

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

IN RE M.F.	:	
	:	Nos. 108502 and 108503
A Minor Child	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** REVERSED AND REMANDED  
**RELEASED AND JOURNALIZED:** January 16, 2020

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. DL16109093 and DL17114502

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***Appearances:***

Timothy Young, Ohio Public Defender, and Lauren Hammersmith, Assistant State Public Defender, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Catherine M. Coleman, Assistant Prosecuting Attorney, *for appellee.*

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, M.F., brings the instant appeal challenging the juvenile court's judgment denying her motions for recalculation of credit for confinement. Specifically, appellant argues that the juvenile court erred in concluding that Carrington Youth Academy ("CYA") was not a secured facility and that the juvenile court applied the wrong standard in determining whether she was

entitled to credit for her confinement. After a thorough review of the record and law, this court reverses and remands the matter for further proceedings consistent with this opinion.

### **I. Factual and Procedural History**

{¶ 2} The instant matter pertains to two juvenile cases in which appellant was charged and adjudicated delinquent. This court previously delineated the factual and procedural history of this case as follows:

In July 2016, M.F. was charged by complaint in Cuyahoga Juvenile Court No. DL 16109093 with offenses which, if committed by an adult, would constitute tampering with evidence, with a firearm specification; conveying a deadly weapon or dangerous ordnance in a school safety zone, with a firearm specification; carrying a concealed weapon; and falsification. In August 2016, M.F. admitted to and was adjudicated delinquent on all counts, and the firearm specifications were dismissed. At disposition, the court committed M.F. to the Ohio Department of Youth Services (“ODYS”) for a minimum period of 6 months, maximum to her 21st birthday, and suspended the commitment on the condition that she comply with the terms of probation.

In September 2017, M.F. was charged in Cuyahoga Juvenile Court No. DL 17114502 for an offense which, if committed by an adult, would constitute domestic violence. Following trial, the juvenile court found M.F. delinquent and committed her to ODYS for a minimum period of six months, maximum to age 21. The court invoked the suspended six-month sentence in No. DL 16109093 and ordered that the sentence be served consecutive to the sentence in No. DL 17114502. The juvenile court granted M.F. 13 days credit for time served.

M.F. subsequently filed motions in both cases for recalculation of confinement credit. She asserted that she was confined for a total of 168 days relating to the two cases, including 126 days at the CYA. Without holding a hearing on the motions, the trial court granted M.F.’s motions in part and denied them in part. It granted M.F. 42 days credit for time served at the Cuyahoga County Juvenile Detention Center but denied credit for time served at the CYA.

*In re M.F.*, 8th Dist. Cuyahoga Nos. 107452 and 107455, 2019-Ohio-709, ¶ 2-4.

{¶ 3} Appellant filed an appeal challenging the juvenile court’s ruling on her motions for recalculation of credit for confinement. Specifically, appellant asserted that she was entitled to 126 days of credit for her confinement at CYA. *Id.* at ¶ 5. On appeal, the state conceded that the juvenile court erred by failing to hold a hearing on appellant’s motions.

{¶ 4} This court reversed the juvenile court’s judgment and remanded the matter, instructing the juvenile court to “hold a hearing to determine whether M.F. was ‘confined’ at CYA for purposes of R.C. 2152.18(B) so as to be entitled to credit for the time she spent there.” *Id.* at ¶ 1. This court explained that (1) there was nothing in the record on appeal upon which this court could determine whether the time that appellant spent at CYA constituted confinement under R.C. 2152.18(B); (2) there was nothing in the record regarding the nature of CYA or the conditions affecting appellant’s personal liberties during her time there; (3) there was no evidence presented to the juvenile court regarding the nature of CYA or the time appellant spent there; and (4) without evidence pertaining to CYA and appellant’s experience at CYA, this court was unable to conduct a meaningful review of the juvenile court’s decision, or determine whether appellant was confined at CYA such that she was entitled to credit for the time she spent therein.

{¶ 5} Following this court’s remand, the juvenile court held a hearing on appellant’s motions on March 20, 2019. During the hearing, the juvenile court heard testimony from CYA’s executive director, Robert Casillo. Following Casillo’s testimony and the parties’ arguments, the juvenile court concluded that appellant

was not entitled to credit for her confinement at CYA. The juvenile court emphasized that (1) CYA's doors are locked to prevent people on the outside from entering the facility, but unlocked on the inside, such that anyone inside can walk out of the facility at any time; (2) the facility's doors are not manned by staff members to prevent individuals from exiting, and as a result, the facilities' entrances and exits are not under the exclusive control of staff members; and (3) CYA is not a secure facility because individuals may leave the facility at any time, even without permission to do so. The juvenile court explained its rationale for denying appellant's motions:

Well, according to Mr. Casillo all of the doors to the facility are locked from the outside, but they are unlocked from the inside. He had indicated through his — that's the reason why the Court asked this question, that there is no one standing at the door if individuals try to exit those doors, any individuals who are confined in that facility.

So those exits and entrances are not under the exclusive control of the facility and because they are not under the exclusive control of the facility because anyone can actually exit there, then that means it does not qualify as a secured facility. \* \* \*

But based on what has been provided to this Court and testimony from Mr. Casillo, [CYA] is not a secured facility because individuals may leave the facility without permission because of the fact that the door is not locked and there is no one guarding that door. They don't have any type of device, which if a person tries to leave will automatically lock the door and prevent the individual from exiting. That shows exclusive control.

No one's monitoring the door, preventing individuals from leaving. If there was someone there, that would show exclusive control over this door.

\* \* \* [CYA's] administrative staff are not the only ones who have access to that door and control over that door. And therefore, the Court finds

that the motion fails and that based on the information provided to this Court this is not a secured facility and so she does not get credit.

(Tr. 25-27.)

{¶ 6} On March 27, 2019, the juvenile court issued a judgment entry denying appellant's motions for credit. The judgment entry provides, in relevant part,

The Court of Appeals cited [R.C.] 2950.01(K) for the definition of secured facility: "Secured facility" means any facility that is designed and operated to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that, because of that exclusive control, no person who is institutionalized or confined in the facility may leave the facility without permission or supervision.

Therefore, upon review and based on testimony from [Casillo] that the doors are not staffed so that anyone wish[ing] to exit may do so, the Court finds that [CYA], in its shelter care status, does not meet the definition of a secured facility; [CYA] does not possess exclusive control over the entrances and exits at its facility.

It is therefore ordered that [appellant's] [m]otion for re-calculation of her confinement time is denied.

{¶ 7} On April 30, 2019, appellant filed consolidated appeals challenging the juvenile court's March 27, 2019 judgment. On May 10, 2019, appellant filed a motion to consolidate the appeals. This court granted appellant's motion to consolidate the appeals on May 14, 2019, and consolidated the appeals for purposes of briefing, oral argument, and disposition.

{¶ 8} In this appeal, appellant assigns one error for review:

I. The juvenile court erred when it failed to grant M.F. credit for the 126 days she was confined at [CYA] in relation to the offense for which she was committed to [O]DYS, in violation of R.C. 2152.18(B); the Fifth and Fourteenth Amendments to the U.S. Constitution; and Article I, Section 16, Ohio Constitution.

## **II. Law and Analysis**

{¶ 9} In her sole assignment of error, appellant challenges the juvenile court’s judgment denying her motions for recalculation and determination that she was not entitled to credit for the time she spent at CYA. First, appellant argues that the juvenile court applied the wrong standard in ruling upon her motions for recalculation.

{¶ 10} Specifically, appellant contends that the juvenile court applied the definition of “secure facility” under R.C. 2950.01, which pertains to juvenile sex offender registration and notification, rather than R.C. 2152.18(B), governing a juvenile’s credit for confinement. Appellant asserts that the definition of a “secure facility” under R.C. 2950.01 is inapplicable in the context of determining whether she is entitled to credit for confinement for the time she spent at CYA. After reviewing the record, we find merit to appellant’s argument.

{¶ 11} R.C. Chapter 2950 governs registration and notification for sex offenders. The record reflects that the trial court did, in fact, cite R.C. 2950.01 in its judgment entry denying appellant’s motions for recalculation. The juvenile court cited R.C. 2950.01(K), which pertains to sexually violent predator and sexual motivation specifications. The record reflects that the juvenile court intended to cite to R.C. 2950.01(O), pertaining to the definition of a secure facility.

{¶ 12} Additionally, the juvenile court’s judgment entry provides, in relevant part, “[t]he Court of Appeals cited [R.C.] 2950.01([O]) for the definition of secured facility[.]” Although it is not entirely clear, the juvenile court appeared to be referencing this court’s decision in *In re M.F.*, 8th Dist. Cuyahoga Nos. 107452 and

107455, 2019-Ohio-709, reversing and remanding the matter to the juvenile court for a hearing on appellant's motions for recalculation. A review of this court's opinion, however, reflects that this court applied R.C. 2152.18(B), rather than R.C. 2950.01.

{¶ 13} The juvenile court's judgment entry indicates that the juvenile court's decision was based upon an application of the definition of a "secure facility" under R.C. 2950.01(O), rather than an application of R.C. 2152.18(B). The juvenile court's judgment entry provides, in relevant part,

The Court of Appeals cited [R.C.] 2950.01([O]) for the definition of secured facility \* \* \*.

Therefore, upon review and based on testimony from [Casillo] that the doors are not staffed so that anyone wish[ing] to exit may do so, the Court finds that [CYA], in its shelter care status, *does not meet the definition of a secured facility*; [CYA] does not *possess exclusive control over the entrances and exits* at its facility.

It is therefore ordered that [appellant's] [m]otion for re-calculation of her confinement time is denied.

(Emphasis added.)

{¶ 14} The transcript from the March 20, 2019 hearing also reflects that the juvenile court cited, discussed, and applied the definition of a "secure facility" under R.C. 2950.01(O). Following closing arguments, the juvenile court stated:

Ohio Revised Code defines a secured facility, it means any facility that is designed and operates to ensure that all of its entrances and exits are locked and under the exclusive control of its staff and to ensure that because of that exclusive control no person that's institutionalized or confined in the facility may leave the facility without permission or supervision.

(Tr. 25.)

{¶ 15} Finally, the juvenile court's factual findings during the hearing indicate that the juvenile court's decision was based upon an application of the definition of a "secure facility" under R.C. 2950.01(O), rather than an application of R.C. 2152.18(B). The juvenile court made the following relevant factual findings:

Well, according to Mr. Casillo *all of the doors to the facility are locked from the outside, but they are unlocked from the inside*. He had indicated through his — that's the reason why the Court asked this question, that there is no one standing at the door if individuals try to exit those doors, any individuals who are confined in that facility.

*So those exits and entrances are not under the exclusive control of the facility* and because they are not under the exclusive control of the facility because anyone can actually exit there, then that means *it does not qualify as a secured facility*. \* \* \*

But based on what has been provided to this Court and testimony from Mr. Casillo, [CYA] *is not a secured facility because individuals may leave the facility without permission* because of the fact that the door is not locked and there is no one guarding that door. They don't have any type of device, which if a person tries to leave will automatically lock the door and prevent the individual from exiting. That shows exclusive control.

No one's monitoring the door, preventing individuals from leaving. If there was someone there, *that would show exclusive control* over this door.

\* \* \* [CYA's] administrative staff are not the only ones who have access to that door and control over that door. And therefore, the Court finds that the motion fails and that based on the information provided to this Court this is not a secured facility and so she does not get credit.

(Emphasis added.) (Tr. 25-27.)

{¶ 16} A juvenile's entitlement to credit for confinement is governed by R.C. 2152.18(B), not R.C. Chapter 2950 or the definition of a secure facility under R.C. 2950.01(O). Pursuant to R.C. 2152.18(B), when a juvenile is committed to the



custody of the department of youth services, the juvenile court must determine how much credit the juvenile is entitled to receive for confinement. R.C. 2152.18(B) provides,

[w]hen a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this chapter, the court shall state in the order of commitment the total number of days that the child has been confined in connection with the delinquent child complaint upon which the order of commitment is based. \* \* \* The department shall reduce the minimum period of institutionalization that was ordered by both the total number of days that the child has been so confined as stated by the court in the order of commitment and the total number of any additional days that the child has been confined subsequent to the order of commitment but prior to the transfer of physical custody of the child to the department.

{¶ 17} R.C. Chapter 2152 does not define the term “confined.” *In re M.F.*, 8th Dist. Cuyahoga Nos. 107452 and 107455, 2019-Ohio-709, at ¶ 7. Furthermore, unlike R.C. 2950.01, R.C. 2952.18 does not define the term “secure facility.”

{¶ 18} In *In re D.P.*, 1st Dist. Hamilton No. C-140158, 2014-Ohio-5414, the First District acknowledged that under the former version of R.C. 2152.18, a juvenile was only entitled to credit for days he or she was “held in ‘detention.’” *Id.* at ¶ 10. Former R.C. 2152.18(B) defined detention as “the temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.” *Id.*, quoting former R.C. 2151.011(B)(14).<sup>1</sup>

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<sup>1</sup> Former R.C. 2151.011(B)(14) is now codified as R.C. 2151.011(B)(13), under which the definition of “detention” is the same.

{¶ 19} The First District “rejected the notion that juveniles should only receive confinement credit for time spent in a lockdown facility[.]” *In re A.S.*, 1st Dist. Hamilton Nos. C-180045 and C-180046, 2019-Ohio-2558, ¶ 27, citing *In re D.P.* Rather, the *In re D.P.* court adopted the standard of confinement from the adult criminal system, as outlined by the Ohio Supreme Court in *State v. Napier*, 93 Ohio St.3d 646, 647, 758 N.E.2d 1127 (2001). The First District explained,

juvenile courts must review the nature of the facility, to see if it is a secure facility with measures sufficient to ensure the safety of the surrounding community. *Napier* at 648. They must also review the nature of the restrictions on the juvenile at the facility to determine if the juvenile was “free to come and go as he wished” or if he was “subject to the control of the staff regarding personal liberties” as contemplated by *Napier*. *Id.*

*In re D.P.* at ¶ 18. Several appellate districts in this state have also applied the *Napier* standard to determine whether a juvenile is entitled to credit for confinement under R.C. 2152.18(B). *See In re D.P.*, 3d Dist. Auglaize Nos. 2-15-13 and 2-15-14, 2016-Ohio-747, ¶ 20; *In re K.A.*, 6th Dist. Lucas No. L-12-1334, 2013-Ohio-3847, ¶ 5 (determining that the 2012 amendment from “detention” to “confinement” under R.C. 2152.18(B) broadened the circumstances under which a juvenile was entitled to credit); *In re J.K.S.*, 8th Dist. Cuyahoga Nos. 101967 and 101968, 2015-Ohio-1312, ¶ 12; *In re J.C.E.*, 11th Dist. Geauga No. 2016-G-0062, 2016-Ohio-7843, ¶ 31; *In re J.A.*, 2018-Ohio-1609, 100 N.E.3d 447, ¶ 43-45 (5th Dist.).

{¶ 20} Based on the foregoing analysis, we conclude that the juvenile court applied the wrong standard in ruling upon appellant’s motions. The juvenile court

should have applied the standard set forth in R.C. 2152.18(B) and the case law addressing the factors to consider in determining whether appellant was “confined” at CYA for purposes of R.C. 2152.18(B), rather than the definition of a “secure facility” under R.C. 2950.01(O). Although appellate courts consider whether a facility is a “secure facility” in determining whether a juvenile is entitled to credit for confinement, this consideration pertains to (1) the facility’s security measures to ensure the safety of the surrounding community, and (2) the personal liberties of the juveniles at the facility — not the definition of “secure facility” set forth in R.C. 2950.01(O). Accordingly, appellant’s first assignment of error is sustained.

**{¶ 21}** We remand this case to the juvenile court to make findings concerning the nature of CYA’s security procedures and the staff members’ control regarding appellant’s personal liberties. *See In re J.C.E.* at ¶ 46. Specifically, in determining whether appellant was confined at CYA, the juvenile court shall examine, based upon Casillo’s testimony, the security measures employed by CYA to ensure the safety of the surrounding community, and the control that CYA’s staff members have over the personal liberties of the juveniles. *See In re A.S.*, 1st Dist. Hamilton Nos. C-180045 and C-180046, 2019-Ohio-2558, ¶ 31.

**{¶ 22}** The juvenile court shall determine whether appellant was “confined” pursuant to R.C. 2152.18(B), as the term confinement is interpreted by the Ohio Supreme Court in *Napier*, rather than the definition of a “secure facility” under R.C. 2950.01(O). *See In re J.D.*, 5th Dist. Richland No. 17CA42, 2018-Ohio-1823, ¶ 27,

citing *In re J.C.E.*, 11th Dist. Geauga No. 2016-G-0062, 2016-Ohio-7843, at ¶ 46; *In re J.A.*, 2018-Ohio-1609, 100 N.E.3d 447, at ¶ 48.

In determining whether appellant was “confined” \* \* \* for purposes of determining credit for time served, the trial court shall consider whether the [facility] is a secure facility that contains lockups and other measures to ensure the safety of the surrounding community; whether juveniles are secured there in such a way as to prevent them from entering the community without the approval of the [the facilities’ staff members and administration]; and whether the juveniles housed at the [facility] are under secure care and supervision. [*In re J.C.E.* at ¶ 47]. The court shall also consider the nature of the restrictions on appellant to determine if he [or she] was free to come and go as he [or she] wished or if he [or she] was subject to the control of the staff regarding his personal liberties as contemplated by *Napier*. *Id.*

*In re J.D.* at ¶ 28.

{¶ 23} We emphasize that this matter is being remanded for a new *ruling*, not a new evidentiary hearing. The record reflects that the evidence adduced during the March 20, 2019 hearing sufficiently addresses the relevant considerations. In issuing the new ruling, the juvenile court is instructed to apply the correct standard set forth in R.C. 2152.18, and the case law applying this standard and expounding on the relevant considerations, including CYA’s security measures to protect the surrounding community, the personal liberties of the juveniles at CYA, and the extent to which the juveniles are subject to the control of the staff. *See, e.g., In re J.K.S.*, 8th Dist. Cuyahoga Nos. 101967 and 101968, 2015-Ohio-1312, at ¶ 10.

{¶ 24} If the juvenile court determines that appellant was, in fact, “confined” at CYA, the juvenile court shall determine the number of days that appellant was confined and credit her for time served.

{¶ 25} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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FRANK D. CELEBREZZE, JR., JUDGE

EILEEN T. GALLAGHER, A.J., and  
LARRY A. JONES, SR., J., CONCUR