

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Case No. 13-0818

Appellee,

On Appeal from the Ross County Court
of Appeals, Fourth District
Case No. : 13CA3365

v.

RICKY L. MANUEL,

Appellant.

MEMORANDUM IN RESPONSE
OF APPELLEE STATE OF OHIO

OFFICE OF THE OHIO PUBLIC DEFENDER

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FILED
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SUPREME COURT OF OHIO

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EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION

Appellant claims that this case should be heard by this Court in order to protect the basic right of inmates to receive the appropriate amount of jail time credit when sentenced to prison, a right he claims is protected by the Equal Protection Clause of the Ohio and United States Constitutions. He argues that without appellate review of R.C. 2929.19(B)(2)(g), defendant's right to jail time credit is rendered meaningless.

Appellant fails to state the fact that he already possesses the protection of appellate review in determining the appropriate amount of jail time credit in the form of a direct appeal following the filing of his judgment entry of sentence. The Appellant did not avail himself of this protection in a timely fashion, and is now attempting a second bite at the apple in the form of appealing the trial court's denial to modify jail time credit under R.C. 2929.19(B)(2)(g).

ARGUMENT AGAINST APPELLANT'S PROPOSITION OF LAW

Appellant's Proposition of Law No. 1: 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)

The State is in an odd position in this particular case. The State of Ohio maintains that the Fourth District Court of Appeals was correct in their decision that the trial court's denial of the Appellant's motion for jail time credit was not a final appealable order, and thus, is not a matter which avails itself of the jurisdiction of this Court.

On the other hand, while the State disagrees that this Appellant is entitled to the jail time credit on each of the counts as requested in this appeal, the State feels that the trial court was incorrect in the jail time credit given by the trial court. The easiest way to describe the situation is that the State feels that the appropriate amount of jail time credit lies in between what was ordered by the trial court, and what is requested by the Appellant in this appeal.

Unfortunately, the State of Ohio did not have the opportunity to bring this argument when the motion for jail time credit was filed in the trial court following the filing of the original Judgment Entry of Sentence. That motion was summarily denied by the trial court.

The Fourth District Court of Appeals dismissed their appeal without argument on the merits based upon their finding that the trial court's Entry denying the motion for jail time credit was not a final appealable order.

The Appellant is correct that he was arrested on July 17, 2012. A fact that the Appellant leaves out is that he was arrested for one count of intimidation of a witness at that time. He remained incarcerated from that date until he was sent to the Ohio Department of Rehabilitation and Corrections following his change of plea and sentencing on November 2, 2012. The Appellant is correct that he was indicted on August 31, 2012 for one count of felony theft and two counts of intimidation of a witness. The Appellant is correct that he pled guilty to all three charges and was sentenced to 12 months in prison on each of the three counts concurrent to each other.

A fact that was not mention by the Appellant is that since he remained incarcerated until his indictment, he would have been served with a copy of the three count indictment

on August 31, 2012, the same date he was indicted. He would have been arraigned on the three count indictment on or about September 4, 2012, which would have been the Tuesday after the Labor Day holiday. At arraignment, his municipal court bond of \$25,000 with a 10% provision on the one count of intimidation was continued. That bond now, for the first time, held him in the Ross County Jail on all three charges.

At sentencing, the trial court granted the Appellant 109 days of jail time credit on the theft charge only.

The following is the jail time credit that should have been given to the Appellant according to the State of Ohio.

On one count of intimidation, the defendant was arrested on July 17, 2012, and held in lieu of bond until sentencing on November 2, 2012. Based upon this jail time credit would be:

July 17 – July 31	15 days
August	31 days
September	30 days
October	31 days
November 1 – November 2	<u>2 days</u>
	109 days

On the other count of intimidation, and the one count of theft, the defendant was held in lieu of bond from the date of his arraignment on September 4, 2012, until sentencing on November 2, 2012. His jail time credit on these counts would be:

September 4 – September 30	27 days
October	31 days

November 1 -- November 2

2 days

60 days

CONCLUSION

The State disagrees with the Appellant's argument that he is entitled to 122 days of jail time credit for each count on which he was sentenced for two reasons. The first reason is that there were not 122 days between his arrest on the one count of intimidation of a witness on July 17, 2012, and his sentencing on November 2, 2012. Only 109 days passed during that time.

The second reason is that the Appellant was only held in lieu of bond on the other count of intimidation of a witness and the one count of theft from his arraignment on September 4, 2012, until his sentencing on November 2, 2012. As such, he should only be entitled to 60 days of jail time credit on those two counts.

Respectfully submitted,

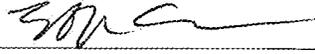
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon Stephen A. Goldmeier, Attorney for Appellant, at 250 East Broad Street, Suite 1400, Columbus, Ohio, 43215, by regular U.S. mail, this 20th day of June, 2013.



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