

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	CASE NO. 14 BE 52
)	
PLAINTIFF-APPELLEE,)	
)	
VS.)	OPINION
)	
KEVIN ALREDGE,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Common Pleas Court
	Case No. 14-CR-185

JUDGMENT:	Reversed and Remanded.
-----------	------------------------

APPEARANCES:

For Plaintiff-Appellee:	No Brief Filed
-------------------------	----------------

For Defendant-Appellant:	Attorney Daniel Balgo Attorney Scot McMahon Balgo & Kaminski LC 52171 National Road, Suite 4 St. Clairsville, Ohio 43950
--------------------------	--

JUDGES:

Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: June 15, 2015

DeGENARO, J.

{¶1} Defendant-Appellant, Kevin R. Alredge Sr., appeals the October 28, 2014 judgment of the Belmont County Court of Common Pleas convicting him of one count of burglary and sentencing him accordingly. On appeal, Alredge contends his sentence was erroneous because the trial court failed to properly calculate jail-time credit. Alredge's assignment of error is meritorious. The trial court failed to grant Alredge credit for the days he was jailed following the sentencing hearing until the time he was transported to a state institution. Accordingly, the judgment of the trial court is reversed and remanded for proper calculation of jail-time credit.

Facts and Procedural History

{¶2} On August 6, 2014, the grand jury indicted Alredge on one count of burglary, R.C. 2911.12(A)(2), a second-degree felony, and one count of breaking and entering, R.C. 2911.13(A), a fifth-degree felony. Alredge was arrested pursuant to the warrant on this indictment on August 12, 2014. Alredge was arraigned, pled not guilty and counsel was appointed. Bond was set at \$25,000 cash or surety, but from the record it does not appear that Alredge was released on bond during the pendency of the proceedings.

{¶3} Alredge later entered into a Crim.R. 11 Agreement with the State. Alredge agreed to plead guilty to an amended charge of third-degree felony burglary, R.C. 2911.12(A)(3). The State agreed to dismiss the breaking and entering charge and to make no recommendation regarding sentencing. Following a plea hearing, the trial court accepted Alredge's plea to the amended charge as knowingly, voluntarily and intelligently made and continued sentencing so that a presentence investigation and a victim impact statement could be prepared. Count 2 of the indictment (breaking and entering) was dismissed.

{¶4} A sentencing hearing was held on October 27, 2014. After considering the information presented at the hearing, including the defendant's statement, the PSI and victim impact statement, and the pertinent sentencing statutes, the trial court sentenced Alredge to 36 months in prison and ordered restitution.

{¶5} Regarding jail-time credit, during the October 27, 2014 sentencing hearing the trial court stated: "Defendant will be given- - granted the time for time

served. Our calculations to date, Mr. Pierce [defense counsel] and Mr. Flanagan [prosecutor], is 64 days. If that is incorrect, I certainly would be willing to raise or lower that, if there's some kind of mathematical tinkering that needs to be done to that."

{¶6} Neither side voiced any objection to that calculation on the record. However, the judgment entry of sentence granted Alredge 100 days of jail-time credit. There is no indication in the entry why the number was changed from 64 to 100.

{¶7} The State has not filed an appellee's brief, and thus, pursuant to App.R. 18(C), this court "may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action."

Jail-time Credit

{¶8} In his sole assignment of error, Alredge asserts:

{¶9} "The Court erred in failing to credit Defendant with the correct amount of time served in the Judgment Entry."

{¶10} Criminal defendants have a right to jail-time credit. "The 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. Further, pursuant to R.C. 2967.191:

The department of rehabilitation and correction shall reduce the stated prison term of a 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. * * *

{¶11} It is the duty of the trial court to: "[d]etermine, 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.* * * " R.C. 2929.19(B)(2)(g)(i).

{¶12} While jail-time credit errors can be corrected via direct appeal the Revised Code now also provides a mechanism for correcting jail-time credit errors in the trial court after sentencing has occurred. Specifically, R.C. 2929.19(B)(2)(g)(iii) provides that upon motion of the defendant, a "sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing in making [a jail-time credit] determination * * * [.] 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." *Id.*

{¶13} Here, during the October 27, 2014 sentencing hearing the trial court stated: "Defendant will be given- - granted the time for time served. Our calculations to date, Mr. Pierce [defense counsel] and Mr. Flanagan [prosecutor], is 64 days. If that is incorrect, I certainly would be willing to raise or lower that, if there's some kind of mathematical tinkering that needs to be done to that." No objection to that calculation was raised in the trial court. Nor did the trial court explain in its judgment entry why Alredge was granted 100 days of jail-time credit.

{¶14} On appeal, Alredge contends he is entitled to 102 days; he states that upon "conferring with the Belmont County Sheriff's Department," 102 is the correct number of days. Because he failed to object to the trial court's calculation during sentencing, it appears this court should apply a plain error standard of review. See *State v. McClellan*, 7th Dist. No. 10 MA 181, 2011-Ohio-4557, ¶39. "Plain error does exist where the trial court fails to properly calculate an offender's jail-time credit, pursuant to R.C. 2967.191, and to include the amount of jail-time credit in the body of the offender's sentencing judgment." *Id.*, citing *State v. Miller*, 8th Dist. No. 84540, 2005-Ohio-1300, ¶10.

{¶15} It is clear from the record that from the time Alredge was arrested pursuant to the warrant on the indictment on this case on August 12, 2014, up to and including the date of the sentencing hearing on October 27, 2014, he had been jailed for 77 days. Alredge contends that he was originally arrested on the burglary and breaking and entering charges on June 17, 2014, and that he was released from custody on July 9, 2014 when those charges were dismissed. However, there is nothing in the record before us explaining why the trial court awarded Alredge 100 as opposed to 77.

{¶16} Alredge further takes issue with the fact that he was not awarded post-sentence jail-time credit for days while he awaited transportation to the penitentiary. He claims at page six of his brief that he was not transported to the Correctional Reception Center in Orient until October 31, 2014, and in fact there is a sheriff's return on a warrant to convey in the record confirming that transport date. "[C]onfinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term," is specifically included in R.C. 2967.191 as days for which the defendant prisoner must be credited.

{¶17} For these reasons, Alredge's assignment of error is meritorious. Based upon the limited record before us, it appears that the trial court's judgment entry does not accurately reflect the amount of jail-time credit. By the same token, the limited record precludes us from determining the precise amount of jail-time credit to which Alredge is entitled. Accordingly, the judgment of the trial court is reversed and the matter remanded for the purpose of recalculating Alredge's jail-time credit.

Donofrio, J., concurs.
Waite, J., concurs.