

[Cite as *State v. Smith*, 2016-Ohio-4983.]

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

STATE OF OHIO

Plaintiff-Appellee

V.

GEANITA A. SMITH

Defendant-Appellant

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C.A. CASE NO. 2015-CA-37

T.C. NO. 15CR160

(Criminal appeal from
Common Pleas Court)

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OPINION

Rendered on the 15th day of July, 2016.

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Geanita A. Smith appeals her conviction and sentence in Champaign C.P. No. 2015 CR 160, asserting that the trial court erred when the trial court failed to award her forty-one days of jail time credit toward her twelve month sentence for one count of possession of heroin. Smith filed a timely notice of appeal with

this Court on October 15, 2015.

{¶ 2} The record establishes that on September 2, 2015, Smith was indicted in the instant case and an arrest warrant was issued for her while she was incarcerated in the Tri-County Regional Jail as a result of a probation violation arising out of Madison County Municipal Court. On September 3, 2015, the trial court journalized an entry setting bond at \$2,500.00. Smith remained incarcerated throughout the pendency of the instant case.

{¶ 3} Smith pled guilty to one count of possession of heroin in the instant case on September 14, 2015. On October 13, 2015, the trial court sentenced her to twelve months in prison to be served concurrently to the jail term imposed by the Madison County Municipal Court. At disposition, the trial court informed Smith of the following:

*** You have no jail time credit as of today's date. All jail time credit served in the Tri-County Jail will be credited to your term of confinement from the [Madison] Municipal Court sentence.

{¶ 4} It is from this judgment that Smith now appeals.

{¶ 5} Smith's sole assignment of error is as follows:

{¶ 6} "THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT FAILED TO PROPERLY DETERMINE AND JOURNALIZE APPELLANT'S ACCRUED JAIL TIME CREDIT."

{¶ 7} In her sole assignment, Smith contends that the trial court erred and violated her due process rights by failing to award her forty-one days of jail time credit on her concurrent sentences during the time she was already serving the jail sentence imposed in Madison County and between her arrest and disposition on the instant case in Champaign County for possession of heroin.

{¶ 8} R.C. 2967.191, governing jail time credit, implements the equal protection right to credit for prior incarceration. *State v. Fugate*, 117 Ohio St.3d 261, 2008–Ohio–856, 883 N.E.2d 440; *State v. Angi*, 2d Dist. Greene No. 2011 CA 72, 2012–Ohio–3840, ¶ 7, citing *State v. Coyle*, 2d Dist. Montgomery No. 23450, 2010–Ohio–2130, ¶ 5. The statute provides, in part:

The department of rehabilitation and correction shall 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, 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 * * *.

{¶ 9} “Although the [department of rehabilitation and correction] has a mandatory duty pursuant to R.C. 2967.191 to credit an inmate with jail time already served, it is the trial court that makes the factual determination as to the number of days of confinement that a defendant 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, 786 N.E.2d 1286, ¶ 7, quoted by *Coyle* at ¶ 7.

{¶ 10} “[W]here a sentence is imposed concurrently with a sentence that has already been imposed, and which the defendant has already begun serving, the defendant is given the comparative luxury of serving each day of his second sentence, beginning with the first day, concurrently with a day served on the first sentence. Thus,

if the new sentence is imposed and put into execution on the 100th day of the old sentence, the defendant is allowed to serve the first day of his new sentence while, at the same time, serving the 100th day of the old sentence.” (Emphasis omitted.) *State v. Ways*, 2d Dist. Montgomery No. 25214, 2013–Ohio–293, ¶ 10.

{¶ 11} However, R.C. 2967.191 does not “include time that the prisoner was incarcerated by reason of a sentence previously imposed for a different offense, even if that prior sentence is one with which the present sentence is ordered to be served concurrently.” *Ways* at ¶ 20. Accordingly, we have consistently held that jail time credit is not appropriate when the defendant was serving a sentence for a separate offense. See, e.g., *State v. Russell*, 2d Dist. Montgomery No. 26503, 2015–Ohio–3373 (defendant did not accrue jail time credit for time he served on a separate misdemeanor offense); *State v. Spears*, 2d Dist. Montgomery No. 25645, 2014–Ohio–146 (defendant was not entitled to jail time credit for 28 days during which he served time for an unrelated misdemeanor offense); *Angi*, 2d Dist. Greene No. 2011 CA 72, 2012–Ohio–3840; *State v. Rios*, 2d Dist. Clark No. 10 CA 59, 2011–Ohio–4720. See also *State ex rel. Rankin v. Mohr*, 130 Ohio St.3d 400, 2011–Ohio–5934, 958 N.E.2d 944, ¶ 2 (“ODRC director had no duty to reduce [defendant’s] 13–year sentence by the number of days that [he] was confined for other crimes before he received the 13–year sentence.”).

{¶ 12} Based on the foregoing, we find that Smith is not entitled to jail-time credit between September 3, 2015, and October 13, 2015. It is clear from the record that during the period of time in question, Smith was serving her sentence in the Tri-County Regional Jail as a result of a probation violation in Madison County Municipal Court.

Also, as of October 13, 2015, Smith began serving her twelve month sentence for possession of heroin in Champaign County. As previously discussed, R.C. 2967.191 does not “include time that the prisoner was incarcerated by reason of a sentence previously imposed for a different offense, even if that prior sentence is one with which the present sentence is ordered to be served concurrently.” *Ways* at ¶ 20. Because Smith was already serving a sentence for a separate offense between September 3, 2015, and October 13, 2015, she is not entitled to receive any jail-time credit for that period of confinement with respect to her conviction and sentence for possession of heroin in the instant case.

{¶ 13} Smith’s sole assignment of error is overruled.

{¶ 14} Smith’s sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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

Copies mailed to:

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