

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- VS -	:	<b>CASE NO. 2017-L-046</b>
JOHN R. LANE, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 2016 CR 000040.

Judgment: Affirmed.

*Charles E. Coulson*, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

*John R. Lane, Jr.*, pro se, PID: A670-876, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, John R. Lane, Jr., appeals the trial court's denial of his motion for jail-time credit. We affirm.

{¶2} Lane was indicted January 11, 2016 with the Lake County charges in this case, and at the time of his indictment, he was already serving a sentence stemming from unrelated Cuyahoga County convictions. The same day, the trial court issued a

warrant and order to the Lake County Sheriff to arrest Lane and transport him from the Lake Erie Correctional Institution for arraignment. The sheriff was likewise ordered to maintain Lane in the Lake County Jail until further court order. The Lake County Sheriff arrested Lane on January 26, 2016 and brought him to the Lake County jail.

{¶3} Lane pleaded guilty on February 17, 2016 to three counts of theft in violation of R.C. 2913.02 and was sentenced to 24 months in prison to run consecutive to the prison term he was already serving for his Cuyahoga County convictions. He was given zero days credit for time served. The Lake County Sheriff was ordered to deliver Lane to the Lorain Correctional Institution to serve his sentence via Lane's sentencing entry filed February 19, 2016. The warrant to convey was issued February 23, 2016.

{¶4} On December 29, 2016, Lane filed a pro se motion for jail-time credit or an order for resentencing pursuant to *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, and R.C. 2967.191. The trial court denied his motion for jail-time credit, explaining in part:

{¶5} "There is no evidence that Lake County placed a detainer on him while in Cuyahoga County Jail.

{¶6} "Likewise, Lane is not entitled to jail-time credit for this time he spent in Lake County Jail. Lane was serving a prison sentence when he was transferred to Lake County Jail to face pending charges. There is no jail-time credit for time served on unrelated offenses even if that time served runs concurrently during the defendant's detention on another charge. *State v. Struble*, 11th Dist. Lake No. 2005-L-115, 2006-Ohio-3417, ¶11. His prison term was completely unrelated to charges in Lake County,

and while in the Lake County jail, he was simultaneously serving the sentences imposed by the Cuyahoga County Common Plea Court.”

{¶7} Lane raises two assigned errors, which we address collectively:

{¶8} “The sentence of the trial court violates the Equal Protection Clauses under the State and Federal Constitutions.

{¶9} “The trial court erred when it failed to credit Appellant’s 91 days of pre-trial incarceration against each prison term.”

{¶10} “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.” (Citations omitted.) (Emphasis sic.) *Fugate* at ¶7.

{¶11} R.C. 2967.191, entitled *Credit for confinement awaiting trial and commitment*, codifies this principle and states in part:

{¶12} “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 \* \* \*.”

{¶13} “When a defendant is sentenced to concurrent prison terms for multiple charges, jail-time credit pursuant to R.C. 2967.191 must be applied toward each concurrent prison term.” *Fugate* at syllabus. However, when offenders are serving consecutive terms, jail-time credit is to be applied only once. *Id.* at ¶10, citing Ohio Adm. Code 5120-2-04(G). “[A]lthough concurrent and consecutive terms are to be treated differently when jail-time credit is applied, the overall objective is the same: to comply with the requirements of equal protection by reducing the total time that

offenders spend time in prison after sentencing by an amount equal to the time they were previously held.” *Fugate* at ¶11.

{¶14} The defendant in *Fugate* was charged and convicted of theft and burglary while he was serving community control for a prior, unrelated offense. His community control was revoked in light of the new charges, and *Fugate* was credited with 216 days of jail-time credit toward his community control violation only. The court ordered this sentence to run concurrent with his theft and burglary sentences. *Id.* at ¶3. *Fugate* was sentenced on the new charges, but received no jail-time credit. The Supreme Court reversed and remanded for *Fugate* to be awarded jail-time credit for each sentence. *Id.* at ¶22-23.

{¶15} Here, Lane seeks 59 days jail-time credit for time spent in the Cuyahoga County jail and 32 days jail-time credit for the time he spent in the Lake County jail before he pleaded guilty to the instant offenses. He claims he was held from March 13, 2015 to May 11, 2015 in the Cuyahoga County jail and from January 28, 2016 to February 28, 2016 in the Lake County jail before he was sentenced in this case.

{¶16} To the contrary, the state argues that the time Lane spent in Cuyahoga County jail was solely related to his Cuyahoga County convictions, which predated the instant offenses. It also asserts that Lane should likewise not receive jail-time credit for the time he was confined in the Lake County jail since he was already serving his prison term for the unrelated Cuyahoga County offenses and Lane’s Lake County offenses were ordered to be served consecutive to his pre-existing Cuyahoga County sentence. We agree.

{¶17} First, Lane is not entitled to jail-time credit for the time he allegedly spent in the Cuyahoga County jail facing separate and unrelated charges. The time spent predated his indictment for the instant offenses; was not a result of a probation violation arising from the same offense; and was ordered to run consecutive to the instant offenses, not concurrent. Thus, *Fugate* is inapplicable.

{¶18} Lane is likewise not entitled to jail-time credit for the time he was confined in the Lake County jail after he was charged with the instant offenses. Unlike *Fugate*, the trial court did not order Lane's time to be served concurrently with the sentences from his prior case. Furthermore, Lane's two cases are factually unrelated; his convictions here did not form the basis for a probation violation in his other case. Neither sentence was imposed as a result of a probation violation. And even if Lane could have posted bond when he was first arrested in this case, he would not have been released because he was already serving his Cuyahoga County sentences. *State v. Pritschau*, 11th Dist. Lake No. 2015-L-115, 2016-Ohio-7147, ¶27; *Fugate* at ¶7. Thus, he is not entitled to jail-time credit for the time spent in the Lake County jail.

{¶19} Accordingly, Lane's assigned errors lack merit and are overruled. The trial court's judgment is affirmed.

DIANE V. GRENDALL, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.