

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2014-1230
Plaintiff-Appellee,	:	
v.	:	On Appeal from the
LOWELL W. THOMPSON,	:	Madison County Court of Appeals,
	:	Twelfth Appellate District
	:	Case No. CA2014-04-010
Defendant-Appellant.	:	

MERIT BRIEF OF APPELLANT LOWELL W. THOMPSON

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INTRODUCTION

Before the enactment of R.C. 2929.19(B)(2)(g), Ohio's courts were unclear as to whether the denial of a motion for jail-time credit resulted in a final, appealable order. After that section's enactment, Ohio's courts have increasingly recognized that the new special proceeding the revision created results in a final, appealable order. Yet, the court below lags behind, relying on superseded case law to deny people like Lowell W. Thompson proper accounting of the time they served in jail. This Court should direct the Twelfth District that it must hear appeals from decisions on motions brought under R.C. 2929.19(B)(2)(g) in order to ensure Ohio citizens the right to equal protection of the law.

STATEMENT OF THE CASE AND FACTS

The Madison County Court of Common Pleas ordered the Franklin County jail to lock up Lowell W. Thompson while the county investigated his case. He was also being held for a federal case related to the same conduct. He spent 87 days in the Franklin County jail before his federal case was dismissed. On that same day, however, he was finally indicted in Madison County Court of Common Pleas Case No. CRI20100077 as a result of the same investigation. Mr. Thompson was transferred to the Madison County jail, where he was held for 187 days until he entered a guilty plea and was sentenced to 25 years in prison. But, he was credited with the time he spent in the Madison County jail and denied the 87 days he spent in the Franklin County jail related to his Madison County charges.

When Mr. Thompson realized he was denied credit for some of his time in jail, he filed a motion pursuant to R.C. 2929.19(B)(2)(g) so that the Madison County Court of Common Pleas could correct its error. Mr. Thompson attached records from the Franklin County jail showing he was under a Madison County hold order for those 87 days in jail. The trial court denied Mr. Thompson's jail-time-credit 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 trial court's ruling. 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. This appeal follows.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

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, it was unclear whether a trial court's 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 for individuals like Mr. Thompson, amended R.C. 2929.19 to create a proceeding through which defendants could challenge jail-time-credit determinations post-sentencing. *See* R.C. 2929.19(B)(2)(g). The amendment was effective September 28, 2012, over a year before Mr. Thompson's motion for jail-time credit.

The statutory change created a special proceeding that affects a substantial right, the result of which is a final appealable order. And Ohio's appellate districts increasingly agree on that fact, leaving the Twelfth District, and years of superseded case law, behind.

A. The procedure outlined in R.C. 2929.19(B)(2)(g) for challenging incorrect jail-time-credit calculation is a special proceeding that affects a substantial right. The result of a motion filed under that statute 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; . . .

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 people like Mr. Thompson have 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).

Ohio defendants now possess the ability to challenge the legal determination of jail-time credit at any time post-sentencing. *Id.* In the past, when someone like Mr. Thompson filed a motion for correction of jail-time credit, they would often find the motion dismissed as a “nullity.” *See, e.g., State v. Humphrey*, 4th Dist. Ross No. 12CA3318, 2012-Ohio-1826, ¶ 8; *State v. Beaudry*, 6th Dist. Lucas No. L-01-1288, 2001 Ohio App. LEXIS 4874, 4 (Nov. 2, 2001); *State v. Harbert*, 9th Dist. Summit No. 20955, 2002-Ohio-6114, ¶ 24-25. No explicit procedure existed for correcting jail-time credit post-sentencing. The procedure outlined in R.C. 2929.19(B)(2)(g) replaced that “nullity” with a method to seek missing credit for time spent

confined before trial. That is a right created by statute that did not exist until the amendments to R.C. 2929.19(B)(2)(g) went into effect.

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). This Court has plainly held that both the Ohio and United States Constitutions guarantee Mr. Thompson the right to credit for time served in confinement before disposition of his case. *See State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 7; *see also* Fourteenth Amendment to the U.S. Constitution; Article I, Section 2, Ohio Constitution.

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 sentences, and the Ohio Revised Code establishes that jail-time credit is the law’s way of protecting that right. *Fugate* at ¶ 7; R.C. 2967.191. The revised version of R.C. 2929.19(B)(2)(g) gives people in Mr. Thompson’s situation the mechanism for protecting that substantial right, and a proceeding under that statute results in a final, appealable order.

B. No published-appellate court opinions in Ohio agree with the Twelfth District in holding that the denial of a jail-time-credit motion brought under R.C. 2929.19(B)(2)(g) does not result in a final, appealable order.

The Fourth and Second District Courts of Appeal have explicitly held that the denial of a motion brought pursuant to R.C. 2929.19(B)(2)(g) is a final, appealable order. *State v. Earles*, 4th Dist. Ross No. 13CA3415 (March 27, 2014); *State v. Bennett*, 2d Dist. Greene No. 2014-CA-17, 2014-Ohio-4102, ¶ 5. And a number of Ohio’s appellate districts have allowed appeals from trial-court denials of motions under R.C. 2929.19(B)(2)(g) since that subsection’s effective date. *See, e.g., State v. Verdi*, 6th Dist. Erie No. E-13-025, 2013-Ohio-5630, ¶ 1; *State v. Prim*, 8th

Dist. Cuyahoga No. 100138, 2014-Ohio-931, ¶ 1; *State v. Dean*, 10th Dist. Franklin Nos. 14AP-173 and 14AP177, 2014-Ohio-4361, ¶ 1.

The Ninth District has acknowledged that the new amendment possibly overrules its prior decisions determining that motions for jail-time credit do not result in final, appealable orders. *See State v. Papczun*, 9th Dist. Summit No. 26560, 2013-Ohio-1162, ¶ 12 (Belfance, J., concurring); *see also State v. Stone*, 9th Dist. Lorain No. 13CA010400, 2013-Ohio-5782, ¶ 5 (acknowledging the new procedure under R.C. 2929.19(B)(2)(g) but dismissing the appeal as not being from an order resulting from that procedure). And even after the enactment date of the revised statute, the Twelfth District once allowed a direct appeal from the denial of a jail-time credit motion. *See State v. Delaney*, 12th Dist. Warren No. CA2012-11-124, 2013-Ohio-2282.

Importantly, the case law upon which the Twelfth District relied predated the revisions allowing the new special proceeding under R.C. 2929.19(B)(2)(g). The court below relied on the Fifth District's decision in *State v. Tully* to dismiss Mr. Thompson's appeal. *See* 5th Dist. Stark No. 2001 CA 00313, 2002 Ohio App. LEXIS 1373 (Mar. 18, 2002). But that case predated R.C. 2929.19(B)(2)(g)'s creation of a special proceeding for challenging jail-time-credit determinations by almost ten years. And while the Fifth District continues to rely on *Tully* to dismiss appeals from jail-time-credit motion denials, that district has not acknowledged the new procedure created by R.C. 2929.19(B)(2)(g) in a published opinion. *See, e.g., State v. Johnson*, 5th Dist. Richland No. 12CA87, 2013-Ohio-1760. There are no published opinions from any district agreeing with the Twelfth District in refusing to hear an appeal from the denial of a motion brought under R.C. 2929.19(B)(2)(g).¹

¹ While no other published appellate decisions have determined that a denial of a motion under R.C. 2929.19(B)(2)(g) is not a final, appealable order, the case law is still developing, and there may be unpublished appellate court entries dismissing such appeals.

The revised statute has mostly succeeded in remedying the divide that pervaded Ohio law regarding whether jail-time-credit motions are final, appealable orders. Now, only the Twelfth District remains divided from the rest of the State of Ohio. This Court should adopt Mr. Thompson's proposition of law and fix that division.

CONCLUSION

The court below deprived Mr. Thompson the equal protection of the law. Because Mr. Thompson's motion to correct jail-time credit was made through a special proceeding defined by R.C. 2929.19(B)(2)(g), 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. The majority of Ohio's courts have allowed appeals from jail-time-credit motions under R.C. 2929.19(B)(2)(g). This Court should reverse the Twelfth District's holding and remand for proper consideration of the merits of Mr. Thompson's claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MERIT BRIEF OF APPELLANT LOWELL W. THOMPSON** was forwarded by regular U.S. Mail to Stephen J. Pronai, Madison County Prosecuting Attorney, 59 N. Main Street, London, Ohio 43140, this 30th day of January, 2015.

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2014-1230
Plaintiff-Appellee,	:	
v.	:	On Appeal From the
	:	Madison County Court of Appeals,
LOWELL W. THOMPSON,	:	12th Appellate District
	:	Case No. CA2014-04-010
Defendant-Appellant.	:	

APPENDIX TO

MERIT BRIEF OF APPELLANT LOWELL W. THOMPSON

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. 2013-A-0021
:
:

NOTICE OF APPEAL OF APPELLANT LOWELL W. THOMPSON

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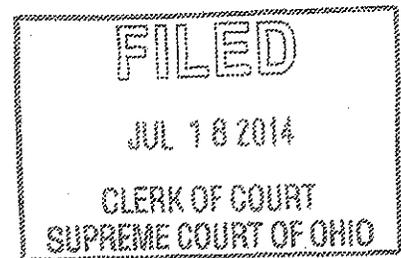
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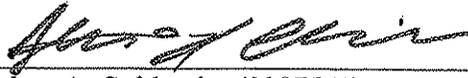
NOTICE OF APPEAL OF APPELLANT LOWELL W. THOMPSON

Appellant Lowell Thompson hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Madison County Court of Appeals, 12th Appellate District, entered in Court of Appeals Case No. CA2014-04-010 on June 5, 2014.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF APPEAL OF 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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Counsel for Lowell W. Thompson

#422714

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

Rene Erbland
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.

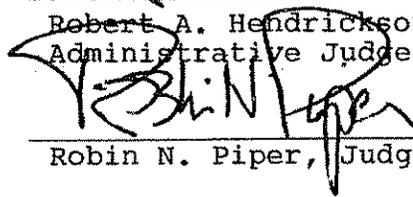
Based upon the foregoing, the court finds that the entry appealed from is not a final appealable order because it does not determine the action and prevent a judgment as required by R.C. 2525.02. Appellant was previously granted jail time credit and no timely appeal was filed.

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.

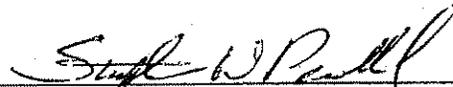
IT IS SO ORDERED.



Robert A. Hendrickson
Administrative Judge



Robin N. Piper, Judge



Stephen W. Powell, Judge

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

2014 MAR 27 PM 12:50

State of Ohio, :
Plaintiff-Appellee, :
v. :
Amber Earles, :
Defendant-Appellant. :

Case No. 13CA3415

FILED
ROSS COUNTY SUMMER PLEAS
CLERK OF COURTS
TY D. HINTON

ENTRY

APPEARANCES:

Valerie Kunze, Assistant State Public Defender, Office of the Ohio Public Defender, Columbus, Ohio, for Appellant.

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

HOOVER, Administrative Judge,

After reviewing the notice of appeal filed in this matter, we issued an order directing Appellant Amber Earles to file a memorandum addressing whether the entry appealed from is a final appealable order. Earles has filed a memorandum arguing that the trial court's entry overruling her 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 find that the entry appealed from is a final, appealable order made in a special proceeding under R.C. 2505.02(B)(2).

I.

Earles pled guilty to the illegal conveyance of weapons or drugs onto the grounds of a detention facility or institution in violation of R.C. 2921.36(A)(2); tampering with evidence in

violation of R.C. 2921.12(A)(1); aggravated possession of drugs in violation of R.C. 2925.11(C)(1)(a); and theft in violation of R.C. 2913.02(A)(1). These violations were set forth under two separate criminal cases, Case No. 11CR522 and Case No. 12CR368, and give rise to two separate but similar appeals, Case No. 13CA3415 and Case No. 13CA3414, respectively. In sentencing entries filed on January 14, 2013 in each case, the trial court sentenced Earles to 18-months imprisonment for each case, to run concurrently. In a nunc pro tunc sentencing entry filed January 24, 2013 in Case No. 13CR522, the trial court awarded Earles jail time credit in the amount of 165 days. See Nunc Pro Tunc Judgment Entry of Sentence, Case No. 11CR522, January 24, 2013, "Jail Time Credit for 165 days is granted as of January 2, 2013, which includes all old and new jail time credit, along with future custody days while defendant awaits transportation to the appropriate State institution." Earles filed no appeal.

A few month later, Earles filed a pro se motion for jail time credit in Case No. 12CR368 in which she argued that she was given only 43 days of jail time credit in that case and she believed was entitled to a total of 138 days of jail time credit under the holding of *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440. The trial court denied her motion. Earles did not appeal. In October 2013, Earles retained counsel and filed a motion for jail time credit in both Case No. 12CR368 and Case No. 11CR522, in which she argued that, based on the *Fugate* decision, she was entitled to a total of 168 days of jail time credit. This was the first motion for jail time credit filed in Case No. 11CR522, but the second motion filed on the same issue in Case No. 12CR368. The trial court denied her motion stating that it had properly determined jail time credit in Case No. 12CR368 and that it had filed a nunc pro tunc entry in Case No. 11CR522 in which it awarded 165 days of jail time credit. In this case, Earles appeals the trial court's denial of her first and only motion for jail time credit in Case No. 11CR522.

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 amendment 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.

Before R.C. 2929.19(B)(2)(g)(iii) was amended to provide for continuing jurisdiction of the sentencing court to consider motions to correct errors made under (B)(2)(g)(i), any challenge to that calculation had to be made on appeal from the trial court's entry imposing sentence. *Rankin* at ¶ 10.

However, the 2012 amendment to

R.C. 2929.19(B)(2)(g)(iii) confers continuing jurisdiction on the trial court to hear and determine motions to correct such errors. Thus, now we must determine if a trial court order determining a motion for jail time credit correction filed pursuant to R.C. 2929.19(B)(2)(g)(iii) is 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).

Earles' sentence was issued on January 14, 2013, several months after the effective date of the September 28, 2012 amendment. R.C. 2929.19 was amended to confer continuing jurisdiction on the trial court to hear motions to correct jail time credit errors made under R.C. 2929.19(B)(2)(g)(i). Therefore, this present appeal involves the category defined by R.C. 2505.02(B)(2), which makes an "order that affects a substantial right made in a special proceeding" a final, appealable order. Accordingly, we first consider whether or not the order at issue was made in a special proceeding.

A "[s]pecial 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). In *Polikoff v. Adam*, 67 Ohio St.3d 100, 616 N.E.2d 213 (1993), the Supreme Court of Ohio considered the issue of whether a particular order was entered in a special proceeding and affected a substantial right, and therefore constituted a final order. It determined that "[o]rders that are entered in actions that were recognized at common law or in equity and were not specially created by statute are not orders entered in special proceedings pursuant to R.C. 2505.02[(B)(2)]." *Id.* at syllabus. The Supreme Court later clarified that "it is the underlying action that must be examined to determine whether an order was entered in a special proceeding." *Walters v. Enrichment Ctr. of Wishing Well, Inc.*, 78 Ohio St.3d 118, 121-22, 676 N.E.2d 890 (1997).

R.C. 2929.19 created a felony sentencing hearing and related requirements and was enacted as part of the comprehensive legislation in Am. Sub. S.B. 2. In enacting S.B. 2, the Ohio General Assembly adopted a comprehensive sentencing structure intended to promote truth in sentencing. Prior to S.B. 2, trial courts had full discretion in sentencing criminal defendants. *Toledo v. Reasonover*, 5 Ohio St.2d 22, 24 213 N.E.2d 179, 180-181 (1965). Thus, the felony sentencing hearing is a special proceeding created by statute that must be held after an offender is convicted by jury or pleads guilty, but before the trial court may impose a sentence. The 2012 amendment

extends the special proceeding by conferring continuing jurisdiction to the trial court to correct errors not previously raised at the sentencing hearing. The amendment also gives offenders the right to file a motion in the sentencing court to correct any error. Thus we find that the felony sentencing hearing proceeding established by R.C. 2929.19 and extended by the proceeding created by R.C. 2929.19(B)(2)(g)(iii) are special proceedings in that they were created by statute and that prior to 1853 were not denoted as an action at law or a suit in equity.

Having determined that an order issuing from R.C. 2929.19(B)(2)(g)(iii) is made in a special proceeding, we must now determine if it affects a substantial right. An order affects a substantial right for the purposes of R.C. 2505.02(B)(2) only if an immediate appeal is necessary to protect the right effectively. *Bell v. Mt. Sinai Med. Ctr.* (1993), 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (to prevail in contending that an order affects a substantial right, “appellants must demonstrate that in the absence of immediate review of the order they will be denied effective relief in the future”). Covered rights include any “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).

Several provisions of the Ohio Revised Code give an offender the right to have jail time credit applied against the sentence imposed by the trial court. See R.C. 2949.08(B); R.C. 2967.191; R.C. 2929.19. An offender has a substantial right to have the jail time credit calculated correctly and included in the final sentencing entry. Prior to the September 2012 amendment to R.C. 2929.19(B)(2)(g), an offender enforced this right by direct appeal of the judgment of conviction. *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286, at ¶ 7. With the 2012 amendment, R.C. 2929.19(B)(2)(g)(iii) now gives offenders a new “substantive right” to have any error made in a jail time credit determination that was not previously raised at sentencing corrected by the trial court at any time after sentencing. And, it

provides an alternative way to enforce this right by providing offenders with a special motion proceeding and conferring continuing jurisdiction on the trial court to hear the motion and correct errors in jail time credit calculations.

Prior to the September 28, 2012 amendment, this right did not exist. The only way an offender could have jail time credit errors corrected on substantive grounds was through a direct appeal. However, non-substantive clerical or mathematical errors in jail time credit could be corrected under Crim R. 36. 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. *State v. Humphrey*, 4th Dist. Ross App. 12CA3318, 2012-Ohio1826; *State v. McLain*, 6th Dist. No. L-07-1164, 2008-Ohio-481; and *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840. Thus, R.C. 2929.19(B)(2)(g)(iii) creates a statutory right that entitles an offender to enforce or protect. The right to have jail time credit errors not previously raised at sentencing corrected at any time after sentencing via a motion to the trial court is a "substantial right" as defined in R.C. 2505.02(A)(1).

In sum, we find that the felony sentencing hearing established in R.C. 2929.19 is a "special proceeding" under R.C. 2505.02(A)(2) and that by extending the trial court's jurisdiction to correct errors under R.C. 2929.19(B)(2)(g)(iii), an order determining a motion filed under (B)(2)(g)(iii) is one made in a special proceeding. The order affects a substantial right because R.C. 2929.19(B)(2)(g)(iii) creates a statutory right that an offender is entitled to enforce by motion to have jail time credit errors not previously raised at sentencing corrected at any time after sentencing.

III.

We conclude that the trial court's entry denying her motion for jail time credit is a final appealable order under R.C. 2505.02(B)(2) and we have jurisdiction to consider this appeal from

that entry.

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.**

Abele, P.J. & Harsha, J.: Concur.

FOR THE COURT



Marie Hoover
Administrative Judge



State of Ohio, Appellee v. Randy Beaudry, Appellant

Court of Appeals No. L-01-1288

**COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT,
LUCAS COUNTY**

2001 Ohio App. LEXIS 4874

November 2, 2001, Decided

PRIOR HISTORY: [*1] Trial Court No. CR-95-6406.

DISPOSITION: Appeal dismissed.

COUNSEL: Randy Beaudry, Pro se.

JUDGES: Peter M. Handwork, J. Richard W. Knepper, J., Mark L. Pietrykowski, P.J., CONCUR.

OPINION BY: Peter M. Handwork

OPINION

DECISION AND JUDGMENT ENTRY

HANDWORK, J. This is an accelerated appeal from a judgment of the Lucas County Court of Common Pleas which denied a motion for jail time credit filed by appellant, Randy Beaudry. Appellant asserts in his sole assignment of error that the trial court erred in failing to grant him jail time credit in both cases. This court dismisses this appeal for lack of jurisdiction.

The following facts are relevant to this appeal. On April 24, 1996, appellant entered a guilty plea, pursuant to *North Carolina v. Alford (1970)*, 400 U.S. 25, 27 L. Ed. 2d 162, 91 S. Ct. 160, to a lesser included charge of drug abuse, a violation of R.C. 2925.11, in Case No. CR 95-6406. Appellant was sentenced to one and one-half years on the drug charge. The sentence on this charge was to be served consecutively to the sentence ordered in another case, Case No. CR 94-6904. The imposition of the incarceration portion of appellant's sentence was suspended and appellant was placed [*2] on probation for four years; appellant was ordered to serve the first six months of probation at the Correctional Treatment Facility ("C.T.F.").

On August 12, 1999, the trial court was notified that appellant had violated his probation after appellant was arrested on July 25, 1999, on criminal charges of permitting drug abuse and theft. A *capias* was issued on April 11, 2000 after appellant failed to appear for a probation violation hearing. On August 16, 2000, a probation violation hearing was held at which appellant admitted to a probation violation. A sentencing hearing was held on January 17,

2001. In a January 19, 2001 judgment entry, appellant's probation was revoked and appellant was sentenced to one and one-half years on the drug charge (Case No. CR 95-6406) to be served concurrently with the sentence imposed in Case No. CR 94-6904.

On March 9, 2001, appellant filed a *pro se* motion for jail time credit; the caption on the motion included both case numbers and requested the same amount of jail time credit in both cases for the six months spent at C.T.F., an additional one hundred eighty days. On March 21, 2001, the trial court granted appellant's motion for jail time [*3] credit in Case No. CR 94-6904 but denied the motion as to Case No. CR 95-6406. On April 12, 2001, appellant filed another motion for jail time credit, essentially advancing the same argument made in his prior motion. ¹ On April 24, 2001, the trial court denied the motion.

1 Although appellant's motion was styled as a motion for jail time credit, in essence, there was no difference between it and a motion for reconsideration of the trial court's prior ruling on appellant's first motion for jail time credit. Indeed, in his appellate brief, appellant denominates this second motion as a motion for reconsideration. The determination of whether a motion has been presented to the court should not turn on a document's form or label, but upon what the document seeks. Form should not be allowed to govern over substance. See *State v. Davidson* (1985), 17 Ohio St. 3d 132, 135, 477 N.E.2d 1141.

Upon review of the procedural history of this case, this court need not reach the merits of appellant's argument. [*4] This court begins by noting that "**** a *pro se* litigant is bound by the same rules of law *** as those who are represented by counsel. (Citations omitted.)" *Musa v. Gillett Communications, Inc.* (1997),

119 Ohio App. 3d 673, 683-84, 696 N.E.2d 227.

The Ohio Rules of Civil Procedure do not provide for motions for reconsideration; therefore, such motions are considered a nullity. *Pitts v. Dept. of Transportation* (1981), 67 Ohio St. 2d 378, 423 N.E.2d 1105. In *Cleveland Heights v. Richardson* (1983), 9 Ohio App. 3d 152, 153, 458 N.E.2d 901, the court stated: "A motion for reconsideration is conspicuously absent within the Criminal Rules." The *Richardson* court also found that the trial court's order granting said motion to be a nullity. *Id.* It follows that because a judgment entered on a motion for reconsideration is a nullity, a party cannot appeal from such a judgment. *Kauder v. Kauder* (1974), 38 Ohio St. 2d 265, 267, 313 N.E.2d 797.

Assuming *arguendo* that appellant intended to appeal the March 21, 2001 judgment denying the first motion for jail time credit, appellant failed to timely file his notice of appeal. [*5] Pursuant to *App.R. 4(A)* "[a] party shall file the notice of appeal required by *App.R. 3* within thirty days of the later of entry of the judgment or order appealed ***." The filing of a motion for reconsideration does not toll the time in which an appeal must be filed. *Ditmars v. Ditmars* (1984), 16 Ohio App. 3d 174, 176, 475 N.E.2d 164. "**** Where a notice of appeal is not filed within the time prescribed by law, the reviewing court is without jurisdiction to consider issues that should have been raised in the appeal." *State ex rel. Pendell v. Adams Cty. Bd. Of Elections* (1988), 40 Ohio St. 3d 58, 60, 531 N.E.2d 713.

Because appellant has failed to invoke this court's jurisdiction to review the March 21, 2001 judgment, his appeal is ordered dismissed. Appellant is ordered to pay court costs for this appeal.

APPEAL DISMISSED.

A certified copy of this entry shall constitute the mandate pursuant to *App.R. 27*. See, also, *6th Dist.Loc.App.R. 4*, amended 1/1/98.

Peter M. Handwork, J.

Richard W. Knepper, J.

Mark L. Pietrykowski, P.J.

[*6] CONCUR.



STATE OF OHIO, Plaintiff-Appellee -vs- RICHARD TULLY, Defendant-Appellant

Case No. 2001 CA 00313

COURT OF APPEALS OF OHIO, FIFTH APPELLATE DISTRICT, STARK COUNTY

2002-Ohio-1290; 2002 Ohio App. LEXIS 1373

March 18, 2002, Date of Judgment Entry

PRIOR HISTORY: [*1] CHARACTER OF PROCEEDING: Criminal appeal from Stark County Common Pleas Court, Case No. 1996CR0999.

DISPOSITION: Appeal was dismissed.

COUNSEL: For Plaintiff-Appellee: ROBERT D. HOROWITZ, Prosecuting Attorney, RONALD MARK CALDWELL, Asst. Prosecuting Attorney, Canton, Ohio.

For Defendant-Appellant: RICHARD TULLY, Pro se, St. Clairesville, Ohio.

JUDGES: Hon. Sheila G. Farmer, P.J., Hon. John W. Wise, J., Hon. John F. Boggins, J. Boggins, J. Farmer, P.J. and Wise, J. concur.

OPINION BY: John F. Boggins

OPINION

Boggins, J.

STATEMENT OF THE FACTS AND CASE

On October 11, 1996, Appellant was indicted on one count of complicity to aggravated robbery. On October 18, 1996, Appellant entered a plea of not guilty to the offense as charged in the indictment. On November 27, 1996, Appellant withdrew his former plea of not guilty and entered a plea of guilty. On January 7, 1997, Appellant was sentenced to three years community control sanction. On September 15, 1998, a Motion to Revoke or Modify Former Order of probation was filed. On October 14, 1998, an evidentiary hearing was held on the Motion to Revoke or Modify Former Order. By Judgment Entry dated October 19, 1998, the trial court continued said community sanctions [*2] and imposed the additional condition that Appellant enter Oriana House and complete the program recommended by his probation officer. On April 5, 1999, a second Motion to Revoke or Modify Former Order of probation was filed. On April 18, 1999, an evidentiary hearing was held on the Motion to Revoke or Modify Former Order. On May 3, 1999, by Judgment Entry, the trial court revoked Appellant's probation and sentenced him to a definite term of four (4) years in the Lorain Correctional Institution. On August 11,

1999, Appellant filed a Motion for Jail Time Credit, requesting an additional 150 days of jail time credit. By Judgment Entry dated August 23, 1999, which was corrected with a Nunc Pro Tunc Entry dated September 8, 1999, the trial court granted Appellant an additional six (6) days to be added to the previous ninety-six (96) days previously credited to Appellant, totaling one hundred twelve (112) days of jail time credit. On June 18, 2001, Appellant filed an additional Motion for Jail Time Credit, claiming that he is entitled to a total of two hundred seventy-six (276) days of jail time credit for time spent in the Stark County Jail, the Tuscarawas County Jail and Oriana House. [*3] By Entry dated June 28, 2001, the trial court again stated that Appellant was only entitled to credit for the one hundred twelve (112) days spent at the Stark County Jail. On September 12, 2001, Appellant filed a Motion to Correct an Improper Sentence, again arguing that he should be granted credit for the seventy-six (76) days spent in the Tuscarawas County Jail and the ninety (90) days spent at Oriana House. Appellant also argued in said Motion that he should have been granted the shortest sentence allowable under the law pursuant to *R.C. § 2929.14(B)* because he had never before been imprisoned. By Entry dated September 21, 2001, the trial court again held that its prior entry granting appellant one hundred twelve (112) days of jail time was correct. Appellant now appeals, assigning the following errors:

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED WHEN IT FAILED TO COMPORT WITH *R.C. 2929.14(B)*.

II. THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT CREDIT FOR TIME SERVED IN A COMMUNITY BASED CORRECTIONAL FACILITY.

III. THE TRIAL COURT ERRED WHEN IT FAILED TO COMPLY WITH *R.C.*

2967.191 AND GRANT CREDIT [*4] FOR TIME SPENT IN THE TUSCARAWAS COUNTY JAIL.

I.

We dismiss appellant's first assignment of error as we find that such challenges the legality of his sentence and therefore, is not timely before this court for consideration. The record reflects the trial court filed its sentencing judgment entry on January 7, 1997. Appellant never filed an appeal of his conviction. In 2001, appellant filed a motion to correct an improper sentence. The trial court denied appellant's motion. Although claiming to appeal the denial of this motion, it is apparent from appellant's brief that he is attempting to challenge the legality of his sentence from 1997. Pursuant to *App.R. 4(A) & 4(B)(3)*, in a criminal case a party must file a notice of appeal within thirty days of the judgment from which the appeal is taken. Appellant's appeal is not timely under *App.R. 4* and accordingly, appellant's first assignment or error is dismissed for lack of jurisdiction.

II., III.

Appellant claims that the trial court erred in failing to grant him jail time credit for the ninety (90) days he spent at Oriana House and the seventy-six (76) days he spent in the Tuscarawas County Jail. We must dismiss these appeals for being [*5] untimely filed and for lack of a final appealable order. The Ohio Supreme Court has held that a criminal defendant may appeal a sentencing order which contains an incorrect calculation of jail time credit. *State ex rel. Jones v. O'Connor (1999)*, 84 Ohio St. 3d 426, 426, 704 N.E.2d 1223; *State ex rel. Sampson v. Parrott (1998)*, 82 Ohio St. 3d 92, 93, 694 N.E.2d 463. Appellant's right to appeal the calculation of jail-time credit arose on September 8, 1999, when his original sentence was corrected and he was granted 112 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 any further judgment. Appellant did not file a direct appeal of this judgment entry. The Ohio Constitution confers upon appellate courts, "such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals." *Section 3(B)(2), Article IV, Ohio Constitution.* R.C. § 2505.02 sets forth those orders that are "final orders" subject to [*6] review by Ohio's appellate courts. For this present appeal to constitute a final appealable order, it must satisfy one of the prongs of R.C. § 2505.02(B), which states:

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: (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment; (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment; (3) An order that vacates or sets aside a judgment or grants a new trial; (4) An order that grants or denies a provisional remedy and to which both of the following apply: (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy. (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action. (5) An order that determines that an action may or may not [*7] be maintained as a class action.

It is obvious that the September 21, 2001, decision does not satisfy R.C. § 2505.02(B)(3-5). A common factor of final appealable orders under both R.C. § 2505.02(B)(1) and (2) is that the orders affect a substantial right of the party who is appealing. We find that the September 21, 2001, entry does not affect any of Appellant's substantial rights. Prior to the order, Appellant had 112 days of jail-time credit. After the order, Appellant continued to have 112 days of jail-time credit. Nothing changed by virtue of the September 12, 2001, order. As stated earlier, the order that affected his substantial rights was the September 8, 1999 entry. The timely filing of a notice of appeal is required for this Court to gain subject matter jurisdiction over an appeal. *Hosfelt v. Miller (Nov. 22, 2000), 2000 Ohio App. LEXIS 5506, Jefferson App. No. 97-JE-50, unreported.* Under *App.R. 4(A)*, Appellant had thirty days to file his appeal of the August 17, 1999, order. He also could have filed a motion for delayed appeal under *App.R. 5*, but that did not occur in this case. Therefore, we are left with an unappealed final order, filed on September 8, 1999, and [*8] an appealed non-final order, rendered on September 21, 2001. This Court does not have jurisdiction to review either of these orders at this time. For the foregoing reasons, we dismiss this appeal for failure to file a timely notice of appeal of the September 8, 1999, entry and for lack of a subsequent final appealable order regarding jail-time credit.

By Boggins, J. Farmer, P.J. and Wise, J. concur.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§2 EQUAL PROTECTION AND BENEFIT

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

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TITLE 25. COURTS -- APPELLATE
CHAPTER 2505. PROCEDURE ON APPEAL

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ORC Ann. 2505.02 (2014)

§ 2505.02. Final order

(A) As used in this section:

(1) "Substantial right" means 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.

(2) "Special proceeding" means 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.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to *section 2307.85* or *2307.86 of the Revised Code*, a prima-facie showing pursuant to *section 2307.92 of the Revised Code*, or a finding made pursuant to division (A)(3) of *section 2307.93 of the Revised Code*.

(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:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

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

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 5164.07 by H.B. 59 of the 130th general assembly), and the enactment of *sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code* or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of *sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code*;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of *section 163.09 of the Revised Code*.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

HISTORY:

GC § 12223-2; 116 v 104; 117 v 615; 122 v 754; Bureau of Code Revision, 10-1-53; 141 v H 412 (Eff 3-17-87); 147 v H 394. Eff 7-22-98; 150 v H 342, § 1, eff. 9-1-04; 150 v H 292, § 1, eff. 9-2-04; 150 v S 187, § 1, eff. 9-13-04; 150 v H 516, § 1, eff. 12-30-04; 150 v S 80, § 1, eff. 4-7-05; 152 v S 7, § 1, eff. 10-10-07; 2013 HB 59, § 101.01, eff. Sept. 29, 2013.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

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ORC Ann. 2929.19 (2014)

§ 2929.19. Sentencing hearing

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to *section 2953.07 or 2953.08 of the Revised Code*. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with *section 2930.14 of the Revised Code*, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to *section 2951.03 of the Revised Code* or *Criminal Rule 32.2*, and any victim impact statement made pursuant to *section 2947.051 of the Revised Code*.

(2) Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(c) Notify the offender that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. This division applies with respect to all prison terms imposed for an offense of a type described in this division, including a term imposed for any such offense that is a risk reduction sentence, as defined in *section 2967.28 of the Revised Code*. If a court imposes a sentence including a prison term of a type described in division (B)(2)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(c) of this section that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of *section 2967.28 of the Revised Code*. *Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(c) of this section and failed to notify the offender pursuant to division (B)(2)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(2)(c) of this section. This division applies with respect to all prison terms imposed for an offense of a type described in this division, including a term imposed for any such offense that is a risk reduction sentence, as defined in *section 2967.28 of the Revised Code*. *Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(d) of this section and failed to notify the offender pursuant to division (B)(2)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(2)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 of the Revised Code*, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(e) of this section that the parole board may impose a prison term as described in division (B)(2)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 of the Revised Code* or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of *section 2967.28 of the Revised Code*, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. *Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(2)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in *section 341.26, 753.33, or 5120.63 of the Revised Code*, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(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.

(3) (a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of *section 2950.03 of the Revised Code* if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under *section 2971.03 of the Revised Code* for a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of *section 2907.02 of the Revised Code*.

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a specification of the type described in *section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code*.

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* for an offense described in those divisions committed on or after January 1, 2008.

(b) Additionally, if any criterion set forth in divisions (B)(3)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (E) of *section 2929.14 of the Revised Code*, the court shall impose sentence on the offender as described in that division.

(4) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to *section 2929.14 of the Revised Code*.

(5) Before imposing a financial sanction under *section 2929.18 of the Revised Code* or a fine under *section 2929.32 of the Revised Code*, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(6) If the sentencing court sentences the offender to a sanction of confinement pursuant to *section 2929.14 or 2929.16 of the Revised Code* that is to be served in a local detention facility, as defined in *section 2929.36 of the Revised Code*, and if the local detention facility is covered by a policy adopted pursuant to *section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to *section 2929.37 of the Revised Code* for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(6)(a)(i) of this section and does not pay the bill by the times specified in *section 2929.37 of the Revised Code*, the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(6)(a)(ii) of this section.

(7) The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(2)(a) of this section or to include in the sentencing entry any information required by division (B)(2)(b) of this section does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandato-

ry, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.

(C) (1) If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose additional sanctions as specified in *sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code*. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of *section 2929.13 of the Revised Code*.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose an additional prison term as specified in *section 2929.14 of the Revised Code*. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (I)(1) of *section 2929.14 of the Revised Code*, may recommend placement of the offender in a program of shock incarceration under *section 5120.031 of the Revised Code* or an intensive program prison under *section 5120.032 of the Revised Code*, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v H 130, § 1, eff. 4-7-09; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2967. PARDON; PAROLE; PROBATION

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ORC Ann. 2967.191 (2014)

§ 2967.191. Reduction of prison term for related days of confinement

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, confinement for examination to determine the prisoner's competence to stand trial or sanity, confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term, as determined by the sentencing court under division (B)(2)(g)(i) of *section 2929.19 of the Revised Code*, and confinement in a juvenile facility. The department of rehabilitation and correction also 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, if any, that the prisoner 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.

HISTORY:

131 v 688 (Eff 10-20-65); 134 v H 511 (Eff 3-23-73); 137 v H 565 (Eff 11-1-78); 138 v H 1000 (Eff 4-9-81); 139 v S 199 (Eff 7-1-83); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 111. Eff 3-17-98; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 337, § 1, eff. Sept. 28, 2012.