

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1221

Appellee

Trial Court No. CR0200601453

v.

Raul Izquierdo

**DECISION AND JUDGMENT**

Appellant

Decided: January 21, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Raul Izquierdo, pro se.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} In this accelerated appeal, defendant-appellant, Raul Izquierdo, appeals the July 12, 2010 judgment of the Lucas County Court of Common Pleas which denied

appellant's pro se motion for jail time credit. For the reasons set forth herein, we affirm the trial court's judgment.

{¶ 2} On February 28, 2006, appellant was indicted on one count of felonious assault and one count of possession of a deadly weapon while under detention. On June 7, 2006, appellant entered an *Alford* plea to one count of felonious assault. On June 9, 2006, appellant was sentenced to a total of five years of imprisonment, the sentence was ordered to be served concurrently with the sentences imposed in Lucas County case Nos. CR05-3263B and CR05-3624. Appellant was given credit for 100 in-custody days from the date of the indictment.

{¶ 3} On June 25, 2010, appellant filed a motion requesting that the court modify his jail time credit from 100 to 227 days.<sup>1</sup> Appellant argued that his total jail time credit should have been applied toward each concurrent prison term. On July 12, 2010, the trial court denied the motion. This appeal followed.

{¶ 4} Though not delineating a specific assignment of error, appellant, pro se, essentially argues that the trial court erred when it failed to apply all the post-confinement, pre-trial jail time that appellant served prior to his July 12, 2010 sentencing. Appellant argues that the trial court credited him with only 100 jail time days; the number of days served following the 2006 indictment in this case. Conversely the state asserts

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<sup>1</sup>In the June 9, 2006 judgment entry for Lucas County case No. CR05-3263, appellant was credited with 231 days, not 227.

that appellant is not able to apply the jail time credit in the 2006 case retrospectively to time served prior to his indictment.

{¶ 5} R.C. 2967.191 provides:

{¶ 6} "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, \* \* \*."

{¶ 7} Ohio Adm. Code 5120-2-04(B) states that a trial court is responsible for calculating the number of days a defendant is incarcerated prior to being sentenced. Ohio Adm. Code 5120-2-04(F) further provides:

{¶ 8} "If an offender is serving two or more sentences, stated prison terms or combination thereof concurrently, the department shall *independently reduce each sentence or stated prison term for the number of days confined for that offense*. Release of the offender shall be based upon the longest definite, minimum and/or maximum sentence or stated prison term after reduction for jail time credit." (Emphasis added.)

{¶ 9} Construing the above-quoted provisions, in *State v. Scott*, 2d. Dist. Nos. 21927, 21928, 2007-Ohio-3815, the court noted that the defendant was entitled to have

his sentences reduced by the number of days served on each case. Id. at ¶ 23. However, the defendant was required to serve the longest sentence. Id.

{¶ 10} Upon review of the judgment entries attached to appellant's brief, in this case appellant was given 100 days of jail time credit. In Lucas County case No. CR05-3263, appellant was given 231 days of jail time credit. Reviewing them independently, although appellant has served his sentence in the 2005 case, his sentence on the 2006 case has not expired. Appellant is properly being held on the "longest definite" prison term. Ohio Adm. Code 5120-2-04(F). Accordingly, appellant's assignment of error is not well-taken.

{¶ 11} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

**JUDGMENT AFFIRMED.**

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

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.