

[Cite as *State v. Champlin*, 2015-Ohio-785.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

LESLIE CHAMPLIN

Defendant-Appellant

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C.A. CASE NO. 26485

T.C. NO. 2013-CR-158

(Criminal appeal from
Common Pleas Court)

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OPINION

Rendered on the 6th day of March, 2015.

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MICHELE D. PHIPPS, Atty. Reg. No 0069829, Assistant Prosecuting Attorney, 301 West Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

JOSE M. LOPEZ, Atty. Reg. No. 0019580, Lopez, 18 East Water Street, Troy, Ohio 45373
Attorney for Defendant-Appellant

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DONOVAN, J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Leslie Champlin, filed November 21, 2014. On June 4, 2014, Champlin pled guilty to domestic violence, a misdemeanor of the first degree, and on July 10, 2014, he was sentenced to community control sanctions with the condition that he serve 45 days of local incarceration. On

September 5, 2014, the trial court issued an amended order to detain, delineating 15 weekends for Champlin's incarceration in the Montgomery County Jail. On November 14, 2014, Champlin filed a Motion for Credit for Jail Time Served that provides as follows:

On September 5, 2014, the Court issued an Amended Order to Detain requiring the Defendant to serve forty-five (45) days in jail and specified the weekends in question. The Defendant has been informed by the jail that in the absence of the Court making provision in the Order to Detain for the time he has already served, they cannot give him credit for time served.

It is respectfully requested that the Court issue an Amended Order giving Defendant credit for five (5) days of jail time previously served. * * *

{¶ 2} The court overruled the request in an Entry dated November 18, 2014, which provides as follows:

On November 14, 2014, a Motion for Jail Time Credit was filed by Attorney Jose Lopez, for Leslie Champlin, on the above case. On July 8, 2014, Mr. Champlin was sentenced to Community Control in Case No. 2013 CR 00158, and currently remains under said supervision. He was ordered to serve 45 days local incarceration as a sanction of his Community Control, and according to the Termination Entry filed on August 14, 2014, and the Order to Detain filed on September 5, 2014, no Jail Time Credit was to be applied (as is typical with a sanction of local incarceration). As such, a Jail Time Credit calculation cannot be completed.

It is recommended that the Motion for Jail Time Credit be closed.

{¶ 3} We note that on November 24, 2014, Champlin filed an emergency motion to stay his remaining court-ordered jail time in this Court, and that the State filed a response on December 1, 2014, stating that it does not object to the stay. On December 3, 2014, this Court sustained Champlin's motion and stayed the September 5, 2014 amended order to detain.

{¶ 4} Champlin asserts one assignment of error herein as follows:

"THE TRIAL COURT ERRED BY FAILING TO GRANT JAIL-TIME CREDIT FOR DEFENDANT'S TIME SERVED."

{¶ 5} According to Champlin, he "is entitled to additional jail-time credit for the five (5) days he served in the Montgomery County Jail in lieu of bail on his domestic violence charge." The State responds that Champlin's appeal is subject to dismissal because this Court "lacks the jurisdiction to consider Champlin's appeal because he has not appealed from a final appealable order." According to the State, Champlin was required to file a direct appeal from his judgment entry of conviction to raise the issue of jail time credit, in reliance upon *State v. Keith*, 9th Dist. Lorain No. 08CA009362, 2009-Ohio-76, ¶ 8. ("Because the number of days of credit to which a defendant is entitled to must be stated in the trial court's sentencing entry, in order to challenge the trial court's calculation of jail time credit, an appellant must appeal from the trial court's entry imposing sentence.")

{¶ 6} We initially note that Champlin relies upon R.C. 2967.191, which governs credit for confinement and requires the department of rehabilitation and correction to reduce the stated prison term imposed for a felony by the number of days during which the prisoner was confined awaiting trial and commitment. Since Champlin was sentenced to community control sanctions for a misdemeanor, R.C. 2967.191 does not

apply to his sentence.

{¶ 7} The State asserts that “since [Champlin] was sentenced to local incarceration, R.C. 2949.08(C)(1) applies to his case.” That statute provides: “If the person is sentenced to a jail for a felony or a misdemeanor, the jailer in charge of a jail shall reduce the sentence of a person delivered into the jailer’s custody pursuant to division (A) of this section by the total number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced * * *.” Champlin was sentenced to jail as a community control sanction, and not to commitment in lieu of supervision, thus R.C. 2949.08(C)(1) is also inapplicable to his sentence.

{¶ 8} R.C. 2505.02 governs final appealable orders and provides: “(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following: (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment.” A substantial right “means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1).

{¶ 9} R.C. 2929.25 governs misdemeanor community control sanctions and provides that the sentencing court may impose a term of local incarceration as a condition of community control, as the trial court did herein in sentencing Champlin. Since Champlin was not sentenced to a jail term in lieu of community control supervision, and since his community control sanctions have not been revoked, the trial court is not required to calculate jail time credit at this juncture. The trial court had the authority to make the 45 day term a sanction, irrespective of pretrial detention. In other words, it is premature to calculate jail time credit, thus a substantial right is not affected by the trial

court's denial of Champlin's motion for jail time credit, and the Entry denying his motion is accordingly not a final appealable order. We note that in the event that Champlin's community control sanctions were to be revoked, Champlin would be entitled to credit for time served.¹

{¶ 10} Since the trial court's November 18, 2014 Entry is not a final appealable order affecting a substantial right, Champlin's appeal is hereby dismissed.

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FAIN, J. and HALL, J., concur.

Copies mailed to:

Michele D. Phipps
Jose M. Lopez
Hon. Richard S. Skelton

¹The court's sentencing entry provides: "If you violate any law, the court can impose a longer time under the same sanction, impose a more restrictive sanction, or a prison term of **170 DAYS LOCAL INCARCERATION.**" R.C. 2929.24(A)(1) provides that for a misdemeanor of the first degree, an offender may be sentenced to "not more than one hundred eighty days," and in the event of a revocation, Champlin could be sentenced to no more than the balance of a 180 day term. That is, Champlin would be entitled to credit for pretrial detention on this case and the 45 days of weekend sanctions.