

[Cite as *State v. Dates*, 2016-Ohio-3297.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	CASE NO. 15 MA 0195
)	
PLAINTIFF-APPELLEE,)	
)	
VS.)	OPINION
)	
JAMIKA DATES,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Mahoning County Court No. 2 of Mahoning County, Ohio Case Nos. 09-CRB-420; 13-CRB-68; 13-CRB-70; 2013-CRB-1532
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JUDGMENT:	Affirmed.
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APPEARANCES:

For Plaintiff-Appellee:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Ralph M. Rivera Assistant Prosecuting Attorney 21 West Boardman St., 6 th Floor Youngstown, Ohio 44503
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For Defendant-Appellant:	Atty. Robert J. Rohrbaugh II 4800 Market St. Suite A Boardman, Ohio 44512
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JUDGES:

Hon. Carol Ann Robb
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: May 31, 2016

{¶1} Defendant-Appellant Jamika Dates appeals the 180-day sentence entered by Mahoning County Court No. 2 in four different county court cases upon her stipulation to community control violations. Appellant asserts the trial court erred in failing to order jail time credit in the sentencing entry. She urges her entitlement to jail time credit is evident on the record, whereas the state claims we must presume the regularity of the proceedings because Appellant failed to order a transcript in this appeal. With no transcript before us, the trial court's decision is hereby affirmed.

STATEMENT OF THE CASE

{¶2} The entry being appealed was filed under four county court case numbers: 2009 CRB 420, 2013 CRB 68, 2013 CRB 70, and 2013 CRB 1352. Appellant was convicted of first-degree misdemeanor theft in each case.

{¶3} In 2009 CRB 420, Appellant was initially sentenced to 180 days in jail with no jail time credit. The court suspended the sentence and imposed twelve months of reporting community control plus a session of "Stop-lift" and eight hours of community service. A warrant was soon issued for her failure to report. At the hearing for community control violations on September 13, 2012, she was again ordered into community control and informed she could serve up to 180 days if she violated. In January 2013, she was accused of violating community control by receiving new charges. On August 13, 2013, she stipulated to the violation. She was ordered to report one time per month for community control until her court requirements were satisfied. But first, she was ordered to serve thirty days in jail to run consecutive to a jail term imposed that same day in other cases, discussed next. However, she failed to report to jail as ordered.

{¶4} In 2013 CRB 68 and 2013 CRB 70, Appellant was sentenced to 180 days in jail with 120 days suspended to commence August 26, 2013, followed by six months of reporting community control. No jail time credit was provided in the August 13, 2013 sentencing entries. After Appellant failed to report to jail, a warrant was issued. On December 12, 2013, the court ordered her to serve 90 days in jail for the community control violation; the court specified jail time credit of 38 days with 52

days remaining.¹ (She had been jailed upon her November 4, 2013 arrest for another theft, which resulted in 2013 CRB 1532.)

{¶5} In 2013 CRB 1532, Appellant was arrested on November 4, 2013, and a motion to modify bond was denied on December 10, 2013. Upon her guilty plea on January 7, 2014, the court sentenced Appellant to 180 days in jail with 90 days suspended and provided credit for the 65 days served since her arrest (leaving 25 days of non-suspended time). She was also placed on twelve months of reporting community control. Commitment papers, filed on the day of sentencing, instructed she was to serve 25 days in jail.

{¶6} In September 2014, a summons was issued for a community control violation, accusing Appellant of failing to report and committing new charges. She pled not guilty and was released on her own recognizance. She failed to appear for the hearing. In October 2014, bench warrants were issued on the four cases at issue herein. The community control violation hearing proceeded on September 29, 2015, and the trial court issued the following entry:

The above named defendant appeared in court today on a Community Control Violation. The defendant stipulates to the violation and the following conditions:

To serve 180 days in jail commencing 9/29/15 at 12:00 noon, for being charged and convicted of 2 counts of theft while on Community Control for 4 counts of theft, and for failure to comply with previous Community Control Violation Orders.

Upon completion of the jail term imposed Community Control shall be terminated.

{¶7} Appellant filed a timely notice of appeal. She initially filed the notice of appeal in 2013 CRB 1532, but she was granted leave to amend to add the three other case numbers listed on the entry: 2009 CRB 420, 2013 CRB 68, and 2013

¹The entry was also filed in 2013 CRB 41 and 2013 CRB 66; those cases are not before us.

CRB 70. This court granted a stay pending appeal on November 20, 2015, after the trial court denied her stay request.

{¶8} In the docketing statement, Appellant's counsel outlined the jail time credit issue as a probable issue for review and checked the box indicating a transcript of proceeding was not to be filed. Counsel also indicated in the praecipe that no transcript was required.

ASSIGNMENT OF ERROR

{¶9} Appellant's sole assignment of error provides:

"THE TRIAL COURT COMMITTED ERROR IN FAILING TO CREDIT APPELLANT THE DAYS OF JAIL TIME CREDIT."

{¶10} Appellant contends the trial court erred as a matter of law in failing to provide jail time credit when imposing 180 days in jail. She states it is clear from the record she earned jail time credit to which she was legally entitled. Appellant believes she was entitled to jail time credit of: 30 days in 2009 CRB 420; 90 days in 2013 CRB 68 and 2013 CRB 70; and 65 days in 2013 CRB 1532.

{¶11} Initially, we note Appellant states she is entitled to 30 days in 2009 CRB 420 due to a community control violation sentence of 30 days in the August 13, 2013 entry (to be served consecutive to other cases). Yet, she did not report to the jail to serve those sentences on August 26, 2013 as ordered. We also note Appellant says the August 13, 2013 sentencing entries in 2013 CRB 68 and 2013 CRB 70 provided 90 days of jail time credit. However, this is incorrect; the entries sentenced her to 180 days with 120 days suspended and no jail time credit. Still, it would appear she spent 90 days in jail after her November 4, 2013 arrest on another offense. When she appeared before the court on a bench warrant for failing to report to serve her sentence, the court filed a December 12, 2013 entry ordering her to serve 90 days in jail. The order provided credit for 38 days (and said 52 days remained), and she was not released at that time.

{¶12} The state frames the issue as a failure to specify what days were attributable to what case and mentions that a defendant is only entitled to jail time credit for confinement related to the offense for which she was sentenced, citing

State v. Mason, 7th Dist. No. 10 CO 20, 2011-Ohio-3167. The state urges this court to presume the regularity of the trial court proceedings on this issue because Appellant failed to file a transcript of the September 29, 2015 community control violation hearing. The state points to Appellant's duty to file a transcript for our review, positing we cannot review the issue without the transcript.

{¶13} Appellant replies that the face of the September 29, 2015 entry shows that none of the previously-credited time was applied to the final concurrent sentences. See R.C. 2929.41(A) (except as provided in division (B), a jail term shall be imposed concurrently), (B)(1) (jail imposed for a misdemeanor is consecutive to other jail terms only if the court so specifies). Appellant insists the transcript is not required to determine the legal error in failing to provide any jail time credit. Appellant cites the Supreme Court's *Fugate* case and statutes governing jail time credit.

{¶14} In *Fugate*, the defendant was charged with burglary and theft while on community control for receiving stolen property. *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 2. After being convicted of the new charges, he stipulated to the community control violation. *Id.* at ¶ 3. The trial court imposed concurrent sentences of twelve months for the community control violation, two years for the burglary, and six months for the theft. *Id.* at ¶ 3-5. The prosecutor recommended only applying jail time credit to the community control violation, and defense counsel did not object. *Id.* at ¶ 3. The trial court provided 213 days of jail time credit only on the community control violation.

{¶15} On appeal, *Fugate* argued the trial court committed plain error by failing to apply the 213 days of jail time credit to each of his concurrent sentences. *Id.* at ¶ 6. The Ohio Supreme Court agreed. *Id.* at ¶ 1 ("We hold that defendants who are sentenced to concurrent prison terms are entitled to have jail-time credit applied toward all prison terms for charges on which they were held."). The Court found *Fugate* had been held in custody on the burglary and theft charges and for violation of community control and was therefore entitled to jail-time credit against each concurrent prison term. *Id.* at ¶ 18.

{¶16} The Court noted how the provision of jail time credit has roots in the Equal Protection Clause. *Id.* at ¶ 7 (as to prisoner who is unable to make bail because of indigency). The Court also pointed to the felony statute and administrative code section discussing jail time credit. *Id.* at ¶ 9-11, citing R.C. 2967.191; Ohio Adm.Code 5120-2-04(F),(G). The Court explained when a defendant is sentenced to consecutive terms, jail time credit applied to one prison term gives full credit that is due as it reduces the entire length of the prison sentence. *Id.* at ¶ 22. “However, when a defendant is sentenced to concurrent terms, credit must be applied against all terms, because the sentences are served simultaneously. If an offender is sentenced to concurrent terms, applying credit to one term only would, in effect, negate the credit for time that the offender has been held.” *Id.*

{¶17} Regarding misdemeanors, if a court imposes a jail term upon a community control violator, the total time spent in jail for the misdemeanor and the violation of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed. R.C. 2929.25(D)(3). When a misdemeanant is sentenced to jail, the judge shall order the person into the custody of the sheriff who shall deliver the person with the record of the person's conviction to the jailer. See R.C. 2949.08(A).

The record of the person's conviction shall specify the total number of days, if any, that the person was confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper under this section. The record shall be used to determine any reduction of sentence under division (C) of this section.

R.C. 2949.08(B). See *also* R.C. 2949.08(C)(1) (the jailer must reduce the sentence by the total number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced, including confinement in lieu of bail while awaiting trial); R.C. 2967.191 (comparable provision for felony).

Failure to Order Transcript of Hearing

{¶18} “[I]t is the obligation of the appellant to ensure that the proceedings the appellant considers necessary for inclusion in the record, however those proceedings were recorded, are transcribed * * *.” App.R. 9(B)(1). See also App.R. 9(B)(3) (appellant to order the transcript in writing and file a copy of the transcript order with the clerk). “If the appellant intends to present an assignment of error on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of proceedings that includes all evidence relevant to the findings or conclusion.” App.R. 9(B)(4).

{¶19} If an argument is based on a purely legal issue, the appellate court must accept the trial court's factual determinations as true and can still review the legal issues without the transcript. See, e.g., *Hepfner v. Hepfner*, 7th Dist. No. 05 CO 66, 2007-Ohio-595, ¶ 5; *Dowers v. Dowers*, 12th Dist. No. CA2015-04-071, 2015-Ohio-4530, ¶ 12. However, “[w]hen portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm.” *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980).

{¶20} We conclude the trial court's potential factual findings are integral to the evaluation of the legal error the defendant claims the trial court made. See, generally, *Pedra Properties, L.L.C. v. Justmann*, 8th Dist. No. 102909, 2015-Ohio-5427, ¶ 16 (after recognizing it is possible to review purely legal issues in the absence of a transcript or transcript alternative). In accordance, the well-established premise in *Knapp* governs.

{¶21} Notably, the transcript may address the topic of jail time credit and may explain the reason the court did not provide jail time credit. Particularly since the entry states “The defendant stipulates to the violation and the following conditions: To serve 180 days in jail...”. Any reason for not providing jail time credit could have been specifically researched and fully briefed on appeal. If the reason was improper,

this would be a topic of a specific assignment of error.² We refuse to guess at various scenarios involving what may have occurred below, research the law governing each scenario, and make legal conclusions on potential arguments that Appellant does not make to this court.

{¶22} In summary, the failure to provide this court with the transcript (or an App.R. 9 substitute) precludes us from reviewing the matter of jail time credit in this case. Appellant's sole assignment of error is overruled, and the trial court's judgment is affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.

² We note the language used in the entry. The court said the defendant stipulated to the violation "and the following conditions * * *." After providing a 180-day sentence, the court noted there would be no further community control after the sentence. There is the suggestion of a negotiated or an agreed upon sentence.