

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL. ANGEL MCPHERSON, :

Relator,	:	
		No. 109030
v.	:	

BUREAU OF SENTENCE
COMPUTATION, :

Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: February 19, 2020

Writ of Mandamus
Motion Nos. 534434 and 534178
Order No. 535740

Appearances:

Angel McPherson, *pro se*.

Dave Yost, Ohio Attorney General, and George Horvath,
Assistant Attorney General, *for respondent*.

MARY EILEEN KILBANE, P.J.:

{¶ 1} On September 20, 2019, the relator, Angel McPherson, commenced this mandamus action against the respondent, the Bureau of Sentence Computation, to compel the respondent to properly grant her jail-time credit. The gravamen of

her complaint is that *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, commands that jail-time credit be “stacked” in concurrent cases. On December 5, 2019, McPherson moved for summary judgment. On December 16, 2019, the Bureau filed its cross-motion for summary judgment and brief in opposition to McPherson’s dispositive motion. She never filed a responsive brief. For the following reasons, this court grants the Bureau’s motion for summary judgment, denies McPherson’s motion for summary judgment, and denies the application for a writ of mandamus.

{¶ 2} In the two underlying cases, *State v. McPherson*, Cuyahoga C.P. No. CR-18-625464-A (“Case I”) and *State v. McPherson*, Cuyahoga C.P. No. CR-18-630668-A (“Case II”), she faced multiple counts for drug trafficking and drug possession for, inter alia, carfentanil, cocaine, heroin, and fentanyl, with firearm, juvenile, schoolyard, and forfeiture specifications. In Case I, she pled guilty to one count of drug trafficking with schoolyard and forfeiture specifications, and in Case II, she pled guilty to one count of drug trafficking with juvenile and forfeiture specifications. On January 14, 2019, the trial court sentenced her to two years on each case concurrent. Eventually, the trial court granted her 191 days of jail-time credit for each case, and the Ohio Department of Rehabilitation and Correction has granted her 191 days for each case.

{¶ 3} R.C. 2967.191, requires jail-time credit and provides in pertinent part as follows:

The department of rehabilitation and correction shall reduce the prison term of a prisoner, as described in division (B) of this section, 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)(h)(i) of section 2929.19 of the Revised Code, and confinement in a juvenile facility.

(Emphasis added.) This statute effects the principles of equal protection so that prisoners who cannot afford bail or fees are not penalized extra for the time spent in jail awaiting trial.

{¶ 4} In *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, syllabus, the Supreme Court of Ohio held that “[w]hen 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.” The Supreme Court reasoned that to comply with the requirements of equal protection the amount of prison time must be reduced by the total time the prisoner spent in jail. If the courts were permitted to apply jail-time credit to only one of the concurrent terms, the practical result would be to nullify jail-time credit. For example as in the present case, if the jail-time credit were applied only to Case I, then McPherson would have served her term for Case I after 539 days; nevertheless she would still have to serve the full two years for Case II. In this scenario, jail-time credit would do her no practical good; it would be a nullity. Thus, the Supreme Court of Ohio ruled that the jail-time credit must be applied to all concurrent terms.

{¶ 5} However, McPherson argues that mandamus should issue to grant her 382 days of jail-time credit because *Fugate* requires multiplying or “stacking” the period of pretrial confinement by the number of convictions entered against her.¹ Thus, she argues that the 191 days of jail-time credit be applied for Case I and then also applied to Case II, and the 191 days of jail-time credit for Case II also be applied to Case I for a total of 382 days of jail-time credit. Although this is a creative argument, it is unpersuasive. McPherson only had one 191-day period of jail time, not 382 days. She did not spend 382 days in jail awaiting trial, and is, thus, not entitled to 382 days of credit. *State ex rel. McPherson v. Chambers-Smith*, 8th Dist. Cuyahoga No. 109131, 2020-Ohio-193. Moreover, the Supreme Court of Ohio rejected such stacking in *Fugate*: “Applying jail-time credit toward all concurrent prison terms imposed for charges on which an offender was held does not have the effect of ‘multiply[ing] his single period of pretrial confinement by the number of convictions entered against him.’” *Fugate*, 117 Ohio St.3d 261, ¶ 21. (Citations omitted.)

{¶ 6} Accordingly, the respondent has no duty to apply 382 days of jail-time credit to McPherson’s sentence. Mandamus does not lie. The court grants the respondent’s motion for summary judgment and denies the application for a writ of

¹ The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987).

mandamus. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 7} Writ denied.

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and
LARRY A. JONES, SR., J., CONCUR