

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

IN THE MATTER OF:	:	Case No. 09CA38
	:	
O.H.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
	:	Released 03/18/10

APPEARANCES:

Teresa D. Schnittke, Lowell, Ohio, for appellant.

James E. Schneider, WASHINGTON COUNTY PROSECUTOR, and Raymond E. Dugger, WASHINGTON COUNTY ASSISTANT PROSECUTOR, Marietta, Ohio, for appellee.

Harsha, J.

{¶1} The Washington County Juvenile Court revoked O.H.’s probation and committed him to the legal custody of the Department of Youth Services (“DYS”) on one count of assault after O.H. violated the terms of his probation by committing an act of domestic violence against his sister. O.H. contends that the court erred by refusing to give him credit for time he spent in detention on a separate complaint charging him with domestic violence for the same incident that forms the basis of the probation revocation. Because O.H. was detained on the domestic violence complaint and was never detained pending the disposition of the probation violation, this time does not constitute “detention in connection with the delinquent child complaint upon which the order of commitment is based[,]” i.e. the assault complaint. Accordingly, we affirm the trial court’s judgment.

I. Facts

{¶2} In 2006, the Washington County Prosecutor’s Office filed a complaint in

the Washington County Common Pleas Court, Juvenile Division in case number 2006 DE 1037. The complaint alleged that O.H., then 12 years old, was a delinquent child because he assaulted a teacher at the Alternative Learning Center in Marietta, Ohio. Following O.H.'s admission to the charge, the court adjudicated him delinquent. And in February 2007, the court committed him to the legal custody of DYS. However, the court suspended the commitment on the conditions that O.H.: 1.) be of good behavior until the age of 21; 2.) commit no further criminal violations prior to age 21; 3.) comply with all terms of community control, including probation; and 4.) complete a rehabilitation program at the Washington County Juvenile Center. Between February 2007 and May 2009, O.H. was held in detention at various times awaiting the final disposition of a series of alleged probation violations. Although the court found that O.H. did violate his probation on these occasions, the court did not revoke it.

{¶3} Then on July 27, 2009 the Washington County Prosecutor's Office filed a complaint in case number 2009 DE 579, alleging that O.H. was a delinquent child because he committed an act of domestic violence against his sister.¹ Had the offense been committed by an adult, it would have been charged as a fourth degree misdemeanor. The same day, O.H. was placed in detention based on that allegation.

{¶4} Based on the same domestic violence incident at issue in case number 2009 DE 579, on July 31, 2009, O.H.'s probation officer alleged that O.H. violated the terms of his probation in the assault case. The allegations of the probation violation claimed that on July 26, 2009, O.H. was charged with domestic violence for threatening to cut his sister's throat and to bash her skull in with a coffee cup. The court never held

¹ Because O.H. did not ask the clerk to transmit a copy of the record from this case for our review, we have gleaned the information about it from the parties' briefs and the transcript from a September 9, 2009 hearing at which the court held proceedings in both 2006 DE 1037 and 2009 DE 579.

a detention hearing regarding the alleged probation violation.

{¶5} On September 9, 2009, the court held a hearing on the domestic violence complaint and the probation violation. Although the parties' briefs state that the court "dismissed" the domestic violence complaint, the hearing transcript indicates that O.H. admitted the allegation, the court adjudicated him as a delinquent child based on it, and the court simply admonished him without further punishment.

{¶6} O.H. also admitted to the probation violation. The court found that he violated the terms and conditions of his probation, revoked his probation, and imposed the previously suspended sentence. The court also found that as of September 9, 2009, O.H. had been held in detention for 95 days in connection with the original assault complaint and would receive credit for those days. Over O.H.'s objection, the court refused to give him credit for the 40 days he spent in detention from July 31, 2009 until September 9, 2009 on the domestic violence complaint. This appeal followed.

II. Assignment of Error

{¶7} O.H. assigns the following error for our review:

I. THE TRIAL COURT ERRED WHEN IT FAILED TO PROPERLY CALCULATE AND APPLY APPELLANT'S DETENTION CREDIT PURSUANT TO R.C. 2152.18(B).

III. Detention Credit

{¶8} O.H. contends that the trial court misinterpreted R.C. 2152.18(B) when it calculated his detention credit. We examine questions of statutory interpretation de novo. *Covert v. Ohio Auditor of State*, Scioto App. No. 05CA3044, 2006-Ohio-2896, at ¶18, citing *State v. Lawless*, Washington App. No. 97CA823, 1998 WL 729233. "In construing a statute, a court's paramount concern is the legislative intent in enacting the

statute.” *State v. S.R.* (1992), 63 Ohio St.3d 590, 594, 589 N.E.2d 1319, citing *Featzka v. Millcraft Paper Co.* (1980), 62 Ohio St.2d 245, 247, 405 N.E.2d 264. To determine the legislature’s intent, we must first look to the plain language of the statute itself. *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, at ¶19, citing *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81, 1997-Ohio-310, 676 N.E.2d 519. We must read words and phrases in context and construe them “according to the rules of grammar and common usage.” R.C. 1.42. “Courts do not have the authority to ignore the plain and unambiguous language of a statute under the guise of statutory interpretation, but must give effect to the words used.” *State, Dept. of Taxation v. Johnson*, Jackson App. No. 96CA793, 1997 WL 799488, at *2, citing *Wray v. Wymer* (1991), 77 Ohio App.3d 122, 601 N.E.2d 503. “In other words, courts may not delete words used or insert words not used.” *Id.*, citing *Cline v. Ohio Bur. of Motor Vehicles* (1991), 61 Ohio St.3d 93, 97, 573 N.E.2d 77.

{¶19} R.C. 2152.18(B) provides:

When a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this chapter, the court shall state in the order of commitment the total number of days that the child has been held in detention *in connection with the delinquent child complaint upon which the order of commitment is based*. The department shall reduce the minimum period of institutionalization that was ordered by both the total number of days that the child has been so held in detention as stated by the court in the order of commitment and the total number of any additional days that the child has been held in detention subsequent to the order of commitment but prior to the transfer of physical custody of the child to the department.

(Emphasis added).

{¶10} The Supreme Court of Ohio has found that a juvenile is entitled to credit for time spent in detention while awaiting the final disposition of an alleged probation

violation because this detention “relates back to the complaint of delinquency and is in ‘connection with’ that complaint[.]” *In re Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908, at ¶13. “Such detention goes to the original disposition in the case and is sufficiently linked to the adjudication of the original charges that credit is required by the statutory language.” *Id.* And although the *Thomas* Court reached these conclusions by analyzing former R.C. 2151.355(F)(6), the Court clearly intended its holding to also apply to R.C. 2152.18(B) – the current, similarly worded statute. *Id.* at ¶11, fn. 1. See, also, *In re Seavolt*, Morrow App. Nos. 2006-CA-0010 & 2006-CA-0011, 2007-Ohio-2812, at ¶59; *In re Marlin*, Paulding App. No. 11-04-15, 2005-Ohio-1429, at ¶9, fn. 1.

{¶11} O.H. contends that because the alleged probation violation and the domestic violence charge were based on the same underlying incident, the time he spent in detention pending the disposition of the domestic violence charge should be credited to his assault case. However, R.C. 2152.18(B) plainly states that a juvenile is only entitled to credit for detention “in connection with the delinquent child complaint upon which the order of commitment is based.” And here, it is clear from the record that the trial court never placed O.H. in detention pending the final disposition of the alleged probation violation at issue. Instead, the court placed him in detention pending the final disposition of the domestic violence complaint. Although factually related to the probation violation allegations, the 2008 domestic violence charge constituted a separate criminal offense from the 2006 assault and brought with it the risk of a separate sentence. Thus O.H.’s time in detention on the domestic violence complaint does not represent time in detention “in connection with” the assault complaint under

R.C. 2152.18(B). See, e.g., *In re Dillard*, Stark App. Nos. 2001CA00093 & 2001CA00121, 2001-Ohio-1897, at *4 (finding that a charge of violating a prior court order stemmed from conditions of probation for an arson charge and was not “a separate criminal offense bringing with it a separate sentence[,]” so time in detention on violation of prior court order charge was “in connection with” the arson complaint under former R.C. 2151.355). Therefore, the trial court correctly denied O.H.’s request for credit for this time.

{¶12} Accordingly, we overrule O.H.’s sole assignment of error and affirm the trial court’s judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

McFarland, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.