

NO. 15-0505

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 101161

In Re: D.S.

STATE OF OHIO'S MEMORANDUM IN RESPONSE TO JURISDICTION

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**WHETHER THIS CASE PRESENTS A SUBSTANTIAL CONSTITUTIONAL
QUESTION AND IS NOT A MATTER OF GREAT AND GENERAL PUBLIC
INTEREST**

This Honorable Court has recognized that the practice of awarding offenders jail-time credit has its roots in the Equal Protection Clauses of Ohio and United States Constitution. As such, “[t]he Equal Protection Clause requires that *all* time spent in any jail prior to trial and commitment by a prisoner who is unable to make bail because of indigency *must* be credited to his sentence.” *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 7.

Appellant was charged in the juvenile court in Case No. DL-13106887, and he was remanded to the juvenile detention center. Appellant was bound over to the general division to be tried as an adult. Shortly afterwards, the parties came to an agreement where the State would dismiss the case and file a new delinquency complaint in Case No. DL-14102017, where Appellant agreed to admit to the allegations contained therein. Both the State and Appellant agreed that Appellant would be credited for the time he spent in confinement awaiting trial.

Both parties recognized and agreed that it would be fundamentally unfair to deny Appellant the jail time credit he had earned while awaiting the final disposition in this matter. The juvenile court, over both parties’ objections, refused to grant Appellant his jail time credit for the time he spent in confinement. Appellant appealed, and the State conceded the juvenile court’s error. The Eighth District affirmed over the State’s conceded error.

Ohio Revised Code §2152.18(B) provides, in relevant part:

When a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this chapter, the court shall state in the order of commitment the total number of days that the child has been confined in connection with the delinquent child complaint upon which the order of commitment is based.

* * *

The Eighth District's decision in this case essentially allows a person to lose all the jail-time credit he has earned just because his complaint is dismissed and a new complaint is filed on the exact same incident. That is exactly what happened here. Such an outcome undermines the protections that jail-time credit statutes were to afford. And as the State recognized, it would be fundamentally unfair to a juvenile defendant.

It would be fundamentally unfair to deny Appellant the jail time credit that he and the State agreed would be part of the plea agreement; solely because of a misinterpretation of the jail time credit statute. It is for this reason that the State would ask this Honorable Court to accept jurisdiction of this appeal and summarily reverse and remand it to the juvenile court so that Appellant may receive the jail-time credit which he is entitled to.

STATEMENT OF THE CASE AND FACTS

The procedural history of the instant case was succinctly laid out in the Eighth District's underlying opinion as follows:

D.S. was originally charged in the juvenile division in Case No. DL-13106887 with committing acts which, if committed by an adult, would constitute the crime of aggravated robbery with a firearm specification. The juvenile division remanded D.S. to the juvenile detention center following notice by the state that it intended to try him as an adult. It found probable cause to believe that D.S. committed the charged acts and then bound him over to the general division to be tried as an adult. A judge of the general division imposed a \$50,000 bond and transferred D.S. to the county jail pending trial.

Discovery and motion practice stretched out for several months, during which time the 17-year-old D.S. was confined in the county jail and could not post bond. Defense counsel asked that D.S. be released into his mother's custody, under house arrest. The length of D.S.'s detention concerned the court, but the judge believed that the proper course of action was to request a reduction of the bond. Shortly thereafter, the parties told the court that they had reached an agreement in the case whereby the state would dismiss the felony case against D.S. without prejudice and transfer D.S. back to the juvenile division, where the state had refiled a new delinquency complaint in DL-14102017. In exchange for the dismissal of the felony charges and a transfer back to the juvenile division, D.S. would admit allegations that would constitute the crime of robbery with a one-year firearm

specification. The judge of the general division dismissed the case without prejudice and ordered D.S.'s transfer to the juvenile detention center for arraignment on the new juvenile division charges.

As agreed, D.S. was arraigned in the juvenile division and admitted the allegations in DL-14102017, with his agreement to serve a minimum one-year commitment with the Department of Youth Services and a mandatory one-year commitment on the firearm specification. The court accepted the admission and for disposition imposed the agreed, two-year commitment. The court refused, however, to grant D.S.'s request for confinement credit for the time he spent awaiting resolution of the charges because the confinement occurred in DL-13106887, the originally filed case, not DL-14102017. The court noted that DL-14102017 was a newly filed case, that the parties were in court for arraignment in the new case, and the parties at no time stated that D.S.'s admission to the complaint was premised on confinement credit. The parties immediately objected to the court's refusal to grant confinement credit on grounds that it was their understanding that D.S. would receive credit for confinement under the original case, but the court overruled those objections.

Opinion at ¶¶ 2-4.

On appeal, D.S. (hereinafter “Appellant”) argued that the juvenile court erred in refusing to grant him jail-time credit. The State conceded the juvenile court’s error. The Eighth District disagreed and affirmed the juvenile court’s ruling. *See Opinion*.

LAW AND ARGUMENT

APPELLANT’S PROPOSITION OF LAW I: WHEN A JUVENILE COURT COMMITS A CHILD TO THE DEPARTMENT OF YOUTH SERVICES, THE COURT MUST STATE IN ITS ENTRY OF COMMITMENT THE TOTAL DAYS THE CHILD WAS CONFINED IN CONNECTION WITH THE OFFENSES ON WHICH THE ORDER OF COMMITMENT IS BASED, INCLUDING TIME FOR WHICH THE CHILD WAS HELD ON CHARGES THAT WERE DISMISSED. R.C. 2152.18(B). FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; OHIO CONSTITUTION, ARTICLE I, SECTION 16.

The State would direct this Honorable Court to Appellant’s law and argument found within his memorandum in support of jurisdiction. It is the State’s position that Appellant is entitled to the time he spent in confinement in connection with the offenses he admitted to.

CONCLUSION

Based on the forgoing, jurisdiction of the present case should be granted and the Eighth District's opinion should be summarily reversed. The case should be remanded back to the juvenile court so that Appellant may be granted the jail-time credit he is entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Response has been sent via U.S. regular mail this the 29th day of April, 2015 to:

Defendant-Appellant (pro-se)

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