

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

LOWELL W. THOMPSON,

Defendant-Appellant.

:
: Case No. **14-1230**
:
: On Discretionary Appeal from the
: Madison County Court of Appeals,
: 12th Appellate District,
: Case No. CA2014-04-010
:
:

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
DEFENDANT-APPELLANT LOWELL W. THOMPSON**

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

The right to credit for time served in confinement is fundamental and protected by the Equal Protection Clauses of the Ohio and United States Constitutions. Ohio's legislature recognized the difficulties defendants face in protecting this basic right. To remedy this difficulty, the legislature created a special proceeding, through R.C. 2929.19(B)(2)(g)(iii), giving trial courts jurisdiction to correct jail-time-credit errors. This Court should accept this case and hold that a trial court's findings, when made under that section, result in a final, appealable order.

The Fourth District Court of Appeals has held explicitly that the denial of a motion under R.C. 2929.19(B)(2)(g) is a final, appealable order. Other districts have allowed direct appeals of decisions denying such motions filed after the amended statute took effect. And, the Ninth District has recognized the new statute might overrule old case law barring appeal from jail-time-credit decisions. Yet, the Twelfth District has held that the denial of a motion for jail-time credit is not a final, appealable order. That is in conflict with other Ohio courts, the revised R.C. 2929.19(B)(2)(g), and the equal protection associated with jail-time credit.

The amendments to R.C. 2929.19(B)(2)(g) regarding jail-time credit are rendered meaningless without appellate review. Unless this Court accepts this case, Mr. Thompson, and defendants like him, will be illegally confined without appellate review. This Court should accept this case to preserve the legislature's purpose to protect Ohio inmates' rights to equal protection.

STATEMENT OF THE CASE AND FACTS

On April 18, 2010, Lowell W. Thompson was arrested. He was held in jail for 87 days based on a holdover from the Madison County Court of Common Pleas, as well as for a federal investigation of the same matter that led to his arrest. On July 13, 2010, the federal investigation ended, and Mr. Thompson was ordered released. However, the next day, the Madison County Court of Common Pleas issued an indictment related to the same conduct for which Mr. Thompson was being held. Mr. Thompson was transferred to the Madison County Jail, where he was held for 187 days until the disposition of his felony charges. Mr. Thompson entered a guilty plea and was sentenced to 25 years in prison. He was transferred to the Ohio Department of Rehabilitation and Correction on January 18, 2011. Mr. Thompson filed a motion for leave to file a delayed appeal from his guilty plea, but that motion was denied.

Mr. Thompson soon realized that he was denied 87 days of credit for confinement arising from the offenses that led to his felony convictions. He was only credited for the 187 days he spent in the Madison County Jail, and not the 87 days during which he was confined in Franklin County while the investigation was ongoing. On February 24, 2014, Mr. Thompson filed with the trial court a motion pursuant to R.C. 2929.19(B)(2)(g) so that the court could correct its error. The trial court denied Mr. Thompson's motion, finding that he was not entitled to credit for his time in the Franklin County Jail while his case was being investigated.

Mr. Thompson timely appealed. The State filed a motion to dismiss Mr. Thompson's appeal, arguing that the entry denying his jail-time-credit motion was not a final, appealable order. The Twelfth District Court of Appeals granted the State's motion and dismissed Mr. Thompson's appeal without considering the merits of his claim. Mr. Thompson now seeks this Court's review.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW I

An order denying a motion to correct jail-time credit filed under R.C. 2929.19(B)(2)(g)(iii) is an order that affects a substantial right, and is therefore a final, appealable order. R.C. 2505.02(B).

Before September 28, 2012, Ohio law was unclear as to whether the denial of a motion to correct jail-time credit was a final, appealable order. *See, e.g., State v. Patton*, 5th Dist. Stark No. 2009 CA 00201, 2009-Ohio-6562; *State v. Lemaster*, 4th Dist. Pickaway No. 02CA20, 2003-Ohio-4457; *State v. Keith*, 9th Dist. Lorain No. 08CA009362, 2009-Ohio-76 (all holding that the denial of a motion for jail-time credit is not a final appealable order); *compare State v. Scranton*, 11th Dist. Portage 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, amended R.C. 2929.19(B)(2)(g) to create a special proceeding allowing defendants to challenge jail-time-credit determinations post-sentencing, effective September 28, 2012.

Now, a motion brought under the revised statute results in 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; . . .

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 in confinement. *State v. 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. Thompson's motion for jail-time credit was a determination that he could be held for 87 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 one 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. But, under the Twelfth District's decision, inmates have no redress when trial courts err under R.C. 2929.19(B)(2)(g).

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 amended R.C. 2929.19(B)(2)(g), 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. But, as demonstrated, confusion in Ohio's courts remains.

The Fourth District Court of Appeals has held that the denial of a motion brought pursuant to R.C. 2929(B)(2)(g) is a final, appealable order. *See* March 27, 2014 Entry, *State v. Earles*, 4th Dist. Ross No. 13CA3415. And, several appellate districts, including the 12th District

in a prior case, have accepted appeals of denials of motions for jail-time credit since the effective date of the new version of R.C. 2929.19(B)(2)(g). *See, e.g., State v. Bowers*, 7th Dist. Mahoning No. 13-MA-82, 2013-Ohio-5523; *State v. Prim*, 8th Dist. Cuyahoga No. 100138, 2014-Ohio-931; *State v. Cline*, 10th Dist. Franklin No. 13AP-548, 2013-Ohio-5399; *State v. Delaney*, 12th Dist. Warren No. CA2012-11-124, 2013-Ohio-2282. And the Ninth District has noted that the case law barring appeal of the denial of a motion for jail-time credit from before the enactment of the new R.C. 2929.19(B)(2)(g) may no longer be good law.

The Twelfth District relied on case law from before the revision in denying Mr. Thompson's right to appeal his denial of jail-time credit. Ohio's courts are divided on this issue. And the depth of this divide is likely greater than that demonstrated by the conflicting published opinions. That is, the denial of the right to appeal results in a deficit of written opinions. Since the enactment of the new statute, no published opinions support the Twelfth District's determination that an order denying a motion brought under the revised version of R.C. 2929.19(B)(2)(g) is not final and appealable.

The court below deprived an Ohio citizen the equal protection of the law. That is likely to reoccur. Because Mr. Thompson'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. This Court should accept this case and make that clear to all of Ohio's criminal courts.

CONCLUSION

The case law upon which the appellate court relied is no longer a reflection of Ohio law, because the legislature has created a special proceeding for post-sentencing motions for jail-time credit. Mr. Thompson took advantage of that, 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 should act to cure a growing divide in Ohio, to protect Ohio inmates' fundamental rights to equal protection, and to guarantee proper appellate review of trial court decisions made under R.C. 2929.19(B)(2)(g).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT-APPELLANT LOWELL W. THOMPSON** was forwarded by regular U.S. Mail to Stephen J. Pronai, Madison County Prosecuting Attorney, 759 N. Main Street, London, Ohio 43140, this 18th day of July, 2014.



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STATE OF OHIO,

Plaintiff-Appellee,

v.

LOWELL W. THOMPSON,

Defendant-Appellant.

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: On Discretionary Appeal from the
: Madison County Court of Appeals,
: 12th Appellate District,
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**APPENDIX TO MEMORANDUM IN SUPPORT OF JURISDICTION OF
DEFENDANT-APPELLANT LOWELL W. THOMPSON**

IN THE COURT OF APPEALS OF MADISON COUNTY, OHIO

STATE OF OHIO, : CASE NO. CA2014-04-010
Plaintiff-Appellee, :

vs. : ENTRY OF DISMISSAL

LOWELL W. THOMPSON,

FILED
In The Court of Appeals
Madison County, Ohio

Defendant-Appellant.

JUN 05 2014

Renee Ryboldil
Clerk of Courts

The above cause is before the court pursuant to a motion to dismiss appeal filed by counsel for appellee, the State of Ohio, on May 9, 2014. No response to the motion has been filed by appellant, Lowell W. Thompson.

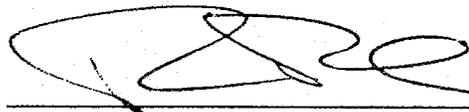
The notice of appeal was filed in this matter on April 8, 2014. Appellant seeks to appeal a decision by the Madison County Court of Common Pleas filed March 7, 2014 which denied his motion for 87 days of additional jail time credit. Appellant was sentenced on January 11, 2011.

The basis of the motion to dismiss the appeal is that this appeal has not been taken from a final appealable order. Appellant was originally sentenced on January 11, 2011 and granted 184 days jail time credit. Any concerns with respect to the jail time credit permitted should have been raised in a timely appeal. *State v. Tully*, 5th Dist. Stark No. 2001 CA 00313, 2002-Ohio-1290. Appellant's request to file a delayed appeal has been previously denied by this court.

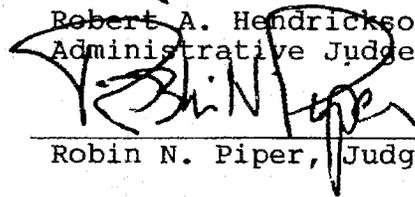
Based upon the foregoing, the court finds that the entry appealed from is not a final appealable order because it does not determine the action and prevent a judgment as required by R.C. 2525.02. Appellant was previously granted jail time credit and no timely appeal was filed.

Based upon the foregoing, the motion to dismiss is GRANTED. Upon consideration, the motion to dismiss is GRANTED. This cause is hereby DISMISSED, with prejudice, costs to appellant.

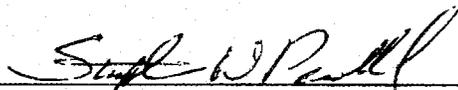
IT IS SO ORDERED.



Robert A. Hendrickson
Administrative Judge



Robin N. Piper, Judge



Stephen W. Powell, Judge