

ORIGINAL

IN THE SUPREME COURT OF OHIO

CARLTON LOGAN

Appellant,

Vs.

STATE OF OHIO

Appellee.

14-0061

On Appeal from the Cuyahoga  
County Court of Appeals  
Eighth Appellate District

Court of Appeals  
Case No. 99434

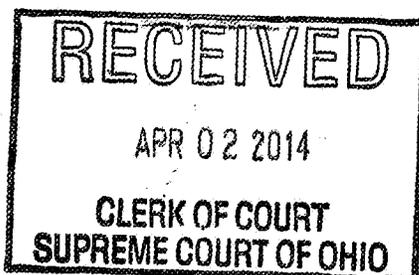
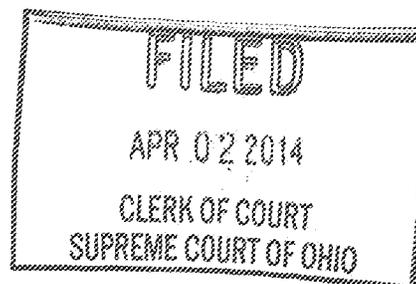
MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT CARLTON LOGAN

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**PROPOSITION OF LAW I**

**THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT DENYING HIM HIS RIGHT TO DUE PROCESS WHEN IT IMPROPERLY DENIED APPELLANT THE FIVE HUNDRED EIGHTEEN (518) DAYS IN JAIL TIME CREDIT HE IS DUE FOR TIME SPENT IN A DETENTION FACILITY ON THESE CHARGES PURSUANT TO O. R. C. § 2967.191, WHILE EITHER IN LIEU OF BOND OR FINAL RESOLUTION OF THE DEFENDANT’ SENTENCE.**

**Question for review:**

Did the Trial Court abuse its discretion when it denied appellant his days of confinement under the underlying charges in this case when he spent time in a state facility under federal detention, and the charges were ran concurrent to each other?

**PROPOSITION OF LAW II**

**THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT WHEN IT CHARGED AND CONVICTED APPELLANT WHEN THE COURT LACKED SUBJECT MATTER JURISDICTION AND/ OR VENUE TO PROCEED IN CUYAHOGA COUNTY WHEN APPELLANT WAS UNDER PENDING FEDERAL CHARGES.**

**Question for review:**

Did the trial court commit reversible error when it adjudicated the State charges against appellant when he was in fact was previously indicted one year earlier and under detention by the federal court who established subject matter jurisdiction and venue first over appellant?

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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case involves a substantial question of great general interest to the people of the State of Ohio, as it pertains to subject matter jurisdiction and/ or venue.

Appellant believes this Honorable Court should take up this appeal as a discretionary appeal and answer the questions to satisfy those appellants now and future appellants who are being illegally tried and convicted when a superseding indictment on like or exact charges is filed in the United States District Court and the State of Ohio in violation of the jurisdictional priority rule, illegally tries and convicts defendants without subject matter jurisdiction. This court must establish a bright line rule to stop the violations of the United States Constitution that occurs in all of Ohio's Eight-eight County Common Pleas Courts and the Twelve Appellate District Courts because they lack clear direction from this court.

## STATEMENT OF THE CASE AND FACTS

On September 13, 1991, Appellant turned himself in to an ATF Agent, on an outstanding warrant issued by the United States District Court. He was put under arrest and booked. His bond hearing was continued until September 20, 1991 on Firearm and Weapons charges. He was delivered to the Euclid City Jail (a Federal Holding facility) as a federal prisoner. On the second shift, the Euclid City Jail processed him in, but made a mistake and booked him in as a State of Ohio prisoner. The prosecution for the City of Euclid subsequently charged Appellant with three (3) counts of Aggravated Robbery with firearm specifications on each count. He was taken to be initially charged in the Euclid City Court on Monday September 16, 1991 and was given a cash bond of five-hundred thousand dollars (\$500,000.00).

On September 20, 1991, the United States Marshalls picked up Appellant at the Euclid City Jail and took him to a hearing for a bond on the Firearm and Weapons charges at a Federal Court House. During transportation the Marshalls were informed that Appellant was being mistreated in the Euclid facility, and when they arrived back at the city jail they questioned the receiving officer as to why a federal prisoner was being treated in an unacceptable manner. The receiving officer informed the Marshall's that the appellant was a state prisoner. Based on this new information the federal Marshall's took Appellant to Lake County to be housed there in lieu of the unacceptable conditions at the Euclid City jail. Appellant remained there until sometime on/or about the 13<sup>th</sup> January 1992 when the State of Ohio Cuyahoga County, had the Appellant transported back to Cleveland to answer the Aggravated Robbery w/ the firearm specification charges.

The Appellant proceeded to a jury trial where he was found guilty on May 18, 1992 of Aggravated Robbery with firearm specifications on counts 1 and 2, Felonious Assault with

firearm specification on count 5, Kidnapping with a firearm specification on count 6, Having a Weapon under disability on count 7, Disruption of Public Service with a firearm specification on count 8, Rape with a firearm specification on counts 9, 10, 11, 12, 13, 14, and Failure to Comply with the Order/Signal of a Police Officer with a firearm specification on count 15, and Felonious Sexual Penetration with a firearm specification on count 16, counts 3 and 4 were dismissed.

On May 20, 1992, the Appellant was sentenced to ODRC to the following terms of incarceration. Count 1, 15 to 25 years, Count 2, 15 to 25 years, and Count 8, 4 to 10 years all to run concurrent to each other. One Firearm specification sentenced to 3 years consecutive to but prior to the Counts 1, 2, & 8. Count 5, 12 to 15 years w a three-year firearm specification consecutive to the other counts. Count 6, 15 to 25 years and three-year firearm specification consecutive to other counts. Count 7, 3 to 5 years and a three-year firearm specification consecutive to and prior to the sentence in Count 7. Counts 9, 10, & 11, 15 to 25 years concurrent to each other but consecutive to the other counts w/firearm specification three years prior to those counts and prior to Counts 12, 13, 14, & 16, 15 years to 25 years, concurrent to each other but consecutive to the other terms and a three- year firearm specification to be served prior to and consecutive to the other counts. Count 15, 3 to 5 years consecutive to the other counts failure to comply with the order/signal of a police officer w/firearm specification count, and Felonious Sexual penetration w/ firearm specification count 16, consecutive to the other counts with three-year firearm specifications to be consecutive to the term of incarceration but before the actual term. Defendant filed a timely appeal and was affirmed.

Appellant after the State of Ohio sentenced him, on or about May 21, 1992 was immediately returned to Lake County as a convicted "State Prisoner" by the U.S. Marshall's, *on leave from state custody* to answer his Federal Charges. On/or about November 4, 1992

Appellant pled guilty to Federal charges and, was found guilty by the court who deferred sentencing until a PSR was prepared. On May 12, 1993, the U.S. District Court sentenced the Appellant to one-hundred eighty (180) eighty months imprisonment to run concurrent w/ith State of Ohio Cuyahoga County Case No. 272143(B). Appellant was given credit for time served since 9/13/91. Appellant was eventually transferred to the Reception center in Milan Michigan for the Board of Prisons to determine his parent institution. While there, it was determined that the needs of the Defendant, the Federal Government and the State of Ohio would be best met if he was transferred to the custody of the ODRC. He was then taken by the United States Marshalls on/or about June 23, 1993, to the Reception Center at Lorain Correctional Institution Grafton, OH.

For purposes of this appeal, the Appellant filed a Motion to Correct Jail-time credit after positing that he was entitled to six-hundred thirty eight days (638) of credit for confinement prior to being delivered into the custody of the Ohio Department of Rehabilitation and Corrections June 23, 1993at LORCI in Grafton, OH. The Trial Court only granted him a total of one-hundred twenty (120) days credit, for his stay in the Cuyahoga County jail. A timely Appeal was filed from that decision of December 28, 2012 to the Eight District Court of Appeals whom affirmed the trial courts mistake on October 10,2013 in Case Number 99434. Appellant was in the hospital when he was required to timely file a Notice of Appeal and Memorandum in Support of Jurisdiction, to this Honorable Court. Appellant filed a Motion for Delayed Appeal and the Chief Justice granted it on March 12, 2014, with instructions to appellant to file his Memorandum in Support within thirty (30) days. Thus, this Memorandum in Support of Jurisdiction is timely before this Honorable Court for consideration.

## PROPOSITION OF LAW I

**THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT DENYING HIM HIS RIGHT TO DUE PROCESS WHEN IT IMPROPERLY DENIED APPELLANT THE FIVE HUNDRED EIGHTEEN (518) DAYS IN JAIL TIME CREDIT HE IS DUE FOR TIME SPENT IN A DETENTION FACILITY ON THESE CHARGES PURSUANT TO O. R. C. § 2967.191, WHILE EITHER IN LIEU OF BOND OR FINAL RESOLUTION OF THE DEFENDANT' SENTENCE.**

### Question for review:

Did the Trial Court abuse its discretion when it denied appellant his days of confinement under the underlying charges in this case when he spent time in a state facility under federal detention, and the charges were ran concurrent to each other?

### Argument

On September 13, 1991, Appellant turned himself in to an ATF Agent, on an outstanding warrant issued by the United States District Court. He was put under arrest and booked.

On September 20, 1991, the United States Marshalls picked up Appellant at the Euclid City Jail and took him to a hearing for a bond on the Firearm and Weapons charges at a Federal Court House. During transportation the Marshalls were informed that Appellant was being mistreated in the Euclid facility, and when they arrived back at the city jail they questioned the receiving officer as to why a federal prisoner was being treated in an unacceptable manner. The receiving officer informed the Marshall's that the appellant was a state prisoner. Based on this new information the federal Marshall's took Appellant to Lake County to be housed there in lieu of the unacceptable conditions at the Euclid City jail. Appellant remained there until sometime on/or about the 13<sup>th</sup> January 1992 when the State of Ohio Cuyahoga County, had the Appellant transported back to Cleveland, OH., to answer the Aggravated Robbery with the firearm specification charges.

The Appellant proceeded to a jury trial where he was found guilty on May 18, 1992.

Appellant after the State of Ohio sentenced him he was immediately returned on or about May 21, 1992 by the U.S. Marshall's to Lake County as a convicted "State Prisoner" on leave to answer his Federal Charges. On/or about November 4, 1992 Appellant pled guilty to the charges and was found guilty by the court. They deferred sentencing until a PSR was prepared. On May 12, 1993, when the U.S. District Court sentenced the Appellant to one-hundred eighty (180) months imprisonment to run concurrent with the State of Ohio Cuyahoga County Case No. 272143(B). He was given jail-time credit for time served since 9/13/91. Appellant was eventually transferred to the Reception center in Milan Michigan for the Board of Prisons to determine his parent institution. While there it was determined that the needs of the Defendant, the Federal Government and the State of Ohio would be best met if he was transferred to the custody of the ODRC. He was then taken on/or about June 23, 1993, by the United States Marshalls, to the Reception Center at Lorain Correctional Institution Grafton, OH..

Appellant filed for jail-time credit of 638 days against his state sentences that were run concurrent to the federal sentence meted out in the United States District Court, while he was awaiting trial in the state case and while he was awaiting disposition of the Federal Case as a borrowed State prisoner to adjudicate his Federal charges.

The Trial Court granted only granted him a total of one-hundred twenty (120) days jail-time credit on December 28, 2012 and a timely Appeal was taken in the Eight District Court of Appeals which affirmed on October 10,2013 in Case Number 99434.

The days of confinement for which Appellant is entitled to break down like this.

<b>Place of Confinement</b>	<b>Date In</b>	<b>Date Out</b>	<b>Days Confined</b>
<b>Euclid City Jail</b>	<b>9-13-1991</b>	<b>9-20-1991</b>	<b>7</b>
<b>Lake County Jail</b>	<b>9-20-1991</b>	<b>01-13-1992</b>	<b>115</b>

<b>Cuyahoga Cnty Jail</b>	<b>01-13-1992</b>	<b>05-21-1992</b>	<b>128</b>
<b>Lake County Jail &amp; FBOP Milan Mich.</b>	<b>05-21-1992</b>	<b>06-23-1993</b>	<b>398</b>

Defendant was indicted in the State of Ohio Cuyahoga County Case No. CR 272143 on October 18, 1991, long after he was initially arrested for the Federal Charges on September 13, 1991. The Defendant was given jail-time credit in his Federal Case No. 1:90-CR-00275-DCN. (At Doc. 93) He was given credit for time served since September 13, 1991) and was sentenced to his federal time run concurrent to his state time.

When sentenced to concurrent prison terms for multiple charges, jail time credit must be applied toward each concurrent prison term; applying credit to only one term only would in effect negate the credit for the time the offender was being held and would violate the Equal Protection Clause; abrogating *State v. Eble* 2004 WL 2895062. U.S.C.A. Constitutional Amendment 14, Article 1 &2; R.C. §2967.191

This is the holding of this Honorable Court in *State v. Fugate*, 117 Ohio St 3d. 261, 2000-Ohio-856.

Directly analogous to this appellant's situation in *State v. Anderson*, 1919 Ohio App. 3d 129, 945 N. E. 2d 527, 2010-Ohio-4525, in which Anderson raised a single assignment of error regarding the denial of this motion for jail-time credit by the trial court. *Anderson* like defendant relied upon *Fugate* to support his contention. The *Fugate* court clarified how jail-time credit is to be applied when multiple terms are imposed concurrently rather than consecutively, at ¶16.

*Anderson* found that when a defendant is sentenced to concurrent terms, credit must be applied against all terms, because the sentences are served simultaneously. If an offender were sentenced

to concurrent terms, applying credit to only one term would in effect negate the credit for the time the offender has been held. To deny such credit would constitute a violation of the equal protection clause. Therefore, the *Anderson* court held that when a defendant is sentenced to concurrent prison terms for multiple charges, jail time credit pursuant to R.C. §2967.191 must be applied toward each prison term. *Fugate* at ¶22.

At ¶17 the *Anderson* court went on discussing *Fugate*; “[w]e have held that the date on which a subsequent offense was committed is irrelevant to the analysis and result in the holding in *Fugate* requires.” *State v. Cole*, Montgomery App. No, 23327, 2009-Ohio-4580, @¶13 the court reasoned; “[S]o long as two or more sentences are imposed concurrently, the jail-time credit applicable to each sentence applies to each term of incarceration made concurrent. On that basis, any shorter jail-time credit is subsumed into the longest jail-time credit available for any concurrent sentence.” Otherwise the defendant is denied the credit to which he is entitled for that longer term, as stated in ¶18 of *Anderson*.

*The appellant was a borrowed prisoner from the State of Ohio to adjudicate his Federal charges, which arose from the same animus. As such, he was a state prisoner, always. With all due respect, the trial court erred and the Appellate Court compounded that error, when in failed to give the appellant the six hundred thirty-eight (638) days arising from his confinement on the state charges. His time never stopped running when he went back to Lake County as the Courts and the State of Ohio have incorrectly reasoned.*

Appellant prays this honorable court follow the directions of itself in *Fugate* and, award the appellant the entire time he is due and entitled in jail-time credit.

## **PROPOSITION OF LAW II**

**THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT WHEN IT CHARGED AND CONVICTED APPELLANT WHEN THE COURT LACKED SUBJECT MATTER JURISDICTION AND/ OR VENUE TO PROCEED IN CUYAHOGA COUNTY WHEN APPELLANT WAS UNDER PENDING FEDERAL CHARGES.**

### **Question for review:**

Did the trial court commit reversible error when it adjudicated the State charges against appellant when he was in fact was previously indicted one year earlier and under detention by the federal court who established subject matter jurisdiction and venue first over appellant?

### **Argument**

Appellant submits that the trial court did not have jurisdiction over him while he was in the custody of the federal government, although the state eventually filed and used a Writ of Habeas Corpus to justify illegally taking Defendant to the Cuyahoga County Jail. When they took custody of him, it had no documentation to remove him from the custody of the United States. This is not formal extradition under R.C. §2963.01 and a failure to file formal extradition proceedings to proceed to prosecution on the state charges makes the appellants conviction and sentence void. In *State v. Owens*, 181 Ohio App. 3d 725, 2009-Ohio-1508, 910 N. E. 2d 1059, 2009 Ohio App. Lexis 1302, the Seventh Appellate District made it abundantly clear that the State did not impose a valid sentence by (1) video conference, (2) filing formal extradition proceedings under R. C. §2963.01 or, (3) seeking his waiver of his presence at sentencing, In this instant case, the State of Ohio did not file a Writ of Habeas Corpus until after the State proceeded prosecution and that is a violation of the Appellant's right to Due Process under the 5<sup>th</sup> Amendment to the United States Constitution brought applicable to the State Court under the 14<sup>th</sup> Amendment. The State illegally proceeded prosecution against appellant before filing a Writ

of Habeas Corpus. This is illegally taking custody of him and transporting him to answer the State of Ohio Cuyahoga County charges, without filing the proper extradition papers.

The law makes clear that “[n]o person arrested upon a warrant under O.R.C. 2963.07 shall be delivered to the agent who demanded him and was appointed to receive him, unless such accused person is first taken forthwith before a Judge of a Court of record in the State, who shall inform him of the demand made for his surrender and he be apprised of the crime for which he is charged, and advised of his right to procure counsel.” If the prisoner or his counsel desires to test the legality of his arrest, the judge shall fix a reasonable period in which he be allowed to challenge his removal and apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and the time and place of the hearing thereon it shall be given to the prosecuting officer of the county in which the arrest is made and where the accused is in custody, and to the other agent of the demanding state.

The record in this case demonstrates that the State of Ohio filed a “Writ of Habeas Corpus after they proceeded prosecution on the appellant September 13, 1991, while appellant was in the custody of the United States Federal Government in the Euclid City Jail and later the Lake County Jail .This resulted in the State of Ohio having *no* jurisdiction to begin proceedings against Appellant. They did not comply with the statutory requirements. This denied appellant his right to due process.

A judgment of conviction is rendered void if the trial court had no jurisdiction. It is the function and duty of a court to apply the law as written and occasionally construe the meaning of statues, but not defeat them. Any attempt by a court to disregard the mandatory statutory requirements of a proceeding and taking jurisdiction of a defendant renders the attempted proceeding void , even if the Court believes it is acting upon a request of an accused. *State v.*

*Perry* (1967), 10 Ohio St, 175, 390 O. 2d 189, and 226 N. E. 2d 104, also see *State v. Pless* 74 Ohio St 3d 333, 658 N. E. 2d 766 ¶2 of the syllabus, *State v. Parker*, 95 Ohio St 3d. 524, 2002-Ohio-2833 769 N. E. 2d 846, 4122, and *U. S. v. Cotton* (2002) 535 U.S. 625, 630, 122 S. Ct. 1781, L. E. 2d 860.

Recently in a case from the United States District, *Kathy Young, Et Al., Plaintiff, Vs. First Merit Bank, NA*, Case No. 1:06CV1486, 2007 U.S. Dist. LEXIS 7450, the court opined:

The "jurisdictional priority rule" specifies that, between state courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties. *State ex rel Shimko v. McMonagle*, (2001) 92 Ohio St. 3d 426, 429, 2001 Ohio 301, 751 N.E.2d 472 "[i]n general, the jurisdictional priority rule applies when the causes of action are the same in both cases, and if the first case does not involve the same cause of action or the same parties as the second case, the first case will not prevent the second." *State ex rel Shimko* at 429, citing *State ex rel. Red Head Brass, Inc. v. Holmes Cty. Court of Common Pleas* (1997), 80 Ohio St.3d 149, 151, 1997 Ohio 143, 684 N.E.2d 1234, 1236. Therefore, under Ohio law, the first-filed case excludes all other tribunals from adjudicating the same claims with the same parties. Since this case was removed from state court, the logic of the first-file rule militates in favor of giving deference to the first-filed case.

The jurisdiction priority rule prevailing in this state provides that, as between courts of concurrent jurisdiction (like appellant) the tribunal whose power is first invoked by institution of power proceedings acquires jurisdiction, to the ***exclusion of all other tribunals***, to adjudicate upon all of the issues and to settle the rights of the parties. *State ex. re; Redhead Brass Inc. v.*

*Holmes County Court of Common Pleas*. This rule applies in criminal cases, see *State v. Urvan* (1982) Ohio App. 3d 151, 4 O.B.R. 244, 446 N.E. 2d 1161, where the court of appeals opined:

- At ¶1 “When an offender commits more than one offense in different jurisdictions as ‘part of a course of criminal conduct,’ the venue may be lodged for all of the offenses in any one jurisdiction where such offense or element there occurred R.C. §2901.12 (H)”
- At ¶2 “The state may not, either by design or inadvertence, separate charges originating in one course of criminal conduct, and pursue them separately in the courts of more than one county even though the venue could be laid in any one of the counties under R.C. §2901.12 (H).”
- At ¶3 “Once a county or state with subject matter jurisdiction of an alleged crime or crimes under R.C. §2901.12 (H) takes actions on any one of them, it preempts jurisdiction for all offenses originating in the same course of criminal conduct and the jurisdiction of the charges is not affected by their disposition.\*\*\*”
- At ¶5 “The state is not permitted to split venue for charges growing out of a single ‘course of criminal conduct’ in order to bring successive prosecutions on one or more charges.”

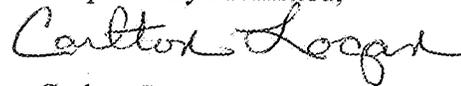
The appellant submits that the within convictions in both the State and Federal Court were a single criminal course of conduct.

The Cuyahoga County indictment and conviction specifically states and thereby proves a substantial overlap in the alleged criminal activity in the underlying State and Federal charges. The File stamped copy, by the Clerk of Court, on the pronouncement of sentence, along with the Cuyahoga County Docket statement, establishes unambiguously that **the United States Federal District Court invoked jurisdiction, first when it indicted Appellant on October 18, 1990**, which was one year prior to the state’s indictment. The jurisdiction priority rule, as well as the judicial interpretation of R.C. §2901.12 (H),( the venue statute) require that the arrest, indictment and subsequent conviction after the United States District Court and Grand Jury acted, must be reversed and remanded with instructions for dismissal.

## CONCLUSION

The record of this case reflects that Appellant is due 518 days of jail-time credit. The State of Ohio did not file the proper paperwork in advance of the Federal Court to obtain subject matter jurisdiction. No matter how much the State wishes it had complied with the statutory requirements, they did not file an indictment, or a Writ of Habeas Corpus until after it proceeded prosecution while it did *not* have jurisdiction, to do so. Wherefore, it is incumbent on this honorable court to accept this discretionary appeal and, allow Appellant to file a merit brief to resolve the issue so that other defendant/ appellants are afforded their right to Due Process under clear guidance from this Honorable.

Respectfully submitted,



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### *Certificate of Service*

I certify that a true copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for the Cuyahoga County Prosecutors Office at 1200 Ontario St. Cleveland, OH. 44113, on this 20<sup>th</sup> day of March 2014.



Carlton Logan  
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OCT 1-0 2013

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 99434

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STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARLTON R. LOGAN

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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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



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ALL PARTIES--COSTS TAXED

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

OCT 10 2013

CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By [Signature] 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. 63943, 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,<sup>1</sup> 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

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<sup>1</sup>R.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.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>2</sup>See 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.

<sup>3</sup>Logan 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.<sup>4</sup> 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.

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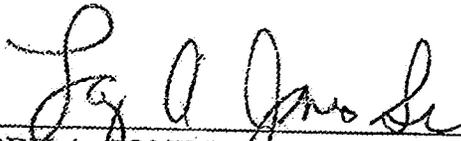
<sup>4</sup>A jurisdictional defect cannot be waived. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998); see also *Eisenberg v. Peyton*, 56 Ohio App.2d 144, 148, 381 N.E.2d 1136 (8th Dist.1978). Since it cannot be waived, jurisdiction can be raised at anytime even on appeal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



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LARRY A. JONES, SR., JUDGE

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

The Supreme Court of Ohio

FILED

MAR 12 2014

CLERK OF COURT  
SUPREME COURT OF OHIO

State of Ohio

Case No. 2014-0061

v.

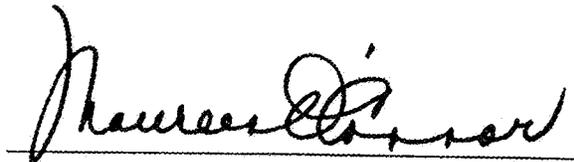
ENTRY

Carlton R. Logan

Upon consideration of appellant's motion for a delayed appeal, it is ordered by the court that the motion is granted.

It is further ordered by the court that appellant shall file a memorandum in support of jurisdiction within thirty days from the date of this entry.

(Cuyahoga County Court of Appeals; No. 99434)



Maureen O'Connor  
Chief Justice