

[Cite as *State v. Carter*, 2009-Ohio-6251.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

RODNEY CARTER

DEFENDANT-APPELLANT

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CASE NO. 09 MA 10

OPINION

CHARACTER OF PROCEEDINGS:

Criminal Appeal from the Court of
Common Pleas of Mahoning County,
Ohio

Case No. 00 CR 1245

JUDGMENT:

Modified.

APPEARANCES:

For Plaintiff-Appellee:

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Mahoning County Prosecutor
Atty. Gabriel Wildman
Assistant Prosecuting Attorney
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For Defendant-Appellant:

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JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: November 24, 2009

[Cite as *State v. Carter*, 2009-Ohio-6251.]
WAITE, J.

{¶1} Pro se Appellant Rodney Carter contends that he is entitled to 430 days of jail-time credit that was not deducted from his sentence for felonious assault and improperly discharging a firearm. The state agrees with Appellant's argument, and we hereby modify the sentence to grant Appellant 430 days of credit to the sentence in Mahoning County Court of Common Pleas Case No. 2000 CR 1245.

{¶2} On December 1, 2000, Appellant was arrested for improperly discharging a weapon into an inhabited structure, R.C. 2923.161, a second degree felony. The case was bound over to the Mahoning County Grand Jury. On February 1, 2001, he was indicted not only on that charge but on an additional charge of felonious assault, also a second degree felony. Firearm specifications were attached to each charge. This was designated as Case No. 2000 CR 1245.

{¶3} On March 1, 2001, Appellant entered into a Crim.R. 11 plea agreement. The state dismissed the firearm specifications, and Appellant pleaded guilty to the two underlying charges. He was sentenced to three years in prison on each count, to be served concurrently. The court filed its judgment on March 9, 2001. Appellant was granted 91 days of jail-time credit.

{¶4} On February 4, 2002, Appellant was granted judicial release pursuant to R.C. 2929.20. The remainder of his prison sentence was suspended and he was placed on two years of community control. He was ordered to abide by all laws of the United States and the State of Ohio, and not to own or possess any firearms. According to the state's calculation, Appellant had served 430 days of incarceration in Case No. 2000 CR 1245 at the time he was placed on judicial release.

{¶5} On October 23, 2002, Appellant was arrested and charged with six felony counts in Case No. 2002 CR 1070 in Mahoning County, including three counts of felonious assault with gun specifications. He entered into a plea agreement and was sentenced on May 6, 2004, in Case No. 2002 CR 1070.

{¶6} On October 29, 2002, the state filed a motion to revoke probation in Case No. 2000 CR 1245. Counsel was appointed, but withdrew on October 1, 2003, and new counsel was appointed. The probation revocation hearing was finally held on May 3, 2004, and the court filed its judgment entry on May 6, 2004. The court revoked Appellant's probation, reinstated the remainder of his original prison term, and ordered that the prison term be served consecutive to the sentence imposed in Case No. 2002 CR 1070. The court granted Appellant 558 days of credit for time already served. This number represents the number of days that Appellant was incarcerated from October 23, 2002 (the date of his arrest in Case No. 2002 CR 1070) to the day he was sentenced in Case No. 2002 CR 1070.

{¶7} On November 18, 2008, Appellant filed a motion for additional jail-time credit. Appellant argued that the trial court miscalculated the amount of jail-time credit awarded after his probation was revoked, and asked the court to add 430 days of credit. The court overruled the motion without comment on December 1, 2008. The judgment entry was served on Appellant on December 19, 2008. This appeal followed on January 15, 2009.

ASSIGNMENT OF ERROR

{¶8} “The trial court committed prejudicial error in refusing to credit against reimposed prison term all time served on sentence.”

{¶9} Substantive claims regarding jail-time credit should be raised on direct appeal, and if a court overrules a post-sentence motion raising such claims, such ruling is generally not regarded as a final appealable order. *State v. Chafin*, 10th Dist. No. 06AP-1108, 2007-Ohio-1840; *State v. Newport*, 2d Dist. No. 2006-CA-49, 2007-Ohio-1678; *State v. Caldwell*, 11th Dist. No.2004-L-173, 2005-Ohio-6149. On the other hand, Crim.R. 36 allows the court to correct clerical errors at any time, and a trial court’s decision overruling a motion to correct a mere clerical error in calculating jail-time credit may be treated as a final appealable order in certain cases. *State v. McLain*, 6th Dist. No. L-07-1164, 2008-Ohio-481, appeal not allowed 118 Ohio St.3d 1463, 2008-Ohio-2823, 888 N.E.2d 1115; *State v. Weaver*, 1st Dist. No. C-050923, 2006-Ohio-5072. Since the state has confessed error in this appeal and apparently concedes that there is a final appealable order, we will treat this as an appeal of a Crim.R. 36 motion to correct a clerical error in sentencing. In correcting an error regarding jail-time credit, we may remand the case to the trial court for the proper credit to be applied, or modify the judgment itself under the authority of App.R. 12(A)(1)(a). *State v. Reese*, 7th Dist. No. 08 MA 80, 2009-Ohio-1202, ¶61.

{¶10} Appellant argues that the trial court should have credited him with an additional 430 days of jail-time credit based on the time he was incarcerated prior to being placed on judicial release in Case No. 2000 CR 1245. Appellant argues that

this was a simple miscalculation by the trial court, and that this Court can correct the calculation by deducting the jail-time from his sentence.

{¶11} The state has agreed with the facts and argument set forth by Appellant. The state's brief on appeal notes that: "the Court only credited Appellant with 558 days successfully served. The period of 558 days reflects the time from when Appellant was arrested on the new charges in case number 2002 CR 1070, specifically 10/23/02 through the 5/3/2004 probation violation hearing. This number fails to account for the 430 days that Appellant successfully served before he was released on judicial release in case number 2000 CR 1245. As such, Appellant is entitled to an additional credit of 430 days on case number 2000 CR. 1245." (Appellee's Brf., p. 3.)

{¶12} The state also makes recommendations regarding jail-time credit calculations in Case No. 2002 CR 1070, but that case is not under review in this appeal. Because the state has confessed judgment in the instant appeal and accepts Appellant's arguments, we rely on the authority found in App.R. 12 and allow for 430 days of jail-time credit to be applied to Appellant's sentence in Case No. 2000 CR 1245, to be served consecutively to the sentence in Case No. 2002 CR 1070.

Vukovich, P.J., concurs.

DeGenaro, J., concurs.