

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Plaintiff-Appellee

14-0061

-VS-

CARLTON R. LOGAN
Defendant-Appellant

:
:
:
: On Appeal From The Cuyahoga
: County Court Of Appeals, Eighth
: Appellate District.
:
: Court Of Appeals Case N.C.A.99434

MOTION FOR DELAYED APPEAL

Now comes Carlton R. Logan, respectfully moves the Court pursuant to Ohio Supreme Court Rule II, Section 2(A)(4)(a) for Leave to file a Delayed Appeal and Notice of Appeal. This case involves a felony and more than 45 days has passed since the Eighth District Court of Appeals render its decision in this case. Memorandum in Support is attached.

Respectfully Submitted

Carlton R. Logan

Carlton R. Logan
Grafton Correctional Inst
Inmate No. #274-790
2500 South Avon Belden Rd
Grafton, Ohio, 44044

RECEIVED
JAN 13 2014
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JAN 13 2014
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

On October 10,2013, the Eighth District Court of Appeals filed it's decision in Appellant's case. Which he have attached a copy of the Court of Appeals opinion to this motion.

The reasons for this delayed appeal as follow:

On October 15,2013, Defendant-Appellant ("herein Mr.Logan) received the Eighth District Court of Appeals opinion. he became ill during the process of typing his Notice of Appeal and Memorandum In Support of Jurisdiction to the Clerk of the Supreme Court of Ohio, Appealing the decision from the Cuyahoga County Court of Appeals, Eighth District Case No.99434 on October 10,2013 which the decision and Journal Entry journalizing the judgment in its entry.

Defendant-Appellant was well aware that the Notice of Appeal and Memorandum of Jurisdiction had to be filed with this Court Clerk before November 25,2013.

Due to circumstances beyond Defendant-Appellant control, he was unable to complete his Notice of Appeal and Memorandum In Support of Jurisdiction in time, he was hospitalize on October 31,2013 and remain in the hospital until December 23,2013 after having a life threatening surgery.

Due to this extraordinary circumstances and Defendant-Appellant have demonstrated that he had no control over the delay in filing the Notice of Appeal and Memorandum In Support of Jurisdiction he also attaches a copy of the document from the Institution that shows he was indeed in the hospital and unable to file the documents.

According to App.R.13 (A) states: Documents required or permitted to be filed in a Court of Appeals shall be filed with the clerk, filing may be accomplished by mail address to the clerk, but shall not be timely unless the documents are received by the clerk within the time fixed on the on the filing, except that briefs shall be deemed filed on the day of mailing.

In this case Defendant-Appellant also attaches a Affidavit from James Gilliam an Inmate at the Grafton Correctional Institution who states that on Friday November 15,2013, He had completed Defendant's Notice of Appeal and Memorandum In Support of Jurisdiction to this Honorable Court, which the Clerk stated that he/or she never received it. Which this Institution mailroom is known for holding inmates legal documents before sending them out.

The record in this case demonstrate every action Appellant Logan has made to satisfy the rules of every court in this State of Ohio.

If this Court grant this delayed appeal, Defendant-Appellant would raise the following issues:

- 1) Subject Matter Jurisdiction, The State of Ohio County of Cuyahoga acquire Jurisdiction from the Federal Government to prosecute Appellant. State started prosecution while Appellant was under the custody of the Federal Government without obtain jurisdiction.
- 2) Violation of the Double Jeopardy Clause.
- 3) Ineffective Assistance of Counsel Violation.

CONCLUSION

This Honorable Court should grant leave for a delayed appeal cause Defendant-Appellant did not have control over the circumstances which cause the delayed, And each issue to be raise are a Constitutional Violation.

Respectfully Submitted


Carlton R. Logan

Grafton Correctional Inst
2500 South Avon Belden Rd
Grafton, Ohio, 44044

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent by regular U.S. mail to the
Prosecuting Attorney for Cuyahoga County located at 1200 Ontario St. Cleveland, OH. 44113 on
this 6th day of January 2014.

A handwritten signature in cursive script that reads "Carlton R. Logan". The signature is written in black ink and is positioned above a horizontal line.

Carlton R. Logan

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Plaintiff-Appellee

On Appeal From The Cuyahoga
County Court of Appeal
Eighth District

-VS-

CARLTON R. LOGAN
Defendant-Appellant

Court of Appeals Case No.
C.A.99434

STATE OF OHIO)
) SS:
COUNTY OF LORAIN)

AFFIDAVIT OF APPELLANT
CARLTON R. LOGAN

I, Carlton R. Logan, being duly deposed in accordance with law, do hereby states that the following is true:

On October 15, 2013 Defendant-Appellant Logan received the Eighth District Court Of Appeal;s decision. Due to a life threatening illness and being hospitalize from October 31, 2013 to December 23, 2013, he was unable to complete his Notice of Appeal and Memorandum In Support of Jurisdiction himself.

Due to the extraordinary circumstances which beyond the control of Appellant which cause his filing to be untimely to file. Rule 7.01(A)(1), the Clerk of Courts.

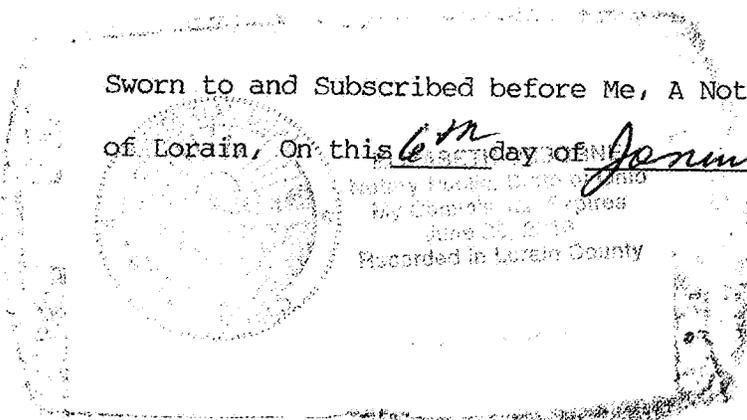
FURTHER AFFAINT SAYETH NAUGHT.

Carlton R. Logan
Carlton R. Logan

Sworn to and Subscribed before Me, A Notary Public In the State of Ohio County of Lorain, On this 6th day of January 2014.

Notary Public, State of Ohio
My Comm. Exp. Expires
June 30, 2014
Recorded in Lorain County

Elizabeth Osborne
Notary Public



AFFIDAVIT OF STEVE WEISHAR

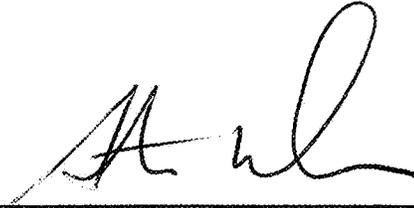
STATE OF OHIO

)
) ss:

COUNTY OF LORAIN

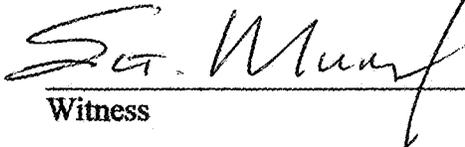
1. My name is Steve Weishar. I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge
2. Specifically, I am a Unit Manager at the Grafton Correctional Institution, located in Grafton, Ohio.
3. I am at all times a Staff member of the Ohio Department of Rehabilitations and Corrections,
4. That our records show that Inmate Carlton R. Logan, A-274-790 was in the Ohio State University Hospital during the period of time to include from 10-31-13 to 12-23-13.
5. I can be contacted to verify this information during regular business hours here at the Grafton Correctional Institution.

FURTHER AFFIANT SAYETH NAUGHT



Steve Weishar
Unit Manager- G.C.I.

Sworn to before me and subscribed in my presence on this ___ day of January 2014.



Witness



Witness

10/31-1/3 to 12/23/13

HOSPITAL

- OSU -

See P 12/30/13

Case No: 099434

STATE OF OHIO VS. CARLTON
R. LOGAN

Decision Date: 10/10/2013
Affirmed.>Larry A. Jones, Sr., J.,
Melody J. Stewart, A.J., and
Eileen A. Gallagher, J., concur.

JONES, SR., L., P.J.
STEWART, M., J., CONCURS
GALLAGHER, E., J., CONCURS

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FROM:
Court of Appeals of Ohio
Eighth Appellate District
One Lakeside Ave.
Cleveland, Ohio 44113
(216) 443-6350
Date: 10/16/2013

TO:
CARLTON R. LOGAN
INMATE #274-790
2500 SOUTH AVON-BELDEN ROAD
GRAFTON, OH 44044

A3
148

OCT 10 2013

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99434

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARLTON R. LOGAN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-272143

BEFORE: Jones, J., Stewart, A.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: October 10, 2013



FOR APPELLANT

Carlton Logan, Pro se
Inmate #274-790
Grafton Correctional Institution
2500 South Avon-Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: T. Allan Regas
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

COPIES MAILED TO COUNSEL FOR
ALL PARTIES--COSTS TAXED

FILED AND JOURNALIZED
PER APP.R. 22(C)

OCT 10 2013

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Deputy

LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant, Carlton Logan, appeals from the trial court's December 2012 judgment granting his motion for jail-time credit, but for only 120 days instead of the requested 638 days. We affirm.

I. Procedural History

{¶2} In October 1991, Logan was charged by the Cuyahoga County Grand Jury with numerous crimes. The case proceeded to a jury trial in May 1992, and the jury found him guilty of 14 of the 16 indicted counts. The trial court sentenced Logan to a 21-year sentence for gun specifications, to be served prior to an aggregate indefinite sentence of 15 to 125 years for the underlying offenses.

{¶3} Logan's convictions were affirmed by this court. *State v. Logan*, 8th Dist. Cuyahoga No. 63945, 1993 Ohio App. LEXIS 5389 (Nov. 10, 1993), *reopening denied*, *State v. Logan*, motion no. 318981; *appeal not allowed*, 91 Ohio St.3d 1446, 742 N.E.2d 144 (2001) (Table No. 00-2262).

{¶4} In October 2012, Logan filed a motion for jail-time credit, seeking credit for 638 days. The trial court granted the motion, but gave Logan credit for only 120 days.

{¶5} Carlton now raises the following two assignments of error for our review:

[I.] The trial court improperly denied Defendant-Appellant the full 638 days of Jail Time Credit he is legally entitle[d] to.

[II.] The trial Court Erred when it charge[d] and convicted Appellant when it did not have Jurisdiction over the Subject Matter.

II. Law and Analysis

{¶6} In his motion for credit, made under R.C. 2967.191,¹ Logan sought credit for 7 days he served in the Euclid city jail from September 13, 1991, through September 20, 1991, and 631 days he served in the Lake County jail from September 20, 1991, through June 23, 1993. Logan attached the "Appearance and Execution Criminal Docket" from this case as the sole exhibit to his motion.

{¶7} Relative to the issue here, the docket reflects that Logan was indicted in this case on October 18, 1991. The first entry on the public online docket of the Cuyahoga County Clerk of Courts' office, dated November 6, 1991, reads: "In the request of the defendant, case continued to November 8, 1991. Prosecutors are filing a writ to bring defendant back from Lake County."

{¶8} By Logan's own admission, he turned himself in on September 13, 1991 to the Bureau of Alcohol, Tobacco and Firearms, a federal agency, and was

¹R.C. 2967.191, states in relevant part that the department of rehabilitation and correction "shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial * * * as determined by the sentencing court under division (B)(2)(g)(i) of section 2929.19 of the Revised Code * * *."

“transferred to the Euclid City Jail to be housed as a federal prisoner * * *.” Logan’s Brief, p. 1. Logan further admits that on “September 20, 1991, the United States Marshals transferred [him] from the Euclid City Jail * * * to the Lake County [Jail] * * *.” *Id.*

{¶9} Logan was being held on federal charges at the time the state indicted him in this case.² Jail-time credit is to be applied to an inmate’s sentence only for confinement related to the specific case in which that sentence is imposed, even if the inmate’s state and federal sentences arose from the same conduct. *State ex rel. Carter v. Wilkinson*, 10th Dist. Franklin No. 03AP-737, 2004-Ohio-3386, ¶ 8.

{¶10} In light of the above, Logan was not entitled to “double” credit for the time he was incarcerated as a federal prisoner.³ The first assignment of error is, therefore, overruled.

{¶11} For his second assigned error, Logan contends that the trial court did not have jurisdiction over him because he was subject to prosecution by the

²See also this court’s opinion from his direct appeal stating, in resolving Logan’s speedy trial assigned error, that “at the time of the instant indictment, [Logan] was already being held on federal charges. The State in fact, issued a writ of *habeas corpus* to U.S. Marshals, to have [Logan] transferred from Lake County Jail to Cuyahoga County Jail for arraignment in the instant case.” (Emphasis sic.) *Logan*, 8th Dist. Cuyahoga No. 63943, 1993 Ohio App. LEXIS 5389, at *13.

³Logan even admits in his reply brief that he was given credit for time served in his federal case starting September 13, 1991. See Reply Brief, p. 3.

federal government.⁴ The doctrine implicated in Logan's second contention is that of dual sovereignty.

{¶12} The doctrine of dual sovereignty provides that a defendant may be subjected to successive trials at both the state and federal levels for the same act or offense. *Moore v. Illinois*, 55 U.S. 13, 14 L.Ed. 306 (1852), syllabus. The doctrine was developed in order to avoid having state prosecutions hinder federal law enforcement by barring federal prosecutions based on the same acts. *United States v. Lanza*, 260 U.S. 377, 382, 43 S.Ct. 141, 67 L.Ed. 314 (1922).

{¶13} The Ohio Supreme Court has applied the dual sovereignty doctrine relative to federal and state prosecutions of the same criminal conduct, stating:

[W]e are of the opinion that the power of a state to prosecute under state law for the same act a defendant who has already been prosecuted under federal law satisfies a legitimate state interest in preserving "the historic right and obligation of the States to maintain peace and order within their confines."

State v. Fletcher, 26 Ohio St.2d 221, 226-227, 271 N.E.2d 567 (1971), quoting *Bartkus v. Illinois*, 359 U.S. 121, 137, 79 S.Ct. 676, 3 L.Ed.2d 684 (1959).

{¶14} In light of the above, the trial court had jurisdiction over the state's case against Logan. The second assignment of error is, therefore, overruled.

{¶15} Judgment affirmed.

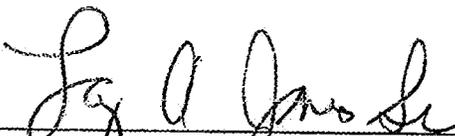
⁴A jurisdictional defect cannot be waived. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998); see also *Eisenberg v. Peyton*, 56 Ohio App.2d 144, 148, 381 N.E.2d 1136 (8th Dist.1978). Since it cannot be waived, jurisdiction can be raised at anytime even on appeal for the first time. *Id.*

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



LARRY A. JONES, SR., JUDGE

MELODY J. STEWART, A.J., and
EILEEN A. GALLAGHER, J., CONCUR