

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

RICKY L. MANUEL,

Defendant-Appellant.

:  
: Case No. **13-0818**  
:  
: On Discretionary Appeal from the  
: Ross County Court of Appeals,  
: 4th Appellate District,  
: Case No. 13CA3365  
:  
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**MEMORANDUM IN SUPPORT OF JURISDICTION OF  
DEFENDANT-APPELLANT RICKY L. MANUEL**

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SUPREME COURT OF OHIO

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## **THIS COURT SHOULD HEAR THIS CASE**

The right to credit for time served is fundamental and protected by the Equal Protection Clause of both the Ohio and United States Constitutions. Ohio's legislature recognized the difficulties defendants face in seeking to protect this basic right. To remedy this issue, the legislature created a special proceeding, through R.C. 2929.19(B)(2)(g), giving trial courts jurisdiction to correct jail-time credit. A trial court's findings, when made under that section, result in a final, appealable order.

The amendments to R.C. 2929.19(B)(2)(g) to protect a defendant's right to jail-time credit are rendered meaningless without appellate review. Mr. Manuel, and defendants like him, will be illegally confined without appellate review. This Court must act to preserve the legislature's purpose and to protect the right to equal protection for Ohio's inmates.

## STATEMENT OF THE CASE AND FACTS

Ricky L. Manuel was indicted on August 31, 2012 for theft and two counts of intimidation of a witness. He was arrested on July 17, 2012 and committed in lieu of bond. Mr. Manuel could not afford to post bond; thus, he remained in custody until his conveyance to the Ohio Department of Rehabilitation and Correction (DRC) on November 16, 2012.

On November 2, 2012, the court held a change of plea hearing, and Mr. Manuel pled guilty to all three felony counts. The court sentenced Mr. Manuel to one year confinement on each count, ran concurrent to each other. The court found that Mr. Manuel was held for 109 days but only credited this time to one of his offenses. Defense counsel never objected to this allocation of jail-time credit, even though it runs afoul of *State v. Fugate*, 117 Ohio St. 3d 261, 2008-Ohio-856.

Mr. Manuel was held for 122 days while awaiting disposition in his case. Yet, the court only credited his jail-time against one of his three counts. His net sentence is therefore longer than the one-year sentence authorized by his judgment entry of sentence: he will be held for a total of one year and 122 days related to these charges.

Mr. Manuel did not appeal, but he eventually learned that his sentence violated *State v. Fugate*, so, on December 14, 2012, he filed a motion so the court could correct its error. Specifically, he moved the trial court to apply his jail-time credit to all three counts, as *Fugate* requires. This motion was governed by the revised R.C. 2929.19(B)(2)(g), which became effective on September 28, 2012. The trial court denied his motion, finding that it correctly calculated Mr. Manuel's jail-time credit.

Mr. Manuel timely appealed. The 4th District Court of Appeals ordered the parties to address whether the entry denying Mr. Manuel's motion for jail-time credit was a final

appealable order. The parties submitted memoranda, and the court of appeals dismissed Mr. Manuel's appeal, holding that the denial of his motion for jail-time credit was not a final appealable order. This appeal follows.

## ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

### PROPOSITION OF LAW I

**The denial of a motion to correct jail-time credit is an order that affects a substantial right, and is therefore a final appealable order. R.C. 2929.19(B)(2)(g); R.C. 2505.02(B).**

Ohio's appellate courts are divided as to whether the denial of a motion to correct jail-time credit is a final appealable order. See *State v. Patton*, 5th Dist. No. 2009 CA 00201, 2009-Ohio-6562; *State v. Lemaster*, 4th Dist. No. 02CA20, 2003-Ohio-4457; *State v. Keith*, 9th Dist. No. 08CA009362, 2009-Ohio-76 (all holding that the denial of a motion for jail-time credit is not a final appealable order); *c.f. State v. Scranton*, 11th Dist. No. 2005-P-0020, 2005-Ohio-2886 (holding that the denial of a motion for jail-time credit is a final appealable order). The legislature, recognizing the widespread denial of jail-time credit to Ohio's inmates, created a special proceeding allowing defendants to challenge jail-time credit post sentencing, and a denial of a motion brought through that special proceeding is a final appealable order.

Ohio Revised Code Section 2505.02(B) defines final appealable orders:

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

\* \* \*

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

When the legislature creates an action that affects a defendant's substantial rights, the resulting order granting or denying relief constitutes a final appealable order. R.C. 2505.02(B)(2).

A “substantial right” is “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1). A proceeding under the revised version of R.C. 2929.19(B)(2)(g) affects a defendant’s substantial rights. This Court has plainly held that both the Ohio and United States Constitutions guarantee a defendant the right to credit for time served. *Fugate*, 117 Ohio St. 3d 261, 2008-Ohio-856, 883 N.E.2d 440, at ¶ 7. In this case, the trial court’s denial of Mr. Manuel’s motion for jail-time credit was a determination that he could be held for 122 days longer than authorized by Ohio law. Those convicted of crimes can only be held for the length of their sentence, and the Ohio Revised Code establishes that jail-time credit is the way of protecting that right. *Fugate* at ¶ 7; R.C. 2967.191. The revised version of R.C. 2929.19(B)(2)(g) gives defendants the mechanism for protecting this substantial right.

A “special proceeding” is “an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.” R.C. 2505.02(A)(2). When the general assembly enacted 2012 Am. Sub. S. B. No. 337, it created a special proceeding to address the difficulty defendants were having when trying to correct their jail-time credit. According to the revised statute, a defendant “may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination [of jail-time credit], and the court may in its discretion grant or deny that motion.” R.C. 2929.19(B)(2)(g)(iii). Defendants now possess the ability to challenge the legal determination of jail-time credit at any time post-sentencing.

To date, no other appellate courts have addressed whether jail-time credit decisions under the revised statute constitute final appealable orders. Yet, the court below deprived an Ohio citizen the equal protection of the law on the basis of conflicted appellate court decisions that no

longer apply. Because Mr. Manuel's motion to correct jail-time credit was made through a special proceeding, and because his motion sought to protect his substantial right to be held only for the length of his sentence, the trial court's entry denying his motion was a final, appealable order.

### CONCLUSION

The case law upon which the appellate court relied is no longer a reflection of Ohio law, since the legislature has created a special proceeding for post-sentencing motions for jail-time credit. Mr. Manuel took advantage of this legislative proceeding, and the trial court's denial of his motion for jail-time credit affected his substantial right. The trial court's entry was a final appealable order, and the appellate court unreasonably refused to review it. This Court must act to protect Ohio inmates' fundamental right to equal protection and guarantee proper appellate review of trial court decisions made in the special proceeding under R.C. 2929.19(B)(2)(g).

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT-APPELLANT RICKY L. MANUEL** was forwarded by regular U.S. Mail to Matthew Schmidt, Ross County Prosecutor, 72 North Paint Street, Chillicothe, Ohio, 45601, on this 22nd day of May, 2013.



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Assistant State Public Defender

Counsel for Ricky L. Manuel

#393612



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

2013 APR -8 PM 1:20

State of Ohio,

Plaintiff-Appellee,

v.

Ricky L. Manuel,

Defendant-Appellant.

Case No. 13CA3365

ROSS COUNTY COMMON PLEAS  
CLERK OF COURTS  
TY D. HINTON

**DECISION AND  
JUDGMENT ENTRY**

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**APPEARANCES:**

Timothy Young, Ohio State Public Defender, and Stephen A. Goldmeier, Ohio State Assistant Public Defender, Columbus, Ohio, for Appellant.

Matthew S. Schmidt, Ross County Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

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ABELE, A.J.,

After reviewing the notice of appeal filed in this matter, we issued an order directing Appellant Ricky L. Manuel to file a memorandum addressing whether the entry appealed from is a final appealable order. Manuel has filed a memorandum arguing that the trial court's entry overruling his motion for jail time credit is a final appealable order because the recent amendment to R.C. 2929.19(B)(2)(g), which became effective on September 28, 2012, creates a "special proceeding" under R.C. 2505.02(B)(2) for a jail-time credit motion, the denial of which is a final, appealable order. After reviewing the memoranda and the relevant law, we hereby **DISMISS** this appeal because the entry appealed from is not a final, appealable order.

I.

Manuel was convicted of one count of theft in violation of R.C. 2913.02 and two counts of intimidation of a witness in violation of R.C. 2921.04 and was sentenced to a term of twelve months for each offense, to be served concurrently, and upon release from prison to a period of post-release control of up to three years. The court awarded 109 days of jail time credit as to the theft violation and zero days of jail time credit as to the two counts of intimidation of a witness. The sentencing entry states that the jail time calculation includes all old and new jail time credit, along with future custody days while Manuel awaits transportation to the appropriate state institution. The sentencing entry was journalized on November 13, 2012. Manuel filed no appeal.

On December 14, 2012, Manuel filed a motion for jail time credit, claiming that he received only 13 days of jail time credit and that he was entitled to 122 days of jail time credit. He argued that because he was sentenced to concurrent prison terms for multiple charges, his jail time credit must be applied toward each concurrent prison term under R.C. 2967.191 and *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440. On December 31, 2012, the trial court denied the motion stating that it had properly determined jail time credit. Manuel appeals the trial court's denial of his motion for jail-time credit.

## II.

Pursuant to R.C. 2949.08(B),

The record of the person's conviction shall specify the total number of days, if any, that the person was confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper under this section. The record shall be used to determine any reduction of sentence under division (C) of this section.

R.C. 2967.191 mandates the department of rehabilitation and correction to reduce a

prisoner's sentence "by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced[.]"

The trial court is responsible for calculating the amount of jail time credit and including it in the sentencing entry. *State v. Keith*, 9th Dist. No. 08CA9362, 2009-Ohio-76, citing *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286, at ¶ 7.

The trial court must conduct a sentencing hearing in felony cases under R.C. 2929.19. Section R.C. 2929.19(B)(2)(g) contains the provision that requires the trial court to determine jail time credit. Prior to the amendments of 2012 Am. Sub. S.B. No. 337, division (B)(2)(g), read:

(g) Include in the offender's sentence a statement notifying the offender of the information described in division (F)(3) of section 2929.14 of the Revised Code regarding earned credits under section 2967.193 of the Revised Code.

It now reads:

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

(ii) In making a determination under division (B)(2)(g)(i) of this section, the court shall consider the arguments of the parties and conduct a hearing if one is requested.

(iii) The sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing in making a determination under division (B)(2)(g)(i) of this section. The offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under division (B)(2)(g)(i) of this section, and the court may in its discretion grant or deny that motion. If the court changes the number of

days in its determination or redetermination, the court shall cause the entry granting that change to be delivered to the department of rehabilitation and correction without delay. Sections 2931.15 and 2953.21 of the Revised Code do not apply to a motion made under this section.

(iv) An inaccurate determination under division (B)(2)(g)(i) of this section is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.

Because the number of days of jail time credit a defendant is entitled to must be stated in the trial court's sentencing entry, any challenge to that calculation must be made on appeal from the trial court's entry imposing sentence. *Rankin* at ¶ 10. Manuel did not appeal his convictions or the jail time credit calculation. The doctrine of res judicata bars a litigant from raising any issue, claim, or defense that could have been previously raised but was not. See *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840, at ¶ 11. Having failed to raise this issue on direct appeal, Manuel is barred by the doctrine of res judicata from raising this issue at this time.

More importantly, the trial court's entry denying Manuel's motion for jail time credit is not a final appealable order. It is well established that an order must be final before it can be reviewed by an appellate court. See Section 3(B)(2), Article IV of the Ohio Constitution. See, also, *General Acc. Ins. Co. v. Insurance Co. of North American*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989). If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and must dismiss the appeal. *Lisath v. Cochran*, 4th Dist. No. 92CA25, 1993 WL 120627 (Apr. 15, 1993); *In re Christian*, 4th Dist. No. 1507, 1992 WL 174718 (July 22, 1992).

R.C. 2505.02 defines a final order as "[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment," or "[a]n order that affects a substantial right made in a special proceeding or upon a summary application in

an action after judgment.” R.C. 2505.02(B)(1) and (B)(2).

The Supreme Court of Ohio has held that a criminal defendant may appeal a sentencing order that contains an incorrect calculation of jail time credit. *State ex rel. Jones v. O’Conner*, 84 Ohio St. 3d 426, 704 N.E.2d 1223 (1999). Manuel’s right to appeal the calculation of jail time credit arose on November 13, 2012, when his original sentence was issued and he was granted 109 days of jail time credit. This order was final and appealable pursuant to R.C. 2505.02(B)(1), in that it was an order that affected a substantial right, determined the action, and prevented further judgment. Manuel did not file a direct appeal of this judgment entry.

The trial court’s order denying Manuel’s motion for a correction of the jail time credit calculation does not satisfy R.C. 2505.02(B)(1) and (2) because under both of those provisions, the order must affect a substantial right of the party. The order denying a recalculation of jail time credit does not affect a substantial right. Prior to the order, Manuel had 109 days of jail time credit. After the order, Manuel continued to have 109 days of jail time credit. Nothing changed by virtue of the December 31, 2012 order. As stated earlier, the order that affected his substantial rights was the sentencing order entered November 13, 2012. The trial court’s denial of his motion for jail time credit did not affect a substantial right. *State v. Lemaster*, 4th Dist. No. 02CA20, 2003-Ohio-4557 (denial of motion to correct and/or modify sentence was not final appealable order because it did not affect a substantial right); *State v. Tully*, 5th Dist No. 2001CA313, 2002-Ohio-1290 (denial of request for jail time credit was not final appealable order because it did not affect a substantial right).

Manuel argues that because R.C. 2929.19(B)(2)(g) now allows a party to request a hearing on the jail time credit calculation prior to the trial court issuing the final

sentencing order, gives an offender the discretion to file a motion to correct any errors in calculating jail time credit, and gives the trial court continuing jurisdiction and discretion to grant or deny the motion, the legislature has created a “special proceeding” under R.C. 2505.02(B)(2) and a denial of a motion to correct jail time credit is now a final, appealable order. We do not need to determine if the amendments to R.C. 2929.19(B)(2)(g) creates a “special proceeding” under R.C. 2505.02(B)(2) because, as we have already held, the order does not affect a substantial right. R.C. 2505.02(B)(2) requires both that the order arise from a special proceeding and that it affect a substantial right.

We note that a trial court may amend the jail time credit awarded in its final sentencing entry to correct a clerical mistake or a mathematical error pursuant to Crim.R. 36. See *State v. McLain*, 6th Dist. No. L-07-1164, 2008-Ohio-481, and *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840. And, a trial court’s denial of a motion to correct jail time credit may be a final appealable order if the trial court refuses to correct a clerical mistake or mathematical error in calculating jail time. *McLain* at ¶ 11. However, because Manuel is seeking credit for a category of time that he claims he is entitled to based upon her interpretation of existing case law and to have that time be applied equally to all of his criminal cases, we determine that he is making a substantive claim for jail time credit rather than seeking to correct a calculation error by the trial court. See *Chafin* at ¶ 12.

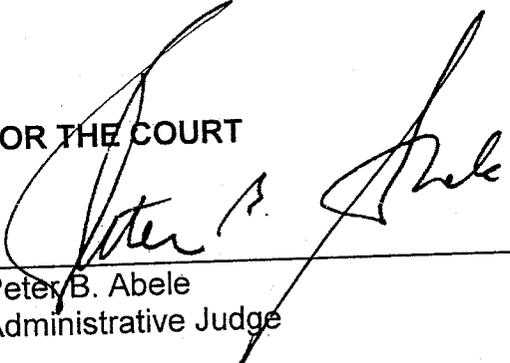
### III.

We conclude that Manuel should have appealed the trial court’s calculation of his jail time credit on direct appeal. Because the trial court’s entry denying her motion for jail time credit is not a final appealable order, we do not have jurisdiction to consider this appeal from that entry. Therefore, we **DISMISS** this appeal.

The clerk shall serve a copy of this order on all counsel of record at their last known addresses. The clerk shall serve appellant by certified mail, return receipt requested. If returned unserved, the clerk shall serve appellant by ordinary mail. **SO ORDERED.**

Harsha, J. & McFarland, J.: Concur.

FOR THE COURT



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Peter B. Abele  
Administrative Judge