

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
David E. Brown,	:	
	:	
Relator,	:	No. 13AP-188
	:	
v.	:	(REGULAR CALENDAR)
	:	
Ohio Department of Rehabilitation	:	
and Correction,	:	
	:	
Respondent.	:	

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D E C I S I O N

Rendered on September 19, 2013

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*David E. Brown, pro se.*

*Michael DeWine, Attorney General, and Peter L. Jamison,*  
*for respondent.*

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IN MANDAMUS  
ON OBJECTIONS TO MAGISTRATE'S DECISION

KLATT, P.J.

{¶ 1} Relator, David E. Brown, commenced this original action in mandamus seeking an order compelling respondent, Ohio Department of Rehabilitation and Correction ("ODRC"), to credit him with an additional 107 days of jail-time credit. ODRC has filed a motion for summary judgment. Thereafter, relator also filed a motion for summary judgment.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that

ODRC properly calculated relator's jail-time credit in accordance with Ohio Adm.Code 5120-2-03(C). Therefore, the magistrate has recommended that we deny relator's request for a writ of mandamus and grant summary judgment in favor of ODRC.

{¶ 3} Relator has filed objections to the magistrate's decision. As relator's three objections are interrelated, we will address them together. In essence, relator contends that ODRC improperly relied upon Ohio Adm.Code 5120-2-03(C) and unlawfully extended his incarceration beyond the five-year sentence imposed by the trial court. We disagree.

{¶ 4} Relator is serving two five-year sentences. Relator received 192 days of jail-time credit on one of the five-year sentences, and 85 days of jail-time credit on the other five-year sentence. The trial court has ordered that these sentences be served concurrently.

{¶ 5} Ohio Adm.Code 5120-2-03(C) provides:

When multiple definite sentences are imposed to run concurrently, the prisoner shall be deemed to be serving the longest of the sentences so imposed. If, however, the various sentences are subject to different amounts of reduction for jail-time credit and/or are subject to different rates of diminution for time off for good behavior, the prisoner shall be released after serving the longest diminished sentence.

{¶ 6} Based upon Ohio Adm.Code 5120-2-03(C), the relator will be released after serving the longest diminished sentence. Here, his longest diminished sentence is five years with 85 days of jail-time credit. ODRC based relator's release date on this sentence.

{¶ 7} Contrary to relator's contention, Ohio Adm.Code 5120-2-03(C) does not usurp the trial court's right to impose sentence. Rather, it clarifies how the trial court's sentence is to be implemented when the trial court imposed concurrent sentences with differing amounts of reduction for jail-time credit.

{¶ 8} Nor does Ohio Adm.Code 5120-2-03(C) conflict with R.C. 2967.191. As noted by the magistrate, R.C. 2967.191 requires ODRC to 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. Here, it is undisputed that relator received a five-year sentence with 85 days jail-time credit in one of two cases. For these reasons, we overrule relator's objections.

{¶ 9} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we deny relator's request for a writ of mandamus, deny his motion for summary judgment, and grant ODRC's motion for summary judgment.

*Objections overruled;  
relator's motion for summary judgment denied;  
respondent's motion for summary judgment granted;  
writ of mandamus denied.*

BROWN and T. BRYANT, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District,  
assigned to active duty under authority of Ohio Constitution,  
Article IV, Section 6(C).

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**APPENDIX****IN THE COURT OF APPEALS OF OHIO****TENTH APPELLATE DISTRICT**

State of Ohio ex rel.	:	
David E. Brown,	:	
	:	
Relator,	:	No. 13AP-188
	:	
v.	:	(REGULAR CALENDAR)
	:	
Ohio Department of Rehabilitation and Correction,	:	
	:	
Respondent.	:	

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**MAGISTRATE'S DECISION****Rendered on May 13, 2013**

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*David E. Brown, pro se.**Michael DeWine, Attorney General, and Peter L. Jamison,  
for respondent.*

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**IN MANDAMUS  
ON MOTIONS FOR SUMMARY JUDGMENT**

{¶ 10} Relator, David E. Brown, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Ohio Department of Rehabilitation and Correction ("ODRC"), to credit him with an additional 107 days of jail-time credit.

Findings of Fact:

{¶ 11} 1. In February 2009, relator was found guilty of aggravated burglary arising out of different charges in both the Courts of Common Pleas of Adams and Montgomery counties.

{¶ 12} 2. In the Adams County Court of Common Pleas ("ACP") case, relator was sentenced to serve a term of five years incarceration and was given 66 days of jail-time credit.

{¶ 13} 3. The Montgomery County Court of Common Pleas ("MCP") also sentenced relator to serve a period of five years incarceration and that sentence was to be served concurrently with the sentence imposed in the ACP case.

{¶ 14} 4. The MCP noted that the number of days of jail-time credit would be indicated in the entry and warrant to transport filed in relator's case.

{¶ 15} 5. According to his complaint, in March 2009, ODRC provided relator with conflicting calculations about the amount of jail-time credit that would be deducted from his sentence. One calculation informed him that he had 192 days of jail-time credit while the other calculation informed him that he had 85 days of jail-time credit.

{¶ 16} 6. Thereafter, in an attempt to determine how many days of jail-time credit he actually had, relator contacted ODRC.

{¶ 17} 7. In a letter dated November 4, 2011, relator was informed as follows:

I am in receipt of your letter regarding your sentence computation. You are serving concurrent sentences as ordered by the court. When serving concurrent sentences, the judge gives jail credit that is to be applied in **each separate** case. The credits are **not** added together because credits given under one case number cannot be applied to a different case number. Therefore, when calculating a release date, each sentence is calculated **separately** using the jail credit for that specific case. The sentence that expires last becomes the controlling sentence. The expiration date of the controlling sentence is when you will be released. Your jail credit of 192 days was applied to case #08CR3262 and 85 days of jail credit was applied to case #20070055 from Adams Co.

If you feel that you are entitled to more jail credit or if your sentence is incorrect I would suggest that you write to your sentencing judge with your concerns and request that an

amended judgment entry be forwarded to our office. If we should receive any such entry, your sentence will be corrected and you will be notified accordingly.

(Emphasis sic.)

{¶ 18} 8. Although relator concedes that, pursuant to Ohio Adm.Code 5120-2-03(C), he only has 85 days of jail-time credit because he is required to serve the longest diminished sentence, relator contends that the Ohio Administrative Code usurped the trial court of its power to sentence him.

{¶ 19} 9. On April 9, 2013, ODRC filed a motion for summary judgment.

{¶ 20} 10. On April 23, 2013, relator filed a memorandum contra and cross-motion for summary judgment.

{¶ 21} 11. The motions are currently before the magistrate.

#### Conclusions of Law:

{¶ 22} For the reasons that follow, it is this magistrate's decision that this court should deny relator's motion for summary judgment and grant ODRC's motion for summary judgment.

{¶ 23} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280 (1996). Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64 (1978).

{¶ 24} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28 (1983).

{¶ 25} R.C. 2967.191 provides:

The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the 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, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term.

(Emphasis added.)

{¶ 26} Ohio Adm.Code 5120-2-03(C) provides:

When multiple definite sentences are imposed to run concurrently, the prisoner shall be deemed to be serving the longest of the sentences so imposed. If, however, the various sentences are subject to different amounts of reduction for jail-time credit and/or are subject to different rates of diminution for time off for good behavior, the prisoner shall be released after serving the longest diminished sentence.

(Emphasis added.)

{¶ 27} Relator is serving two five-year sentences. The trial courts have ordered that those sentences be served concurrently. Applying Ohio Adm.Code 5120-2-03(C), when a prisoner is serving multiple definite sentences and when those sentences are ordered to run concurrently, the prisoner is deemed to be serving the longest of the sentences imposed. Further, to the extent that the various sentences are subject to different amounts of reduction for jail-time credit, the prisoner is still considered to be serving the longest diminished sentence.

{¶ 28} Contrary to relator's argument, the Administrative Code does not usurpe from the trial court its right to impose sentence. Instead, the Ohio Administrative Code provides the method whereby sentences are determined when a prisoner is serving multiple sentences. There must be a uniform method by which sentences can be calculated. Further, as ODRC argues, if relator was actually granted 192 days of jail-time credit, relator would not serve the full sentence imposed by the MCP; instead, relator would be released before he served the full five year sentence.

{¶ 29} Finding that relator has not demonstrated that ODRC abused its discretion in its calculations of his jail-time credit, it is this magistrate's decision that this court should deny relator's motion for summary judgment and grant summary judgment in favor of ODRC.

/S/ MAGISTRATE

STEPHANIE BISCA BROOKS

**NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).