

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-12-162
- vs -	:	<u>OPINION</u>
	:	8/16/2010
FREDERICK S. CAMPBELL,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08CR25456

Rachel A. Hutzell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive,
Lebanon, Ohio 45036, for plaintiff-appellee

Darin S. Barber, 12 East Warren Street, Lebanon, Ohio 45036, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, Frederick Campbell, appeals a decision of the Warren County Court of Common Pleas denying his "motion for correction of jail time credit." We affirm.

{¶2} In November 2008, the grand jury returned a 13-count indictment against appellant on various drug-related charges. In April 2009, appellant pled guilty to one count of possession of marijuana in violation of R.C. 2925.11(A) and one count of

cultivation of marijuana in violation of R.C. 2925.04(A), both third-degree felonies. Sentencing was delayed while the court awaited a presentence investigation report ("PSI"). Appellant remained out of jail on bond.

{¶13} In May 2009, the trial court revoked appellant's bond and issued a *capias* for his arrest due to his failure to comply with bond conditions. Appellant was thereafter located in the Greene County Jail. On June 1, 2009, the trial court entered a transport order requesting that the warden of the Greene County Jail hold appellant for transport to Warren County.

{¶14} Appellant was conveyed to Warren County for his sentencing hearing on June 18, 2009. The court imposed one-year terms of imprisonment on each of the two counts, to run concurrently. The sentencing entry afforded appellant credit for four days of jail time.

{¶15} On August 20, 2009, appellant filed a *pro se* motion asking the trial court to correct his jail time credit to reflect an additional 65 days. The trial court denied the motion. This appeal followed.

{¶16} Assignment of Error No. 1:

{¶17} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT FAILED TO GIVE HIM JAIL-TIME CREDIT OF 20 DAYS BECAUSE HE WAS BEING HELD IN JAIL FOR PURPOSES OF THE INSTANT CASE WHEN THE TRIAL COURT ORDERED THE WARDEN OF THE GREENE COUNTY JAIL TO HOLD HIM."

{¶18} On appeal, appellant argues that he was entitled to an additional 20 days of jail time credit. According to appellant, once the trial court issued the order requiring the warden of the Greene County Jail to hold appellant for transport to Warren County, he was being confined on charges in the Warren County case. Appellant insists that he

was entitled to jail time credit for his term of confinement in Greene County following the issuance of the transport order.

{¶9} The trial court makes the factual determination regarding the number of days of confinement an offender is entitled to have credited toward his sentence. *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, ¶7. R.C. 2967.191 provides, in pertinent part, that a prison term shall be reduced "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 while awaiting transportation to the place where the prisoner is to serve [his] prison term." (Emphasis added.)

{¶10} Thus, where an offender is incarcerated for a reason pertaining to the offense of conviction, he is statutorily entitled to credit toward his sentence. R.C. 2967.191 does not, however, entitle an offender to jail time credit for any periods of incarceration that arose out of facts *separate and apart* from those underlying the instant conviction and sentence. *State v. Siney*, Warren App. No. CA2004-08-094, 2005-Ohio-3449. Accord *State v. Washington*, Hamilton App. No. C-050462, 2006-Ohio-4790; *State v. Brooks*, Lorain App. No. 05CA008786, 2006-Ohio-1485; *State v. Eaton*, Union App. No. 14-04-53, 2005-Ohio-3238; *State ex rel. Carter v. Wilkinson*, Franklin App. No. 03AP-737, 2004-Ohio-3386; *State ex rel. Croake v. Trumbull Cty. Sheriff* (1990), 68 Ohio App.3d 245.

{¶11} The record indicates that appellant was not confined in the Greene County Jail for a reason *arising out of* his convictions for possession and cultivation of marijuana in Warren County. Appellant's assertion in his appellate brief that "the record is not clear as to why [he] was in the Greene County Jail" is inaccurate. At the sentencing hearing, the state informed the court that appellant was arrested in Greene County for a

probation violation after attempting to falsify a urinalysis. These details are supported by information in the PSI.

{¶12} The record demonstrates that appellant's convictions in the instant case for possession and cultivation of marijuana had nothing to do with his urinalysis and concomitant probation violation in Greene County. The Warren County charges arose from the search and seizure of a large amount of narcotics, whereas the Greene County probation violation arose from a botched urinalysis. It is thus readily apparent that the probation violation arose from facts that were separate and apart from appellant's conviction in Warren County for possession and cultivation of marijuana. Therefore, the trial court's transport order was not the impetus behind appellant's incarceration in Greene County.

{¶13} Appellant's own motion for correction of jail time lends further support for our conclusion. In the motion, appellant conceded that he was being held in Greene County from May 6, 2009 until July 9, 2009 in conjunction with case number 2006-CR-0803 (the Greene County case). The Warren County court's June 1, 2009 transport order and June 18, 2009 sentencing entry were issued in the middle of this timeframe. Also, the transcript for the sentencing hearing in Warren County indicated that appellant had to be transported back to Greene County following the close of the hearing, presumably for further proceedings in the probation violation case. It is thus apparent that appellant's confinement in Greene County was not related or attributable to the Warren County proceedings.

{¶14} Under these circumstances, we conclude that appellant was not entitled to any credit towards his Warren County sentence for the time he was confined in Greene County. The trial court therefore did not err in denying appellant's motion.

{¶15} Appellant's single assignment of error is overruled.

{¶16} Judgment affirmed.

YOUNG, P.J., and BRESSLER, J., concur.