the nature of the civil action or appeal: **On May 17th, 2010, Petitioner filed a Federal Habeas Corpus, raising issues of pretrial motions denied without reason, and his forced guilty plea**; **(2) The case name, case number, and the court in which the civil action or appeal was brought: Kenneth Pruitt v. State of Ohio, 1:10CV-313 U.S. District Court, Southern District Ohio, Western Division**; (3) The name of each party to civil action or appeal: **State of Ohio and Hamilton County Justice Center**; (4) **The Federal Habeas Corpus was dismissed without prejudice on June 25th, 2010, for being premature**.

A brief description of the nature of the civil action or appeal: **On May 24th, 2011, Petitioner filed a Federal Habeas Corpus, raising issues of jail-time credit previously granted, and The Petition for Post Conviction Relief was denied without reason**; (2) The case name, case number, *and the court in which the civil action or appeal was* brought: **Kenneth Pruitt v. Pickaway Correctional Institution,**

1:11-CV-340 U.S. District Court, Southern District of Ohio, Western Division; (3) The name of each party to the civil action or appeal was brought: Brian Cook, Warden and Pickaway Correctional Institution; (4) The Federal Habeas Corpus was not the proper action and was dismissed without prejudice on March 6th, 2012.

(1) A brief description of the nature of the Civil action or appeal: On March 8th, 2012, Petitioner filed a Writ of Mandamus, raising the issue that the Ohio Department of Rehabilitation and Correction, refused to follow an Original Order of the Hamilton County, Ohio, Common Pleas Court determination of local Jail Credit; (2) The case name, case number, and the court in which the civil action was brought; Kenneth Pruitt v. Ohio Department of Correction, Case No. 2012-0404, Ohio Supreme Court; The Writ of Mandamus was dismissed on May 9th, 2012, although the Respondent did not dispute the facts within the Writ of Mandamus, Habeas Corpus rather than Mandamus was the proper action; This Writ follows;

I further assert waiver of prepayment; the information submitted in this petition for Writ of Habeas Corpus, is true and correct to the best of my perception, and the supporting attachments are admissable as evidence in a Court of Law;

Further Affiant Sayeth Naught.

Kenneth Pruitt ss 635780
Affiant In Pro se
P.C.I. - P.O. Box 209
Orient, OH 43146

Continuous of: AFFIDAVIT OF VERITY

Sworn to, or affirmed and subsrcibed in my presence this 15, day of MAY, 2012.

Carl Bridgeforth
NOTARY PUBLIC
My commission expires on:

(Page 3 of 3)

Carl Bridgeforth
Notary Public, State of Ohio
My Commission Expires 06-02-2014

Ohio Department of Rehabilitation and Correction

SECTION I - To be completed by cashier prior to this form being presented to the inmate for completion of SECTION II - Affidavit of Indigency.

I, Carolyne E Crockett-Harris, cashier at the Pickaway Correctional Institution certify that the following is a true and accurate reflection of the status of the account maintained at this institution for t benefit of:

Inmate Name:	Inmate Number:
Pruitt, Kenneth	A-635780

The Prison Litigation Reform Act (PLRA) requires that the time period to be considered is the preceeding six months. It also requires that, "...if financial activity is less than six months due to less than six months of incarceration, then note this fact on the statement. If lack of history is due to recent transfer, then obtain missing month-end reports from sending cashier to complete the six month period. The sending cashier must similarly certify the monthend reports."

The time period being reported below is: ☒ Six months ☐ Fewer than six months, beginning _____

The time period is fewer than six months, because: ☐ Period of Incarceration ☐ Transfer

Account Balance as of 03/06/2012:	$ $91.
Total state pay credited for the report period;	$ $135.
Average monthly state pay for the report period;	$ $24.
Total funds received from all sources, excluding state pay, for the report period;	$ $981.
Total amount spent in inmate's commissary during the same period;	$ $1,090.

Signature of Cashier:	Date:
Carolyne Crockett-Harris	03/06/2012

AFFIDAVIT OF INDIGENCY

SECTION II - To be completed by inmate after cashier's statement is completed.

I, Pruitt, Kenneth, being first duly sworn, says that he/she does not have sufficient funds to pay the filing fee and other costs of prosecuting this complaint against the State of Ohio, Department of Rehabilitation and Correction, in the Court of Claims of Ohio and submits the cashier's statement (Section I) in support of said allegation of indigency.

I hereby represent that the Information set forth in the cashier's statement concerning my financial condition is true and complete to the best of my knowledge and belief.

Signature of Inmate:	Inmate Number:
	A-635780

Sworn to and subscribed to me in my presence this _____ day of _____, 2_____.

NOTARIAL SEAL STATE OF OHIO

Carolyne Crockett-Harris
Notary Public, State of Ohio
My Commission Expires 02-10-2015

Notary Public:

DRC 2257 E (08/

ACA 4262, 4324

01/26/2012

Pickaway Correctional Institution

Inmate Demand Statement

Inmate Name: PRUITT, KENNETH

Number: A635780

Lock Location: PCI,D,11,,,034

Date Range: 07/24/2011 Through 01/27/2012

Beginning Account Balances:

	Saving	Debt	Payable
Inmate's Person	$263.48	$0.00	$0.00
Begin Totals	**$263.48**	**$0.00**	**$0.00**

Ending Account Balances:

	Saving	Debt	Paya
Inmate's Personal A	$49.52	$0.00	$0
End Totals	**$49.52**	**$0.00**	**$0**

Transaction Date / Inst.	Transaction Amount	Description	Comment	Saving Balance	Debt Balance	Paya Balar
07/27/2011 PCI	($52.76)	Commissary Sale	Ticket Number 245799	$210.72	$0.00	$0
08/01/2011 PCI	($15.00)	Inmate's Personal Account	POS Exemption Transfer	$195.72	$0.00	$0.
08/01/2011 PCI	$15.00	Pos Exemption	POS Exemption Transfer	$210.72	$0.00	$0.
08/03/2011 PCI	($72.91)	Commissary Sale	Ticket Number 246999	$137.81	$0.00	$0.
08/04/2011 PCI	$40.00	OffConnect Kiosk Deposit	3562463065367143170/BAGGETT, AYANA	$177.81	$0.00	$0.
08/05/2011 PCI	$97.00	TouchPay Kiosk Deposit	4458274/KENNETH R JONES	$274.81	$0.00	$0.
08/05/2011 PCI	$24.00	State Pay	State Pay	$298.81	$0.00	$0.0
08/11/2011 PCI	($96.43)	Commissary Sale	Ticket Number 248194	$202.38	$0.00	$0.0
08/12/2011 PCI	$10.00	Money Order	8/11/2011	$212.38	$0.00	$0.0
08/17/2011 PCI	($2.00)	Medical Co-Payment	DOS 8/16/2011 PCI	$210.38	$0.00	$2.0
08/24/2011 PCI	($81.38)	Commissary Sale	Ticket Number 250115	$129.00	$0.00	$2.0
08/31/2011 PCI	($2.00)	Payment to Medical Co-Pay Fund	419-4093 - 8/2011 Medical Co-Pays	$129.00	$0.00	$0.0
08/31/2011 PCI	($46.25)	Commissary Sale	Ticket Number 251435	$82.75	$0.00	$0.00

PCI 09/01/2011	($15.00) Inmate's Personal Account	POS Exemption Transfer	$67.75	$0.00	$
PCI 09/01/2011	$15.00 Pos Exemption	POS Exemption Transfer	$82.75	$0.00	$
PCI 09/07/2011	($75.05) Commissary Sale	Ticket Number 252099	$7.70	$0.00	$
PCI 09/09/2011	$97.00 OffConnect Kiosk Deposit	3606587396833436418/JO ONES, KENNETH	$104.70	$0.00	$
PCI 09/09/2011	$24.00 State Pay	State Pay	$128.70	$0.00	$
PCI 09/09/2011	($1.00) Electronics Usage Charge	Electronic Usage Charge	$128.70	($1.00)	$
PCI 09/11/2011	($1.00) Inmate's Personal Account	CSi Automated Task	$127.70	($1.00)	$0
PCI 09/11/2011	$1.00 Electronics Usage Charge	CSi Automated Task	$127.70	$0.00	$1
PCI 09/14/2011	($69.56) Commissary Sale	Ticket Number 253078	$58.14	$0.00	$1
PCI 09/16/2011	$39.00 OffConnect Kiosk Deposit	3633517161569870595/PR UITT, DERRICK	$97.14	$0.00	$1.
PCI 09/27/2011	($66.87) Commissary Sale	Ticket Number 254935	$30.27	$0.00	$1.
PCI 10/01/2011	($15.00) Inmate's Personal Account	POS Exemption Transfer	$15.27	$0.00	$1.
PCI 10/01/2011	$15.00 Pos Exemption	POS Exemption Transfer	$30.27	$0.00	$1.
PCI 10/04/2011	($25.00) Commissary Sale	Ticket Number 256018	$5.27	$0.00	$1.
PCI 10/05/2011	$129.00 OffConnect Kiosk Deposit	3661040809251726083/PR UITT, DERRICK	$134.27	$0.00	$1.
PCI 10/05/2011	($1.00) Payment to Treasurer, State of Ohio	September 2011	$134.27	$0.00	$0.0
PCI 10/07/2011	$24.00 State Pay	State Pay	$158.27	$0.00	$0.0
PCI 10/11/2011	($1.00) Electronics Usage Charge	Automated Electronics Charge	$157.27	$0.00	$1.0

PCI 10/13/2011	($68.53) Commissary Sale	Ticket Number 257558	$88.74	$0.00	$
PCI 10/25/2011	($58.50) Commissary Sale	Ticket Number 259241	$30.24	$0.00	$1
PCI 11/01/2011	($15.00) Inmate's Personal Account	POS Exemption Transfer	$15.24	$0.00	$1
PCI 11/01/2011	$15.00 Pos Exemption	POS Exemption Transfer	$30.24	$0.00	$1
PCI 11/03/2011	($1.00) Payment to Treasurer, State of Ohio	ECP October 2011	$30.24	$0.00	$0
PCI 11/04/2011	$24.00 State Pay	State Pay	$54.24	$0.00	$0
PCI 11/04/2011	($1.00) Electronics Usage Charge	Electronic Usage Charge	$53.24	$0.00	$1.
PCI 11/10/2011	($49.39) Commissary Sale	Ticket Number 262118	$3.85	$0.00	$1.
PCI 11/10/2011	($3.84) Commissary Sale	Ticket Number 262119	$0.01	$0.00	$1.
PCI 11/11/2011	$50.00 OffConnect Kiosk Deposit	3714723378018935091/PRUITT, DERRICK	$50.01	$0.00	$1.
PCI 11/22/2011	$69.00 OffConnect Kiosk Deposit	3721987668136452866/PRUITT, DERRICK	$119.01	$0.00	$1.(
PCI 11/22/2011	($97.43) Commissary Sale	Ticket Number 263504	$21.58	$0.00	$1.(
PCI 11/23/2011	($2.48) Postage Charges (USPS)	Postage 11/18/2011	$19.10	$0.00	$1.(
PCI 11/29/2011	$27.00 OffConnect Kiosk Deposit	3737889897125011763/JONES, KENNETH	$46.10	$0.00	$1.0
PCI 11/29/2011	($40.48) Commissary Sale	Ticket Number 264658	$5.62	$0.00	$1.0
PCI 12/01/2011	$0.00 $15.00 Reservation to Pos Exemption	Odrc Pos Exemption	$5.62	$0.00	$1.0(
PCI 12/06/2011	($4.79) Commissary Sale	Ticket Number 265635	$0.83	$0.00	$1.0(
PCI 12/08/2011	$75.00 OffConnect Kiosk Deposit	3752379454109278514/PRUITT, DERRICK	$75.83	$0.00	$1.0(

PCI 12/09/2011	$15.75 State Pay	State Pay	$91.58	$0.00	$
PCI 12/09/2011	($1.00) Electronics Usage Charge	Electronic Usage Charge	$90.58	$0.00	$
PCI 12/14/2011	($66.31) Commissary Sale	Ticket Number 266929	$24.27	$0.00	$
PCI 12/20/2011	$77.00 OffConnect Kiosk Deposit	3764153861097939251/JONES, KENNETH	$101.27	$0.00	$
PCI 12/20/2011	$25.00 Money Order	12/19/2011	$126.27	$0.00	$2
PCI 12/28/2011	($80.87) Commissary Sale	Ticket Number 268590	$45.40	$0.00	$2
PCI 12/28/2011	$25.00 Money Order	12/27/2011	$70.40	$0.00	$2
PCI 01/01/2012	($15.00) Inmate's Personal Account	POS Exemption Transfer	$55.40	$0.00	$2
PCI 01/01/2012	$15.00 Pos Exemption	POS Exemption Transfer	$70.40	$0.00	$2
PCI 01/03/2012	$57.00 OffConnect Kiosk Deposit	3785896967476371763/JONES, KENNETH	$127.40	$0.00	$2
PCI 01/04/2012	($51.84) Commissary Sale	Ticket Number 269826	$75.56	$0.00	$2
PCI 01/06/2012	$24.00 State Pay	State Pay	$99.56	$0.00	$2
PCI 01/06/2012	($1.00) Electronics Usage Charge	Electronic Usage Charge	$98.56	$0.00	$3
PCI 01/11/2012	($38.08) Commissary Sale	Ticket Number 271277	$60.48	$0.00	$3
PCI 01/12/2012	($3.00) Payment to Treasurer, State of Ohio	ECP January 2012	$60.48	$0.00	$0
PCI 01/18/2012	($0.05) Copy Charges	Library Copies	$60.43	$0.00	$0
PCI 01/19/2012	$70.00 OffConnect Kiosk Deposit	3806251544599879987/PRUITT, DERRICK	$130.43	$0.00	$0
PCI 01/24/2012	($79.81) Commissary Sale	Ticket Number 272998	$50.62	$0.00	$0

01/25/2012 PCI	($0.40) Postage Charges (USPS)		$50.22	$0.00	$
01/25/2012 PCI	($0.35) Postage Charges (USPS)		$49.87	$0.00	$
01/25/2012 PCI	$0.35 Reversed Postage Charges (USPS)	Reversed Task No. 28146380	$50.22	$0.00	$
01/25/2012 PCI	($0.35) Copy Charges	Library Copies	$49.87	$0.00	$
01/25/2012 PCI	($0.35) Copy Charges	Library Copies	$49.52	$0.00	$

Outstanding Debts:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Bala O

Total Outstanding Case Balances	$0.00

Outstanding Holds:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Bala Ov

Total Outstanding Case Holds	$0.00

Outstanding Investments / EPC:

Investment Type	Investment Type Description	Invest Company	Company Description	Balar

Sally Pruitt, AC

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

ENTERED
AUG 03 2010

date: 07/28/2010
code: GJEI
judge: 109

Attachment #A

D89387099

Judge: NORBERT A NADEL

NO: B 0901851

STATE OF OHIO
VS.
KENNETH PRUITT

JUDGMENT ENTRY: SENTENCE: INCARCERATION

Defendant was present in open Court with Counsel BARRY R LEVY on the 28th day of July 2010 for sentence.
The court informed the defendant that, as the defendant well knew, the defendant had pleaded guilty, and had been found guilty of the offense(s) of:
count 1: POSSESSION OF COCAINE, 2925-11A/ORCN,F3
count 2: TRAFFICKING IN COCAINE, 2925-03A1/ORCN,F2
count 3: POSSESSION OF COCAINE, 2925-11A/ORCN,F1
count 4: TRAFFICKING IN COCAINE, 2925-03A2/ORCN,F1
count 5: TRAFFICKING IN COCAINE, 2925-03A2/ORCN,F1
count 6: POSSESSION OF COCAINE, 2925-11A/ORCN,F1
count 7: HAVING WEAPONS WHILE UNDER DISABILITY, 2923-13A3/ORCN,F3.

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:
count 1: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 2: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 3: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 4: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 5: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 6: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 7: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS

THE SENTENCES IN COUNTS #1, #2, #3, #4, #5, #6, AND #7 ARE TO BE SERVED CONCURRENTLY WITH EACH OTHER.

THE TOTAL AGGREGATE SENTENCE IS FIVE (5) YEARS IN THE DEPARTMENT OF CORRECTIONS.

THE DEFENDANT IS TO RECEIVE CREDIT FOR TIME SERVED.

CMS

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 07/28/2010
code: GJEI
judge: 109

Judge: NORBERT A NADEL

NO: B 0901851

STATE OF OHIO
VS.
KENNETH PRUITT

JUDGMENT ENTRY: SENTENCE: INCARCERATION

FINE OF $5,000.00 AS TO COUNT #1 AND FINES OF $10,000.00 AS TO COUNTS #2, #2, #4, #5, #6, AND #7 ARE REMITTED.

THE DEFENDANT IS TO PAY THE COURT COSTS.

THE DEFENDANT HEREIN IS NOT ELIGIBLE FOR INTENSIVE PRISON PROGRAM, TRANSITIONAL CONTROL, JUDICIAL RELEASE, OR ANY OTHER EARLY RELEASE PROGRAM AND IS TO SERVE THIS SENTENCE IN ITS ENTIRETY.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT *PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW.* IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

AS PART OF THE SENTENCE IN THIS CASE, THE DEFENDANT MAY BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT *LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL,* FOR UP TO THREE (3) YEARS AS DETERMINED BY THE ADULT PAROLE AUTHORITY.

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 07/28/2010
code: GJEI
judge: 109

Judge: NORBERT A NADEL

NO: B 0901851

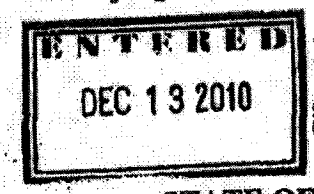
STATE OF OHIO
VS.
KENNETH PRUITT

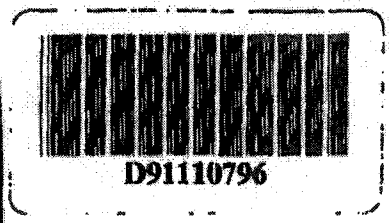
JUDGMENT ENTRY: SENTENCE: INCARCERATION

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 12/09/2010
code: GJEI
judge: 109





Judge: NORBERT A NADEL

NO: B 0901851

STATE OF OHIO
VS.
KENNETH PRUITT

Attachment #B

JUDGMENT ENTRY: SENTENCE: INCARCERATION
NUNC PRO TUNC 09/22/2010
CORRECTED
RE-SENTENCE FOR POST RELEASE CONTROL NOTIFICATION

Defendant was present in open Court with Counsel **JOHN TRELEVEN** on the **22nd** day of **September 2010** for sentence.
The court informed the defendant that, as the defendant well knew, the defendant had pleaded guilty, and had been found guilty of the offense(s) of:
count 1: POSSESSION OF COCAINE, 2925-11A/ORCN,F3
count 2: TRAFFICKING IN COCAINE, 2925-03A1/ORCN,F2
count 3: POSSESSION OF COCAINE, 2925-11A/ORCN,F1
count 4: TRAFFICKING IN COCAINE, 2925-03A2/ORCN,F1
count 5: TRAFFICKING IN COCAINE, 2925-03A2/ORCN,F1
count 6: POSSESSION OF COCAINE, 2925-11A/ORCN,F1
count 7: HAVING WEAPONS WHILE UNDER DISABILITY, 2923-13A3/ORCN,F3

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:
count 1: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 2: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 3: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 4: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 5: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 6: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
count 7: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS

THE SENTENCES IN COUNTS #1, #2, #3, #4, #5, #6, AND #7 ARE TO BE SERVED CONCURRENTLY WITH EACH OTHER.

A TRUE COPY OF THE ORIGINAL
ENTERED 12/13/10
ATTEST TRACY WINKLER
CLERK.
BY

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 12/09/2010
code: GJEI
judge: 109

Judge: NORBERT A NADEL

NO: B 0901851

STATE OF OHIO
VS.
KENNETH PRUITT

JUDGMENT ENTRY: SENTENCE: INCARCERATION
NUNC PRO TUNC 09/22/2010
CORRECTED
RE-SENTENCE FOR POST RELEASE CONTROL NOTIFICATION

THE TOTAL AGGREGATE SENTENCE IS FIVE (5) YEARS IN THE DEPARTMENT OF CORRECTIONS.

THE DEFENDANT IS TO RECEIVE CREDIT FOR TIME SERVED.

FINE OF $5,000.00 AS TO COUNT #1 AND FINES OF $10,000.00 AS TO COUNTS #2, #3, #4, #5, #6, AND #7 ARE REMITTED.

THE DEFENDANT IS TO PAY THE COURT COSTS.

THE DEFENDANT HEREIN IS NOT ELIGIBLE FOR INTENSIVE PRISON PROGRAM, TRANSITIONAL CONTROL, JUDICIAL RELEASE, OR ANY OTHER EARLY RELEASE PROGRAM AND IS TO SERVE THIS SENTENCE IN ITS ENTIRETY.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 12/09/2010
code: GJEI
judge: 109

Judge: NORBERT A NADEL

NO: B 0901851

STATE OF OHIO
VS.
KENNETH PRUITT

JUDGMENT ENTRY: SENTENCE: INCARCERATION
NUNC PRO TUNC 09/22/2010
CORRECTED
RE-SENTENCE FOR POST RELEASE CONTROL NOTIFICATION

CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

AS PART OF THE SENTENCE IN THIS CASE, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR THREE (3) YEARS.

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.

RE-SENTENCE FOR POST RELEASE CONTROL NOTIFICATION

CORRECTED, NUNC PRO TUNC 09/22/2010

D91130615

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO
CRIMINAL DIVISION

FILED
2010 DEC 13 P 2:43
PATRICIA J. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

STATE OF OHIO,	:	Case No. B0901851
Plaintiff	:	
vs.	:	JUDGE NADEL
KENNETH PRUITT,	:	MOTION TO CLARIFY ENTRY GRANTING MOTION FOR JAIL-TIME CREDIT.
Defendant	:	

Attachment #C

Now Comes, Kenneth Pruitt, (hereinafter Defendant), acting In Pro se, hereby moves this Honorable Court to clarify an Entry Granting Defendant's Motion For Jail-Time Credit pursuant to Criminal Rule 36, within the above-captioned case, that was found "well taken" from the Defendant's Motion For Jail Time Credit filed on August 11th, 2010, that contained 1,580 days credit.

However; The Bureau Of Sentence Computation have not sent the Defendant an "Update/Correction"printout of a new outdate.The amount of *jail-time credit,"well taken"from the* Defendant's motion,filed on August 11th,2010,which contain the amount of days,was omitted in the Entry filed on August 24th,2010,and shall be specified in an Entry to ensure that the Defendant recieves the full amount of jail-time credit that is contained in the motion and granted to the Defendent, along with the 11days credit for time served(as of the date of sentencing)plus conveyance time to the Institution, the court granted Defendant in the aforesaid Entry.

A TRUE COPY OF THE ORIGINAL ENTERED
ATTEST TRACY WINKLER
CLERK.
BY _____ DEPUTY

THEREFORE;Defendant prays for an amended,certified Journal Entry directing The Bureau Of Sentence Computation,as well as The Department Of Rehabilitation and Correction to comply with the herein Court's Order Granting the Defendant a total of 1,511days of jail-time credit,plus conveyance time to the Institution.

Respectfully Submitted,

Kenny Pruitt - 11/26/10

KENNETH PRUITT -DEFENDANT In PRO SE
INSTITUTIONAL NO.: A635780
PICKAWAY CORRECTIONAL INSTITUTION

PO BOX209
ORIENT,OHIO 43146

CERTIFICATE OF SERVICE

I,Kenneth Pruitt,hereby certify that copies of this foregoing motion was mailed by regular U.S.Mail,to the Hamilton County Clerk of Courts on the 26th day of NOVEMBER,2010.

Kenny Pruitt - 11/26/10

KENNETH PRUITT DEFENDANT

(Page 2 Of 2)

ENTERED
FEB 17 2011

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Attachment #D

STATE OF OHIO : CASE NO. B0901851

:

-vs- : ENTRY GRANTING MOTION FOR JAIL TIME CREDIT

:

Kenneth Pruitt :

This matter is before the Court on Defendant's Motion for Jail Time Credit, and the Court, being fully advised, hereby finds the Motion to be well taken and hereby grants the Defendant credit for time served for a total of 1530 days credit. This credit includes any credit previously granted.

D91890695

Norbert A. Nadel, Judge

2/17/11
Date

A TRUE COPY OF THE ORIGINAL
ENTERED 2/17/11
ATTEST TRACY WINKLER
CLERK.
BY _____ DEPUTY
DATE 1/17/12

Ohio Department of Rehabilitation and Correct

Attachment #E

770 West Broad
Columbus, Ohio

John R. Kasich, Governor

www.drc.ohio.gov

Gary C. Mohr, D

Thursday, February 17, 2011 2

PRC RESULT NOTIFICATION

D-8-2

Inmate:	**A635780 PRUITT, KENNETH**
Institution:	**PICKAWAY CORRECTIONAL INSTITUTION**
Most Serious Offense:	**2925.11 4-POSS. OF DRUGS**
Aggregate Sentence:	**5.00 TERM**

As a result of the 02/17/2011 assessment, it has been decided that the above inmate WILL BE PLACED unde Post Release Control for the following term and under the following sanctions:

Tentative Start Date:	**05/23/2011**
Post Release Control Term:	**5.00 Year(s)**
Post Release Control Sanctions:	**BASIC SUPERVISION**
Parole Board Imposed Special Conditions:	**I understand I will be subject to imprisonment of up to ½ my original sentence as a result of violations of my Post Release Control. Ineligible for sentence reduction.**

BY THE AUTHORITY OF THE PAROLE BOARD CHAIR:

Parole Board Hearing Officer * **Parole Board Parole Officer ***

*** This notification requires one signature.**

CC: Inmate
Warden
Institution Record Office
Central Records
Office of Victims' Services
APA Placement
Mental Health Services
Unit Management Administrator

Ohio Department of Rehabilitation and Correcti

Bureau of Sentence Compu
P.O. Bo
Orient, OH

John R. Kasich, Governor
www.drc.state.oh.us
Gary C. Mohr, Dir

Attachment # F

April 6, 2011

Inmate Kenneth Pruitt #635780
PCI

Dear Inmate Pruitt:

I am in receipt of your correspondence regarding your sentence computation. Even though you may be entitled to jail time credit, our Department cannot apply it toward your sentence unless the Court specifically orders it in a judgment entry. We must follow the order of the Court and credit your sentence with only the credit that was granted in the sentencing entry plus any time that you served awaiting transportation to our reception facility.

We did receive this jail credit entry and had to call the Court to see if it contained prison time since you had been re-sentenced on this case. When I spoke with the Bailiff he said he had given the wrong amount and would send a corrected entry. We have applied the credit as pe the corrected entry and your release date has been certified as 3/13/2014 and includes 4 da earned credit.

If you feel you are entitled to more jail time credit, I would suggest that you write your sentencing judge and ask that any credit for time served be forwarded to our office in a certified judgment entry. Do not send our office a copy of your motion, as we must wait for a decision from the Court. Upon receipt of the jail time credit entry from the Court, we will promptly adjust your release date accordingly and you will be notified.

Sincerely,

D. Warren

D. Warren
Bureau of Sentence Computation

cc: file

Attachment G

115 Ohio Misc.2d 44

The STATE ex rel. DAILEY

v.

MORGAN, Warden.*

No. 01CV0293.

Court of Common Pleas of Ohio, Marion County.

Decided Aug. 8, 2001.

Petitioner sought a writ of habeas corpus, alleging that he was entitled to local jail credit. The Court of Common Pleas, Marion County, Richard M. Rogers, J., held that Department of Rehabilitation and Correction did not have authority to alter clear and unambiguous statement in judgment that awarded petitioner 139 days of local jail credit.

Writ granted.

1. Habeas Corpus ⇐671

Petitioner complied with habeas statute that required a copy of the cause of detention, as he attached to the petition a *certified copy of court's sentencing entry* that was relevant to his contention that he was entitled to local jail credit against sentence for escape, and petitioner was not *required instead to attach commitment* papers on any prior sentences that expired. R.C. § 2725.04(D).

2. Habeas Corpus ⇐693

State's supplemental motion to dismiss habeas corpus petition, which petitioner filed on contention that he was entitled to local jail credit against sentence for escape, was without merit; since the supporting materials were not certified, they were not of an evidentiary quality.

3. Constitutional Law ⇐79

Sentencing and Punishment ⇐1181

Department of Rehabilitation and Correction did not have authority to interpret or alter clear and unambiguous statement in trial court's judgment that awarded defendant 139 days of local jail credit against his sentence for escape, even if the judgment was contrary to statute that required consecutive term of imprisonment if offender was an escapee. R.C. § 2929.14(E)(2).

4. Constitutional Law ⇐79

Department of Rehabilitation and Correction has no authority to interpret or alter the clear and unambiguous statement contained in a court judgment.

5. Constitutional Law ⇐79

It is neither the prerogative of the Department of Rehabilitation and Corrections, nor within its authority, to refuse to *enforce the unambiguous terms of a sentence* contained in a court judgment.

6. Habeas Corpus ⇐710

In habeas proceeding in which petitioner alleged that he was entitled to local jail credit against sentence for escape, burden was on the state to demonstrate *validity* of court entries that *purportedly* reduced the jail-time credit that was originally awarded to petitioner.

7. Habeas Corpus ⇐725

In habeas proceeding in which petitioner alleged that he was entitled to local jail credit against sentence for escape, state failed to substantiate claim that trial court reduced jail-time credit that was originally awarded petitioner, as it failed to obtain certified copies of court entries that it proffered in support of its claim.

* Reporter's Note: There was no appeal from the judgment of the court.

8. Evidence ⇐383(3)

Court of Common Pleas cannot presume the legitimacy of court entries that are not properly authenticated.

Syllabus by the Court

1. The Department of Rehabilitation and Correction has no authority to interpret or alter the clear and unambiguous language contained in a court judgment.

2. The Department of Rehabilitation and Correction may not "correct" sentencing errors, real or perceived, by imposing the department's interpretation of a proper term of sentence.

William R. Dailey, pro se.

Betty D. Montgomery, Attorney General, and Thelma Thomas Price, Assistant Attorney General, for respondent.

RICHARD M. ROGERS, Judge.

This matter came on to be heard on a petition for habeas corpus on June 19, 2001. The petitioner, William R. Dailey, was present, without counsel. The respondent, Warden John Morgan, was represented by Thelma Thomas Price, Assistant Attorney General, Corrections Litigation Section. After discussion and testimony, it was apparent that the parties' dispute was limited to whether the petitioner is entitled to local jail credit from the Summit County Jail for the period of time between October 14, 1999 and February 29, 2000.

The evidence presented at the initial hearing demonstrated that on October 13, 1999, the petitioner was sentenced in Marion County to eighteen months' imprisonment in case No. 98CR238 and six months' imprisonment in case No. 98CR270, those terms to be served consecutively. The petitioner was subsequently sentenced in Summit County on February 29, 2000, to eight months' imprisonment on a charge of escape. That sentence was journalized by entry filed March 2, 2000 in case No. 99-12-2882. On March 14, 2000, the Summit County Court of Common Pleas filed an additional entry, granting the defendant local jail credit of 139 days through the date of sentencing. The Summit County Judge later confirmed that credit by entry filed January 9, 2001.

The Records Supervisor of North Central Correctional Institution testified that he has refused to credit petitioner with the 139 days credit because the petitioner was already in custody during that period and receiving credit toward the Marion County cases. He further stated that, in so doing, he was complying with departmental policies. He further argued that if the Summit County Common Pleas Court intended the eight-month sentence from Summit County to be served consecutively to the Marion County cases, then the credits should not apply, because that would grant 139 days of credit on a concurrent sentence.

The issue then is whether the Ohio Department of Rehabilitation Correction has the authority to interpret the entries filed by the Judge of the Court of Common Pleas of Summit County, or whether it must abide by the clear language of the entry. This court, by entry filed June 19, 2001, granted the state further time to substantiate its claim that petitioner is not entitled to the 139 days of credit. Since the hearing in this matter, respondent has filed a motion to dismiss and a supplemental motion to dismiss, and the petitioner has filed motions to strike, a motion for summary judgment, and a motion for release on bail.

The court first considers the motion to dismiss and finds that it should be denied.

[1] Respondent first argued that petitioner failed to provide a copy of his commitment papers as required by R.C. 2725.04(D). This court disagrees. Petitioner attached a certified copy of his sentencing entry from the Court of Common Pleas of Summit County to his petition. It is from the respondent's interpretation of that sentence and related entries that the problem arises, and any prior sentences, which the parties agree have long since expired, are moot.

[47] Respondent next alleges that the petitioner has failed to comply with R.C. 2969.25. Again, respondent is mistaken. The petitioner did provide a separate affidavit specifically stating that he had not filed any prior civil actions during the preceding five years.

Finally, respondent simply claims that the petition lacks merit. This court addressed that issue in its initial review of the petition. Before issuing a writ of habeas corpus, this court necessarily had to determine whether the facts alleged created a prima facie case in favor of the petitioner's release. R.C. 2725.05 and 2725.06. Had the petition failed in that respect, this court would be required to refuse to issue the writ. Therefore, this branch of the motion to dismiss is also denied.

Having found all three arguments to be without arguable merit, the court is hard-pressed to understand why respondent has *put the court to the time and trouble of* reviewing a motion to dismiss.

[2] The respondent's supplemental motion to dismiss is likewise without merit, as it is not supported by any materials of an evidentiary quality. The attached entry, like all the materials submitted by the respondent, is not certified.

In consideration of a motion for summary judgment, the court may consider only those matters permitted by Civ.R. 56(C). Unfortunately, respondent again failed to submit any materials that may be properly considered by this court. The copies of entries that have been submitted by respondent are not certified, nor is the partial transcript that was submitted by respondent.

Petitioner did submit, with his petition, a certified copy of the judgment entry of the Court of Common Pleas of Summit County, filed March 2, 2000, which clearly and unambiguously states that petitioner was sentenced to eight months in prison on the offense of escape, a felony of the fifth degree. Petitioner also provided a certified copy of a judgment entry of the Court of Common Pleas of Summit County, filed March 14, 2000, which awarded petitioner 139 days of local jail time credit through the date of sentencing, which was February 29, 2000. The state has tendered to this court an uncertified copy of a transcript of the plea proceedings that clearly states that the prosecutor advised the court at the time of sentencing (February 29, 2000) that the defendant was to receive credit for jail time served from October 14, 1999.

The court finds from the evidence submitted that the petitioner was sentenced by the Court of Common Pleas of Summit County on February 29, 2000 to a term of eight months in prison. The parties have each stated that the sentence was to be served consecutively to petitioner's sentence in Marion County case No. 98CR238, pursuant to statute. See R.C. 2929.14(E)(2). (Therefore, this court will not consider whether the consecutive nature of a sentence must be stated in [48] the sentencing entry or may be inferred by the Ohio Department of Rehabilitation and Correction, even though the original judgment did not suggest that the term was to be served consecutively.) However, the entries of the Court of Common Pleas of

Summit County (through and including the entry filed January 9, 2001) clearly state that the defendant was to receive credit for 139 days of local jail time.

[3, 4] While the stated credit might be contrary to law as alleged by respondent, it became the judgment of the case and was not appealed by any party. Respondent and the Ohio Department of Rehabilitation and Corrections have no authority to interpret or alter the clear and unambiguous statement contained in a court judgment.

[5] Respondent has acknowledged that the original sentence of the Court of Common Pleas of Summit County originally granted the petitioner 139 days credit against his Summit County case, case No. 99-12-2882, for time served from October 14, 1999 through February 29, 2000. It is not the department's prerogative, nor within its authority, to refuse to enforce the unambiguous terms of a sentence contained in a court judgment.

Indeed, respondent and the Ohio Department of Rehabilitation and Correction are not even parties in the Summit County case and would have no standing or authority even to appeal an incorrect sentence in that case. Such an appeal would necessarily need to be initiated by the local prosecutor's office that was responsible for prosecuting the underlying criminal offense. That is the same office that apparently represented to the court at the time of the plea, February 29, 2000, that the defendant was to be given local jail credit for time served from October 14, 1999. (See the uncertified transcript submitted with respondent's motion for summary judgment. That document, if properly submitted, would have given further substance to petitioner's claim that the jail time credit was intended as part of a plea bargain, which also obviously resulted in a reduction from a felony of the third degree [the original charge] to a felony of the fifth degree.)

The duty of respondent and the Ohio Department of Rehabilitation and Correction is to carry out the judgment of the court, and nothing more. To permit otherwise would be to destroy the sanctity and finality of judgments.

The principle of finality of judgments has always been protected by the courts. "A final judgment brings closure, certainty, and possibly a commitment to changed future behavior. These are societal benefits as well as benefits to the parties. Wrongs are righted through judgments. Our justice system does not work without finality. Until then, the system's great value is in limbo. We take little from it, but we continually feed it with our energies, intellect, and emotions." *Wightman v. Consol. Rail Corp.* (1999), 86 Ohio St.3d 431, 443, 715 N.E.2d 546, 556.

Respondent has provided no authority to this court that suggests that the Ohio Department of Rehabilitation and Correction is empowered to arbitrarily and unilaterally alter the clear intention of a sentencing judgment entry.

[6-8] Respondent has attempted to demonstrate that the Court of Common Pleas of Summit County has corrected the apparent mistake and reduced the 139 days of jail-time credit originally awarded to the petitioner by a judgment filed June 27, 2001. However, respondent has not presented this evidence in any form that this court is permitted to consider. The copies of entries submitted by the respondent are not certified. This court cannot presume the legitimacy of entries not properly authenticated, and the burden was on the respondent to demonstrate their validity. Petitioner, acting *pro se*, was knowledgeable enough and capable enough to secure a certified copy of court

entries. There is no reason to believe that respondent or his attorney was incapable of the same. Certainly this court has allowed more than sufficient time for the proper submission of evidence.

This court, being limited to the evidence properly submitted, cannot determine that this corrective entry was actually filed. (The question of whether correction in the manner suggested would be proper is not before this court, but would rather be an issue for appeal if such an entry were filed.)

The court, therefore, finds that petitioner William R. Dailey is entitled to immediate release from the custody of the respondent and the Ohio Department of Rehabilitation and Correction.

The ruling of this court necessarily turns on the facts of this case, and the inadequacy of evidentiary materials submitted by respondent. However, the underlying issue addressed here is much bigger than the calculation of the release date of one prisoner. The question arises as to how many prisoners may have been detained contrary to the clear intentions of sentencing entries. The Ohio Department of Rehabilitation and Correction must be advised of its limitations in interpreting court judgments.

This court has had a previous experience of a similar nature, wherein the court was requested by a prisoner to provide clarification of the intended sentence. Even after the court provided the institution with an entry to clarify its erroneous interpretation of the sentences and personally talked with prison records personnel, the institution refused to acknowledge this court's authority, and the prisoner was held until a date someone in the prison records department thought appropriate for release. Unfortunately, the individual had been released prior to this court becoming aware of the institution's refusal to comply with the court's orders, and no habeas corpus action was filed. If this court has now had two such circumstances brought to its attention in recent months, how many others have gone unnoticed throughout this state?

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that respondent shall immediately release petitioner William R. Dailey from confinement, subject only to such sanctions of postrelease control as may be imposed by the Ohio Adult Parole Authority.

Judgment accordingly.

KEY NUMBER SYSTEM

CERTIFIED MAIL

7196 9008 9111 4510 7878

Pickaway Co. Clerk of Courts
207 S. Court St., P.O. Box 280
Circleville, OH 43113

UNITED STATES POSTAGE
PITNEY BOWES
02 1P $ 007.40
0003095725 JUN 06 2012
MAILED FROM ZIP CODE 43113

2012CI0245
WA71 9690 0891 1145 107

BRIAN COOK WARDEN
P. O. BOX 209
11781 STATE ROUTE 762
ORIENT, OH 43146

Ohio Department of Rehabilitation and Correction

Pickaway Correctional Institution
11781 State Route 762
Orient, OH 43146

John R. Kasich, Governor | www.drc.ohio.gov | Gary C. Mohr, Director

June 8, 2012

The Honorable Mike DeWine
Attorney General of the State of Ohio
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215

Re: Kenneth Pruitt--vs- Warden, Pickaway Correctional Institution
Inmate Number: 635-780

Dear Sir:

Please find enclosed documentation relating to Petition for Writ of Habeas Corpus regarding the above-referenced case. The documents were received by certified mail on June 7, 2012. The original documents have been forwarded to DRC Legal Services.

A Request for Representation and Report Regarding Representation has been completed and is being forwarded to DRC Legal Services.

Do not hesitate to contact me if I can be of any further assistance.

Sincerely,

Brian Cook, Warden
Pickaway Correctional Institution

BC/kh

Cc: DRC – Legal Services
File

Ohio Department of Rehabilitation and Correction

null
null, OH null

John R. Kasich, Governor | www.drc.ohio.gov | Gary C. Mohr, Director

(To be used for Criminal Justice Section cases when a summons and complaint, or non-capital habeas corpus petition, is filed in federal or state courts except Court of Claims)

Report Regarding Representation Request

The Honorable Mike DeWine
Attorney General of the State of Ohio
Criminal Justice Section
150 East Gay Street,16th Floor
Columbus, OH 43215

Case Name: Kenneth Pruitt vs Brian Cook, Warden

Case Number: 2012C10245

Dear Attorney General:

This report is provided pursuant to Section 109.363 of the Revised Code.

Name of Officer or Employee: Brian Cook

Present or former job title or classification: Warden

This employee was served by the Court on Jun 7, 2012 by:

☐ Personal Service; ☒ Certified Mail; ☐ Regular Mail; ☐ Other: _____

☒ It is the opinion of the employer that the above named employee meets the requirements for representation under Section 109.362 of the Revised Code. If applicable, cite pertinent facts in support of this conclusion:

☐ It is the opinion of the employer that the above named employee does not meet the requirements for representation under Section 109.362 of the Revised Code because:

- ☐ The employee was acting manifestly outside the scope of his/her employment or official responsibilities.
- ☐ The employee was acting with malicious purpose.
- ☐ The employee was acting in bad faith.
- ☐ The employee was acting in a wanton or reckless manner.
- ☐ The person does not fall within the definition of "employee".

If applicable, cite pertinent facts in support of the disqualifying rationale selected:

Recommended:

Director, Parole & Community Services Regional Administrator, or Warden (as Appropriate):

DRC1561 E (Rev. 01/11)

FILED COMMON PLEAS

2012 NOV 14 P 2:50

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

Kenneth Pruitt,	:	**CASE NOs. 2012-CI-0245**
Petitioner,	:	**2012-CI-0258**
Vs.	:	**JUDGE P. RANDALL KNECE**
Brian Cook, Warden,	:	**DECISION AND ENTRY**
Respondent.	:	

EXHIBIT 6

Petitioner has filed a *pro se* petition for habeas corpus. Respondent filed a Motion to Dismiss / Summary Judgment Motion on July 3, 2012. Petitioner filed a Motion for Leave to Amend Petition for Writ of Habeas Corpus on July 12, 2012, and a Memorandum Contra to the Motion to Dismiss / Summary Judgment Motion. Petitioner also filed a Motion for Leave to Amend Memorandum Contra on July 23, 2012.

Upon review, and for good cause shown, this Court agrees with the position of the Respondent and, therefore, **GRANTS** Respondent's Motion to Dismiss.

Habeas Corpus is an extraordinary remedy available only if the petitioner is entitled to the immediate release from confinement. State ex rel. Jackson v. McFaul, 73 Ohio St.3d 185, 1995-Ohio-228; O.R.C. 2725.01 et seq. Further, "habeas corpus is not available when there is an adequate remedy in the ordinary course of law." In re Complaint for Writ of Habeas Corpus for Goeller, 103 Ohio St.3d 427, 2004-Ohio-5579.

The Supreme Court has held, "[A defendant has] an adequate remedy at law by appeal to raise any error by the trial court in calculating his jail-time credit. State ex rel. Brown v. Summit

Cty. Court of Common Pleas, 99 Ohio St.3d 409, 2003-Ohio-4126, 792 N.E.2d 1123, ¶ 4." State ex rel. Rudolph v. Horton, 119 Ohio St.3d 450 (Ohio, 2008).

Habeas corpus is a preconviction remedy for illegal detention. It is not and never was a postconviction remedy for the review of errors or irregularities of an accused's conviction. It is not a substitute for, nor is it a concurrent remedy with, appeal. Walker v. Maxwell (1965), 1 Ohio St.2d 136.

The issues raised by Petitioner are not cognizable in habeas corpus. In addition, the Petitioner failed to attach copies of his most current commitment papers, which are the actual cause of his detention, as required by O.R.C. Section 2725.04; and failed to show that he is entitled to immediate release. For the foregoing reasons, and the reasons stated in Respondent's Motion to Dismiss, Mr. Pruitt's petition for habeas corpus is hereby **DISMISSED** thereby rendering all other pending motions moot.

This is a final appealable order and within three (3) days of the entering of this Judgment upon the Journal, the Clerk of this Court shall serve the parties as provided for in Civil Rule 5(B) with notice of the filing of a final appealable order and note such service upon the appearance docket pursuant to Civil Rule 58.

IT IS SO ORDERED. Costs to Petitioner.

P. RANDALL KNECE, JUDGE

Date: 11/14/12

COPIES TO:

Maura O'Neill Jaite, Esq.
Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, OH 43215

Kenneth P)ruitt, #635-780
Pickaway Correctional Institution
Post Office Box 209
Orient, OH 43146

FILED-CT OF APPEALS

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

2012 DEC 21 PM 12: 59
JAMES K. DEAN
CLERK OF COURTS
PICKAWAY COUNTY

Kenneth Pruitt,	:	Case No. 12CA22
Petitioner-Appellant,	:	**DECISION AND JUDGMENT ENTRY**
v.	:	
Brian Cook, Warden,	:	
Respondent-Appellee.	:	

EXHIBIT
7

Appellant Kenneth Pruitt has filed an appeal challenging the trial court's dismissal of his petition for habeas corpus. After reviewing appellant's notice of appeal, we conclude that it is fatally defective because he failed to comply with R.C. 2969.25.

An inmate filing an appeal of a civil action against a government entity or employee seeking waiver of prepayment of court filing fees is required to submit a statement of the balance of his prison account for each of the preceding six months, verified by the institutional cashier. R.C. 2969.25(C). *See, also, State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842, at ¶5. Here, appellant has filed a financial disclosure statement and affidavit of indigency. Appellant, however, has not filed a verified statement from the institutional cashier setting forth the balance of his inmate account for each of the preceding six months.

"The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, at ¶5. *See, also, State ex rel. Qualls v. Story*, 104 Ohio St.3d 343, 2004-Ohio-6565, 819 N.E.2d 701. Moreover, appellant cannot correct the omission because R.C. 2969.25 expressly states that the verified

statement shall be filed at the time an inmate commences an appeal against a government entity or employee. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982 at ¶9.

Because appellant has not complied with R.C. 2969.25, we sua sponte **DISMISS** this appeal. The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. The clerk shall serve appellant by certified mail, return receipt requested. If returned unserved, the clerk shall serve appellant by ordinary mail.

APPEAL DISMISSED. COSTS TO APPELLANT. ANY PENDING MOTIONS ARE DENIED AS MOOT. SO ORDERED.

Kline, J. & McFarland, J.: Concur.

FOR THE COURT

Peter B. Abele
Presiding Judge

ENTERED
AUG - 3 2012

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-110768 TRIAL NO. B-0901851
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
KENNETH PRUITT,	:	
Defendant-Appellant.	:	

EXHIBIT
8

D98659543

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Kenneth Pruitt appeals the trial court's judgment convicting him of two counts of trafficking, possession, and having a weapon while under a disability, and the trial court's imposition of an aggregate prison term of five years. We remand this case for the proper imposition of postrelease control.

In March 2010, defendant-appellant Kenneth Pruitt pleaded guilty to three counts of possession of cocaine in violation of R.C. 2925.11(A) ("counts one, three, and six"), trafficking in cocaine in violation of R.C. 2925.03(A)(1) ("count two"), two counts of trafficking in cocaine in violation of R.C. 2925.03(A)(2), ("counts four and five"), and having a weapon under a disability ("count seven"). The trial court imposed a five-year prison term for each of the seven offenses and ordered the terms to be served

concurrently. Pruitt appealed his convictions and sentences. In *State v. Pruitt*, 1st Dist. No. C-100587, 2011-Ohio-4948, ("*Pruitt I*") we held that some of the offenses were allied offenses of similar import and remanded the case to the "trial court to allow the state to elect between counts one and two, counts three and four, and counts five and six. The trial court should then sentence Pruitt on only those three counts upon which the state has elected to proceed."

At the resentencing hearing the trial court imposed a five-year prison term for each of the three offenses—count two, count three, and count five. The trial court then imposed a three-year prison term for the offense of having a weapon while under a disability. The prison terms were ordered to be served concurrently. Pruitt now appeals his convictions and sentences, bringing forth four assignments of error. For purposes of this judgment entry, we consider the assignments of error out of order.

In his second assignment of error, Pruitt contends that the trial court erred by sentencing him to a three-year prison term for having a weapon while under a disability. We agree, but not for the reasons advanced by Pruitt. In *Pruitt I*, we affirmed Pruitt's convictions, but remanded the case to the trial court for the sole purpose of having the state elect on which three charges it wanted to proceed, and for the trial court to sentence on those counts only. We did not instruct the trial court to resentence on count seven, having a weapon while under a disability. Accordingly, the trial court did not have the authority at the resentencing hearing to change Pruitt's five-year prison term imposed for the offense of having a weapon while under a disability to a three-year prison term. *See State v. Fischer*, 128 Ohio St.3d. 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraphs one and three of the syllabus. Therefore, the three-year term is a nullity, and the concurrent five-year prison term for having a weapon while under a disability that we affirmed in *Pruitt I* is the sentence that is in effect today.

In his first assignment of error, Pruitt argues that his sentences are contrary to law because the trial court failed to orally inform him of his postrelease-control obligations at the resentencing hearing. We agree to the extent that the trial court's failure to notify Pruitt of his postrelease-control obligations at the sentencing hearing rendered that part of his sentences void. It is well-established that a sentencing court must "notify the offender of the mandatory nature of the term of post-release control and the length of that mandatory term and incorporate that notification in its entry." *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 69; R.C. 2929.19(B)(3)(c). A review of the record demonstrates that the trial court failed to notify Pruitt at his resentencing hearing of the duration of each period of postrelease control and the mandatory nature of the postrelease periods imposed for each felony. Accordingly, we sustain Pruitt's assignment of error and remand this case to the trial court to inform Pruitt of his postrelease-control obligations in accordance with R.C. 2929.191. *See State v. Williams*, 1st Dist. No. C-081148, 2010-Oho-1879, ¶ 20.

We note that the trial court need not inform Pruitt of his postrelease-control obligations with respect to count seven, having a weapon while under a disability. Given our resolution of Pruitt's second assignment of error, Pruitt's prior sentence, where he was properly notified of postrelease control, is still in effect.

Finally, our review of the resentencing hearing revealed that the trial court failed to impose the statutorily-mandated driver's-license-suspension sanction for counts two, three, and five. *See* R.C. 2925.03(D)(2) and (G); R.C. 2925.11(E)(2). This, as well as the failure to notify Pruitt of his postrelease-control obligations, rendered those parts of the sentences imposed for counts two, three, and five, void. *State v. Harris*. Slip Opinion No. 2012-Ohio-1908, paragraph one of the syllabus. Accordingly, on remand,

we also direct the trial court to impose the appropriate driver's-license-suspension sanction for each count. *Id.*

The first assignment of error is sustained in part and overruled in part.

Pruitt maintains in his third assignment of error that his sentences for counts two, three, and five were not supported by the findings in the record. Specifically, he argues that that the trial court did not consider mitigating circumstances, mainly that Pruitt was remorseful and apologetic for his actions.

After reviewing the record, we cannot say that the trial court abused its discretion in imposing the five-year sentences for multiple felonies, even if Pruitt was apologetic. *See State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 14. Accordingly, the third assignment of error is overruled.

In his fourth and final assignment of error, Pruitt argues his due process rights were violated in a variety of ways, including that his speedy trial rights were violated and his guilty pleas were not knowing or voluntary. But these issues are not properly before us in this appeal. We have already reviewed Pruitt's case on appeal, including the entry of his guilty pleas, and have determined that there was no error. Our determination is the law of the case, and we will not now address issues that were or could have been raised in Pruitt's first appeal. This appeal is limited to Pruitt's resentencing. *See Fischer at* ¶ 33. We therefore overrule Pruitt's fourth and final assignment of error.

In conclusion, the judgment of the trial court is reversed in part, and this cause is remanded to the trial court (1) to properly notify Pruitt of his postrelease-control obligations associated with the felonies in counts two, three, and five; (2) to correct the sentencing entry to reflect the proper original sentence for having a weapon while under a disability; and (3) to impose the appropriate driver's license

suspension associated with the felonies in counts two, three, and five. We affirm the trial court's judgment in all other respects.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and FISCHER, JJ.

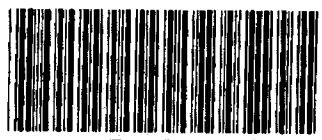
To the clerk:

Enter upon the journal of the court on August 3, 2012

per order of the court _____.
Presiding Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-120092 TRIAL NO. B-0901851
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
KENNETH PRUITT,	:	
Defendant-Appellant.		


D98982178

ENTERED
AUG 29 2012

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Kenneth Pruitt presents on appeal a single assignment of error, challenging the Hamilton County Common Pleas Court's judgment overruling his motions seeking "[c]orrection" of his jail-time credit. We affirm the court's judgment.

In his motions, Pruitt asserted that the number of days of jail-time credit that the trial court had "intended" to afford him was reflected in the February 17, 2011 entry granting him 1530 days of jail-time credit, and not in the February 18, 2011 entry setting aside the February 17 entry and crediting only 553 days. He prayed for a nunc pro tunc entry reanimating the February 17 entry.

EXHIBIT
9

A defendant may challenge the calculation of his jail-time credit in the direct appeal of his conviction, in a petition under R.C. 2953.21 et seq. for postconviction relief, or in a motion under Crim.R. 36 for "correct[ion]" of a "clerical mistake[]." *See Heddleston v. Mack*, 84 Ohio St.3d 213, 213, 702 N.E.2d 1198 (1988); *State v. Weaver*, 1st Dist. No. C-050923, 2006-Ohio-5072, ¶ 12.

Pruitt did not raise the matter of jail-time credit in his direct appeal from his 2010 judgment of conviction. *See State v. Pruitt*, 1st Dist. No. C-100587 (Sept. 30, 2011). He instead raised the matter in a series of postconviction motions.

In the December 2011 and January 2012 "Motion[s] for Correction" from which this appeal derives, Pruitt did not designate the statute or rule under which he sought relief. Nor did he articulate a ground for relief.

In light of the arguments advanced in his earlier postconviction motions, Pruitt's December 2011 and January 2012 motions could fairly be read to allege a factual mistake in the trial court's calculation of his jail-time credit. But Pruitt was not entitled to relief under Crim.R. 36 because he failed to demonstrate that the trial court had credited him with too few days.

Pruitt's arguments on appeal, coupled with his assertion in his motions that the trial court had "intended" to afford him the days of jail-time credit reflected in the February 17, 2011 entry and not those reflected in the February 18 entry, suggest a challenge not to the court's calculation of his credit, but to the lawfulness of the February 18 entry setting aside the February 17 entry. To the extent that the motions could thus be read to allege an error of law, they constituted petitions for postconviction relief, reviewable under the standards provided by R.C. 2953.21 et seq. *See State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12. But

ENTERED
AUG 29 2012

the common pleas court had no jurisdiction to entertain the motions on their merits because Pruitt failed to satisfy either the time restrictions of R.C. 2953.21 or the jurisdictional requirements of R.C. 2953.23.

We, therefore, hold that the common pleas court properly overruled Pruitt's December 2011 and January 2012 "Motion[s] for Correction." Accordingly, we overrule the assignment of error and affirm the court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on August 29, 2012

per order of the court _____.
Presiding Judge

ENTERED
AUG 29 2012