

IN THE SUPREME COURT OF OHIO

IN RE D.S.,  
A Minor Child

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Case No. 2015-0505

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

C.A. Case NO. 101161

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**MERIT BRIEF OF D.S.**

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## Statement of the Case and Facts

On May 14, 2013, a two-count complaint was filed in the Cuyahoga County Juvenile Court, Case No. DL13106887, alleging that on May 8, 2013, then 17-year-old D.S. committed two counts of aggravated robbery, violations of R.C. 2911.01(A)(1), felonies of the first degree if committed by an adult, each enhanced with two firearm specifications pursuant to R.C. 2941.141 and 2941.145. (Juv. Case No. DL13106887, 5.14.13 Complaint). D.S. was arraigned on May 20, 2013 and remanded to the juvenile detention center upon the State's notice that it intended to pursue transfer of his case to criminal court under Juv.R. 30. (Juv. Case No. DL13106887, 5.22.13 Entry).

On July 26, 2013, the juvenile court found probable cause that D.S. committed the acts charged and transferred his case to criminal court for prosecution. (Juv. Case No. DL13106887, 7.26.13 T.pp. 3-147; 7.29.13 Entry). The court also imposed a \$50,000 bond and remanded D.S. to county jail, where he was confined for several months because he could not post bail. (Juv. Case No. DL13106887, 7.26.13 T.p. 146; 7.29.13 Entry). D.S. was indicted in criminal court on August 9, 2013. (Juv. Case No. CR576691, 8.9.13 Indictment).

On February 25, 2014, the parties informed the criminal court that they had reached an agreement in which the State would dismiss the aggravated robbery charge without prejudice in exchange for D.S.'s admission to robbery with a one-year firearm specification. (C.P. Case No. CR576691, 2.25.14 T.p. 116). The State had already filed a new complaint in juvenile court charging D.S. with the lesser offense and assured the court there would be no break in D.S.'s custody during the transfer back to juvenile court. (C.P. Case No. CR576691, 2.25.14 T.pp. 116-118; Juv. Case No. DL14102017, 2.21.14 Complaint). Accordingly, the criminal court dismissed the case without prejudice and remanded D.S. to the juvenile detention center pending further

proceedings. (C.P. Case No. CR576691, 2.25.14 T.p. 119; 2.25.14 Entry).

On February 28, 2014, the juvenile court held D.S.'s adjudication and disposition hearing on the 2014 complaint, which alleged that he was delinquent of robbery, committed on May 8, 2013. (Juv. Case No. DL14102017, 2.21.14 Complaint; Juv. Case No. DL14102017, 2.28.14 T.pp. 3-31). The parties agreed that D.S. would admit to one count of robbery with a one-year firearm specification, and that he would serve a one-year minimum commitment in the Department of Youth Services ("DYS") consecutive to a mandatory year commitment for the specification. (Juv. Case No. DL14102017, 2.28.14 T.pp. 3-4). The juvenile court recalled that the offense was previously filed under case number DL13106887; and, the court referenced the victim's and officers' testimony from the probable cause hearing held in that case number. (Juv. Case No. DL14102017, 2.28.14 T.pp. 17-18). Following a brief colloquy, D.S. entered an admission; and, the court found him delinquent. (Juv. Case No. DL14102017, 2.28.14 T.p. 19).

For disposition, the juvenile court imposed the jointly recommended two-year minimum commitment. (Juv. Case No. DL14102017, 2.28.14 T.pp. 26-28). But, the court granted D.S. zero days of credit, finding that the 2014 complaint was a "new" case. (Juv. Case No. DL14102017, 2.28.14 T.p. 26). D.S., his mother, and defense counsel objected. (Juv. Case No. DL14102017, 2.28.14 T.p. 26). Defense counsel and the State reminded the court that the 2014 complaint was simply a refiling of the 2013 case, and that it charged D.S. with the same act against the same victim, and that the confinement credit from the 2013 case was to be credited against his commitment to DYS. (Juv. Case No. DL14102017, 2.28.14 T.pp. 27-28). The court refused to grant D.S.'s request for credit for the time he was confined in Case No. DL13106887. (Juv. Case No. DL14102017, 2.28.14 T.p. 28). The State apologized to the court for failing to

discuss confinement credit earlier in the hearing. (Juv. Case No. DL14102017, 2.28.14 T.p. 29).

The following exchange then occurred on the record:

State: It was the State's understanding that you would give him credit for the time that he was in on that original case because it's the same facts and circumstances. So it wasn't an intent to mislead the court. We just thought that was going to happen because of the two-year recommended sentence.

Court: But you said a two-year recommended sentence. You didn't say a two-year recommended sentence with so many precommitment day credits. This is a new case for me.

State: Again, and I understand and I apologize having not worked in front of you very often, Judge. We understood it was a reindictment of the old offense or the other delinquency matter. So I thought, again, when we discussed this, that we understood he was going to be going to ODYS for two years. He would get credit for the time he's been in, and the victims also were aware of that. And we understood he was going to be in for another 16 months minimum. And we were okay with that, Judge. So again I apologize it wasn't made clear to you. I'm not trying to gum out what's happening today, but that was the understanding we had with counsel. And I again apologize we did not go through that clearly with you at sidebar.

Court: How many days are you looking at because I'm still at zero?

State: He was incarcerated as of May 14th, Judge. So I believe he was going to get credit for.

Defense: I believe it was May 22nd, right?

D.S.: May 18th.

Defense: May 18th.

State: So he's been in for almost nine months, I believe, as of today.

Defense: Yes. And a lot of that was in the County Jail by the way.

State: Some of that was in the County—

Court: Excuse me. [D.S.], who took you to county jail?

D.S.: Sheriffs, I think.

Court: Noted. Who took you to county jail?

D.S.: Sheriff took me.

Court: Who took you to county jail? This is the last time I'll ask.

D.S.: What do you mean?

Court: Noted. Zero days. I'm done.

Defense: Judge. Wait a second, Judge. This cannot be a proper—

Court: We're off the record.

(Juv. Case No. DL14102017, 2.28.14 T.pp. 29-31).

On appeal, D.S. assigned error to the juvenile court's denial of his request for 286 days of confinement credit arguing that, notwithstanding the filing of a new complaint, he was entitled to credit against his DYS commitment because his confinement under the 2013 complaint was "in connection with" the 2014 complaint upon which his commitment to DYS was based. *In re D.S.*, 8th Dist. Cuyahoga No. 101161, 2015-Ohio-518, 29 N.E.2d 236, ¶ 1, 5. The State conceded error. *Id.* at ¶ 1. But, the Eighth District affirmed, holding that R.C. 2152.18(B) requires a court to calculate credit only for the time a child is confined under a specific complaint; and, that because D.S.'s confinement was under the 2013 complaint, he was not entitled to credit for the nine months he was confined for the offense. *Id.* at ¶ 6, 12. D.S. timely appeals.

## Argument

### Introduction

This Court has found that the practice of awarding jail time credit is rooted in protections found in both the Ohio and U.S. Constitutions. *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 7 (finding that the Equal Protection Clause requires that indigent defendants be credit with all the time they are confined awhile awaiting trial). And, recently, the General Assembly “broaden[ed] the circumstances under which [children \* \* \* ] receive credit against [their] term of institutionalization” by bringing R.C. 2152.18(B)—Ohio’s juvenile confinement credit statute, more in line with the adult requirements found in R.C. 2967.191. *In re K.A.*, 6th Dist. Lucas No. L-12-1334, 2013-Ohio-3847, ¶ 5 (finding that the legislature’s amending the word “detained” to “confined” increased the types of credit to which children are entitled); and *In re Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908, ¶ 15 (recognizing that the term “confinement” is more broad than the term “detention.”).

Yet, despite this expansion, the Eighth District unconstitutionally narrowed R.C. 2152.18(B) by interpreting the statute to require courts to include in their calculations only the days the child was confined under a specific complaint or the days that the parties state “on the record [as] a part of the deal,” when a child enters an admission. *D.S.* at ¶ 6, 11. Because neither holding is supported by the plain language of R.C. 2152.18(B), the Eighth District’s decision establishes a disturbing precedent for the application of the juvenile confinement credit statute. For the reasons that follow, D.S. respectfully requests that this Court adopt his proposition of law and remand his case to the Eighth District Court of Appeals.

## Proposition of Law

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 guarantees of the Due Process Clause apply to juveniles and adults alike. *In re Gault*, 387 U.S. 1, 13-14, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The applicable due process standard, as developed by *Gault* and *Winship* is fundamental fairness. *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971); *see also Lassiter v. Dept. of Social Servs. Of Durham Cty., North Carolina*, 452 U.S. 18, 25, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981). This case asks this Court to decide whether it is fundamentally fair for courts to interpret Ohio's juvenile confinement credit statute so narrowly that it awards children credit only for days they are confined under a specific complaint rather than for the days they are confined in connection with the offense for which they are committed to DYS. D.S. submits that under this Court's rationale in *Thomas*, juveniles are entitled to receive credit for any time they are confined in connection with their offense of commitment.

- A. **The plain language of R.C. 2152.18(B) requires that a child be credited with the time he is confined in connection with his commitment to DYS.**

Ohio Revised Code Section 2152.18(B) requires that when a juvenile court commits a child to DYS, the court must include in its order of commitment, the total days a child was "confined in connection with the delinquent child complaint upon which the order of

commitment is based.” See also *Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908, at

¶ 11.<sup>1</sup> Specifically, the statute provides:

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 department shall reduce the minimum period of institutionalization that was ordered by both the total number of days that the child has been so confined as stated by the court in the order of commitment and the total number of any additional days that the child has been confined subsequent to the order of commitment but prior to the transfer of physical custody of the child to the department.

R.C. 2152.18(B).

In this case, the juvenile court declined to credit D.S. with the 286 days he was confined in juvenile detention and county jail for the May 8, 2013 robbery because, during the negotiation process, the State dismissed the original complaint against D.S. and refiled a lesser offense under a new complaint and number, but the parties did not state on the record that D.S. was to receive credit for the 2013 complaint. (Juv. Case No. DL14102017, 2.28.14 T.pp. 29-31). The Eighth District agreed. *D.S.* 8th Dist. Cuyahoga No. 101161, 2015-Ohio-518, 29 N.E.3d 236, at ¶ 4. The Eighth District affirmed the juvenile court’s determination that the 2014 complaint was a “new” case and interpreted R.C. 2152.18(B) to mean that a child is only entitled to credit for time the child is confined under a specific case number, even when the original complaint is dismissed and the same delinquent act is refiled as a different charge. *Id.* at ¶ 6. But, The Eighth District’s interpretation of R.C. 2152.18(B) does not comport with the plain language of the statute.

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<sup>1</sup> R.C. 2152.18 has been amended since *Thomas* to grant children credit for all time “confined” rather than “detained,” but the phrase “in connection with” has remained the same.

**1. The Eighth District’s plain language analysis is incomplete.**

“In construing a statute, a court’s paramount concern is the legislative intent in enacting the statute.” *State v. J.R.*, 63 Ohio St.3d 590, 594, 589 N.E.2d 1319 (1992). To determine legislative intent, a reviewing court must look to the plain language of the statute itself, reading words and phrases in context and construing them “according to the rules of grammar and common usage.” *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 9; *In re Columbus Southern Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, 8 N.E.2d 863, ¶ 26; and R.C. 1.42. It is well-established that if the words in a statute are unambiguous, a court must look no further than the face of the statute and simply apply its terms, and “give effect to the words used, making neither additions nor deletions from words chosen by the General Assembly.” *State ex rel. Jones v. Conrad*, 92 Ohio St.3d 389, 392, 750 N.E.2d 583, (2001); and *Columbus Southern Power Co.* at ¶ 26. But, courts are to presume that the legislature did not intend to enact statutes that produce absurd results. *Conrad* at 392.

Here, the Eighth District’s analysis of R.C. 2152.18(B) focused solely on the word “complaint.” Specifically, the court found that:

When interpreting a statute, we examine its plain language to determine legislative intent, and a plain reading of R.C. 2152.18(B) does not support the parties’ argument that the court erred by refusing to grant D.S. confinement credit. \* \* \* The statute states that credit is applied “in connection with the delinquent child complaint upon which the order of commitment is based.”

(Emphasis sic.) *D.S.* 8th Dist. Cuyahoga No. 101161, 2015-Ohio-518, 29 N.E.3d 236, at ¶ 6.

The court concluded that “the statute permits no other interpretation other than that the confinement relates to the underlying complaint, not any proceedings under previously dismissed complaints or indictments.” *Id.* The court supported its conclusion by highlighting the differences between R.C. 2152.18(B) and R.C. 2967.191—Ohio’s adult jail time credit statute,

which requires a committing court to credit a defendant for 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.” (Emphasis sic.) *Id.* at ¶ 7. The court found that because the General Assembly used the word “complaint” in R.C. 2152.18(B), when used the word “offense,” in R.C. 2967.191, the legislature expressed its clear intent to limit the credit to which a child is entitled under R.C. 2152.18(B) to a specific complaint, rather than to the offense the child committed. *Id.*

But, if the Eighth District is correct, then after months of confinement, court proceedings, and negotiations, the State can amend or refile the original complaint as a lesser or different offense under a new case number and thereby relieve a juvenile court of its duty to grant a child credit under R.C. 2152.18(B)—which is precisely what happened here. Not only is this fundamentally unfair, but it creates an absurd result that undermines the protections that Ohio’s confinement credit statutes were enacted to afford. See *Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, at ¶ 7; and, *State of Ohio’s Memorandum in Response to Jurisdiction*, p.1-2.

The Eighth District’s analysis of R.C. 2152.18(B) is incomplete, because the court gave no effect to the phrase “in connection with,” which appears in the same sentence immediately before the clause “the delinquent child complaint upon which the order of commitment is based.” R.C. 2152.18(B). This oversight is significant in light of this Court’s decision in *Thomas*.

**2. The phrase “in connection with” controls whether a child receives credit against a DYS commitment for time confined.**

In *Thomas*, this Court was asked whether a child is entitled to credit for time held in a rehabilitation facility while awaiting adjudication and disposition for a probation violation. *Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908, at ¶ 10. This Court held that juveniles are entitled to receive credit, not only for time held on the original complaint, but also for time held “awaiting the adjudication or disposition of, or execution of a court order relating

to, the original delinquency complaint or a complaint of a related probation violation.” *Id.* This Court’s rationale was that the phrase “in connection with” requires a court to include the time a child was held on a complaint alleging a probation violation because the violation stems from the original complaint and is “sufficiently linked to the adjudication of the original charges.” *Id.*; see also *In re Marlin*, 3d Dist. Paulding No. 11-04-15, 2005-Ohio-1429, ¶ 12-14 (relying on *Thomas* and finding that a child’s time in detention on a probation violation was “in connection with” his commitment to DYS and was “clearly in connection with the original complaint and linked to the adjudication of the original charges.”).

In *Thomas*, this Court relied in part on the Fifth District’s decision in *In re Dillard*, in which that court found that, where a new complaint alleges a probation violation, a child’s time in detention is “in connection with” the original action because:

The new charge of violation of a prior court is a condition of probation, not a separate offense bringing with it a separate sentence. Had the State brought a complaint for contempt of court for violation of the prior court order, that may be considered a new charge, but upon this record, it appears the only criminal charge against appellant was the original charge of arson.

*In re Dillard*, 5th Dist. Stark Nos. 2001CA00093, 2001CA000121, 2001 Ohio App. LEXIS 5555, 13 (Dec. 3, 2001). By ignoring the phrase “in connection with,” the Eighth District misinterpreted R.C. 2152.18(B).

- 3. Where an amended or refiled complaint charges a child with the same delinquent act as the original complaint, the two complaints are “in connection with” each other.**

The Eighth District’s conclusion that *Thomas* does not apply here because *Thomas* concerned a probation violation is wrong. *D.S.* 8th Dist. Cuyahoga No. 2015-Ohio-518, 29 N.E.3d 236, ¶ 8. The holding in *Thomas* was based on this Court’s interpretation of the phrase “in connection with.” *Thomas* at ¶ 10. This case turns on how that phrase operates when the

State elects to amend or refile an original complaint as a new action. The facts of this case demonstrate D.S.'s confinement on the 2013 aggravated robbery complaint was "in connection with" the 2014 complaint upon which his commitment was based; therefore, *Thomas* applies.

The 2013 complaint against D.S. alleged that on May 8, 2013, he committed aggravated robbery, enhanced with three- and one-year firearm specifications. (Juv. Case No. DL13106887, 5.14.13 Complaint). *D.S.* 8th Dist. Cuyahoga No. 101161, 2015-Ohio-518, 29 N.E.3d 236, at ¶ 2. After bindover, the 2013 criminal indictment alleged the same. (Juv. Case No. CR576691, 8.9.13 Indictment). D.S. was confined under the 2013 complaint and 2013 indictment for a total of 286 days. (Juv. Case No. DL13106887, 5.22.13 Entry; 7.26.13 T.p. 146; 1.13.14. Entry; C.P. Case No. CR576691, 1.13.14 T.p. 114; Juv. Case No. DL14102017, 2.28.14. T.pp. 28-31). Following plea negotiations, D.S. returned to juvenile court under a 2014 complaint, which alleged that he committed the robbery on May 8, 2013, enhanced with a one-year firearm specification, against the same victim listed in the 2013 complaint. (Case No. DL14102017, 2.21.14 Complaint). Further, although D.S. had only one hearing on the 2014 complaint, the court and parties acknowledged that the charge was originally filed in the 2013 complaint and referenced the testimony and proceedings that were held in that matter. (Juv. Case No. DL14102017, 2.28.14 T.pp. 17-18; 28-31).

The record is clear: the 2013 and 2014 complaints charged D.S. with the same delinquent act, against the same victim, supported by the same facts and circumstances. (2.28.14 T.pp. 17-18; 29-30). And, while the record does not demonstrate why the State elected to dismiss and refile the original charges rather than utilize the reverse waiver provisions of R.C. 2152.121 to return D.S. to juvenile court, it is clear that the parties agreed that D.S.'s 2013 case and 2014 case concerned the same delinquent behavior.

Contrary to the juvenile court and the Eighth District's findings, the 2014 case was not a "new" case charging D.S. with a separate act for which he could receive a separate sentence; rather, it was a refile of the same delinquent act, albeit charged as a lesser offense filed in a new case number. *D.S.* at ¶ 11; *see Dillard* at 13. Thus, D.S.'s confinement under the 2013 complaint was sufficiently linked to the 2014 complaint such that the juvenile court was required to include in its entry of commitment on the 2014 case, the days D.S. was confined under the 2013 complaint. *Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908, at ¶ 10; R.C. 2152.18(B).

**B. The Eighth District decision creates an unconstitutional end-around the juvenile confinement credit requirement and forces children to serve a sentence for which there is no crime.**

Courts of appeals have interpreted Ohio's confinement credit statutes to require courts to credit juveniles and defendants with the days they are held on charges that are dismissed or of which they are acquitted. *In re Felver*, 3d Dist. Auglaize No. 2-01-20, 2002 Ohio App. LEXIS 1590, 14-15 (Apr. 10, 2002) (finding that a juvenile court's failure to grant a child credit for days held on a dismissed probation violation was improper); *State v. Gregory*, 108 Ohio App.3d 264, 268, 670 N.E.2d 547 (1st Dist.1995) (finding that the mandatory language of R.C. 2967.191 "requires that the trial court calculate credit for any time of incarceration that arises out of the offense for which [the defendant] was convicted and sentenced."). This makes sense because denying such credit results in a child or defendant serving what is known as "dead time," or a punishment without a crime. *Felver*, at 15-16; *Gregory* at 268.

In *Gregory*, the First District analyzed whether a defendant, who was convicted of one offense but acquitted of another, was entitled to receive credit against his sentence for the months he was held in jail awaiting trial. *Gregory* at 268. In that case, the state argued that the trial

court was permitted to allocate the defendant's jail time to the acquitted charge, resulting in him losing months of credit for the days he was held. *Id.* But, the First District rejected the state's argument, finding that although "trial courts enjoy a great deal of discretion in sentencing," Ohio's jail time credit statute does not afford a trial court any discretion in regard to jail time credit. *Id.* Specifically, the court found:

The calculation of credit for jail time is separate and subsequent to sentencing. The decision whether to credit pretrial confinement days is simply not part of the sentence. Credit for jail time is not open to tailoring to the individual case in the same sense as sentencing, because once the *sentence has already been rendered*, the remaining calculation is merely a computation of how much time has been served and how much remains. The *mandatory* language of R.C. 2967.191 requires that the trial court calculate credit for *any* time of incarceration that arises "out of the offense for which [Gregory] was convicted and sentenced."

(Emphasis sic.) *Id.* The First District concluded that because R.C. 2967.191 gives courts no discretion concerning whether to calculate a defendant's jail time credit, a trial court cannot prevent the defendant from receiving his credit by allocating his time in jail to an offense of which he was acquitted. *Id.* at 269. Accordingly, the imposition of dead time "is fundamentally unfair to the defendant" because it forces the defendant to serve time for which there is no crime attached. *State v. Klein*, 1st Dist. Hamilton Nos. C-040176 and C-040224, 2005-Ohio-1761, ¶ 31. The same is true for juveniles who do not receive the credit to which they are entitled under Ohio's juvenile confinement credit statute. *Felver* at 14-15, citing *Gregory*, generally.

D.S. was confined for 9 months on the May 8, 2013 aggravated robbery complaint, which was ultimately dismissed without prejudice. But, by interpreting R.C. 2152.18(B) to only require credit for the 2014 complaint and not for the original action that was dismissed, the Eighth District has effectively imposed a 9-month sentence on D.S.—most of which was served in an adult jail, with no crime attached thereto, in violation of due process.

C. It is fundamentally unfair for a court to require a child to request that he be afforded a statutorily conferred right as part of his plea before it can be awarded.

Finally, both the juvenile court and the Eighth District found that if the parties wanted D.S.'s confinement from the 2013 aggravated robbery complaint to be included in the commitment entry for the 2014 robbery, the parties should have stated that credit was a part of his plea. (Juv. Case No. DL14102017, 2/28/14 T.pp. 29-31); *D.S.* 8th Dist. Cuyahoga No. 101161, 2015-Ohio-518, 29 N.E.2d 236, at ¶ 12. But, this undermines the duty that R.C. 2152.18(B) places on the committing court.

This Court has "repeatedly recognized that use of the term 'shall' in a statute or rule connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary." *State v. Golphin*, 81 Ohio St.3d 543, 545-546, 692 N.E.2d 608 (1998). Further, "[a] statute or rule which uses the word 'shall' in describing an act that is to be performed is not generally susceptible [to] a 'substantial compliance' standard of interpretation." *Id.* at 546, citing *State v. Pless*, 74 Ohio St.3d 333, 658 N.E.2d 766 (1996).

Further, the language of R.C. 2152.18(B) does not grant a juvenile court the same discretion that a court has when crafting delinquency dispositions. *Compare* R.C. 2152.18(B) *with In re D.S.*, 111 Ohio St.3d 361, 2006-Ohio-5851, 856 N.E.2d 921, ¶ 6 ("Pursuant to R.C. 2152.19(A)(4), a juvenile court has broad discretion to craft an appropriate disposition for a child adjudicated delinquent."). Under R.C. 2152.18(B), *whether* a child receives credit against his commitment is not part of the court's calculus. *See Gregory*, 108 Ohio App.3d at 268, 670 N.E.2d 547 (1st Dist.1995). Rather, the statute imposes a mandatory duty on the court to calculate the time a child was confined; then DYS has a duty to reduce the child's sentence in accordance with that calculation. *In re R.A.I.*, 2d Dist. Miami Nos. 2006 CA 43-44, 2007-Ohio-2365, ¶ 14.

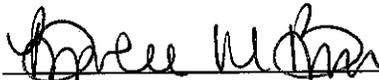
Accordingly, the Eighth District's placing of the onus on the child to demonstrate that credit was a part of his plea is without merit.

### Conclusion

According to the Eighth District, a child receives credit for confinement if the State proceedings in the original complaint; but, if the case is dismissed and refiled under a new case number for the same offense, the child does not. *D.S. 8th Dist. Cuyahoga No. 101161, 2015-Ohio-518, 29 N.E.2d 236, at ¶ 7.* D.S. asks this Court to hold that under such circumstances, if the days he was confined are sufficiently linked to the refiled charges such that they are "in connection with" the DYS commitment, then the child must receive credit. To hold otherwise would deny children the basic constitutional guarantees that Ohio's juvenile confinement credit statute affords and would result in unfair plea bargaining tactics in delinquency cases. For these reasons, D.S. respectfully requests that this Court adopt his proposition of law and remand his case to the Eighth District.

Respectfully submitted,

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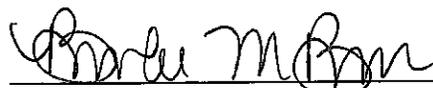
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### Certificate of Service

I hereby certify that a copy of the foregoing MERIT BRIEF OF APPELLANT D.S. AND THE APPENDIX TO THE MERIT BRIEF OF APPELLANT D.S. was forwarded by regular U.S. Mail, postage prepaid, this 14th day of December, 2015, to the office of Frank R. Zeleznikar, Assistant State Prosecuting Attorney, 1200 Ontario Street, 8th and 9th Floor, Cleveland, Ohio 44113.



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IN THE SUPREME COURT OF OHIO

IN RE D.S.

ADJUDICATED DELINQUENT CHILD

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CASE No. 2015-0505

ON APPEAL FROM THE CUYAHOGA  
COUNTY COURT OF APPEALS  
EIGHTH APPELLATE DISTRICT

C.A. CASE No. 101161

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APPENDIX TO MERIT BRIEF OF APPELLANT D.S.

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**FILED SEPARATELY UNDER SEAL**