[Cite as *State v. Carpenter*, 2017-Ohio-9038.]

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

STATE OF OHIO,	:	
	:	Case No. 16CA11
Plaintiff-Appellee,	:	
	:	
vs.	:	DECISION AND JUDGMENT
	:	ENTRY
ANTHONY A. CARPENTER,	:	
	:	
Defendant-Appellant.	:	**Released: 12/08/17**

APPEARANCES:

Timothy Young, Ohio State Public Defender, and Katherine R. Ross-Kinzie, Assistant Ohio State Public Defender, Columbus, Ohio, for Appellant.

Colleen S. Williams, Meigs County Prosecuting Attorney, and James K. Stanley, Assistant Meigs County Prosecuting Attorney, Pomeroy, Ohio, for Appellee.

McFarland, J.

{¶1} Anthony A. Carpenter appeals the judgment entry of the Meigs County Common Pleas Court, dated August 23, 2016. In June 2016, Carpenter entered a plea of guilty to one count of Burglary, a violation of R.C. 2911.12(A)(3) of the Ohio Revised Code. On appeal, Carpenter asserts the trial court erred by sentencing him to a maximum prison term. He also asserts the trial court erred by its failure to properly calculate the jail time credit to which he was entitled. After carefully reviewing the record, we

find no merit to either assignment of error. Accordingly, we overrule both assignments of error and affirm the judgment of the trial court.

FACTS

{¶2} On or about December 3, 2014, Anthony A. Carpenter burglarized his father's home. Appellant was confined in jail from December 2, 2014 through December 11, 2014. On March 20, 2015, Appellant was indicted for one count of burglary, R.C. 2911.12(A)(3), a felony of the third degree. On April 15, 2015, Appellant was arraigned on the indictment for burglary, case number 14CR231.

{¶3} The trial court held pretrials on November 9, 2015 and November 23, 2015. Appellant failed to appear for the November 9, 2015 pretrial. On November 23, 2015, Appellant was scheduled for a change of plea hearing, which was to take place on December 21, 2015.

{¶4} The matter was continued several times for reasons which are not completely clear. On March 2, 2016, Appellant again failed to appear for a pretrial hearing and a warrant for arrest was issued. Appellant was again confined in jail on April 19, 2016. On April 25, 2016, Appellant was allowed a recognizance bond with GPS.

{¶5} On June 27, 2016, Appellant appeared for a settlement conference. The State and Appellant reached an agreed resolution in the

matter. Appellant changed his plea and sentencing was continued in order to obtain a pre-sentence investigation report. However, instead of receiving the sentence to which the parties had agreed, at the sentencing hearing on August 22, 2016, Appellant was sentenced to a maximum prison term, thirty-six months. He was also given 9 days of jail-time credit.

{¶6} This timely appeal followed. Where pertinent, we set forth additional facts below.

ASSIGNMENTS OF ERROR

> "I. ANTHONY CARPENTER'S MAXIMUM PRISON SENTENCE IS NOT CLEARLY AND CONVINCINGLY SUPPORTED BY THE RECORD.
>
> II. THE TRIAL COURT ERRED WHEN IT FAILED TO PROPERLY CALCULATE, NOTIFY THE DEFENDANT AT THE SENTENCING HEARING, AND INCLUDE IN ITS SENTENCING ENTRY THE NUMBER OF DAYS OF CREDIT TO WHICH ANTHONY CARPENTER WAS ENTITLED UNDER R.C. 2967.191."

STANDARD OF REVIEW

{¶7} R.C. 2953.08(G)(2) defines appellate review of felony sentences and provides, in relevant part, as follows:

> "The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.
>
> The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the

> sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following: (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant; (b) That the sentence is otherwise contrary to law."

{¶8} "[A]n appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Bass*, 4th Dist. Washington No. 16CA32, 2017-Ohio-7059, ¶ 6, quoting *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1. This is a deferential standard. *Id.* at ¶ 23. Furthermore, "appellate courts may not apply the abuse-of-discretion standard in sentencing-term challenges." *Id.* at ¶ 10. Additionally, although R.C. 2953.08(G) does not mention R.C. 2929.11 or 2929.12, the Supreme Court of Ohio has determined that the same standard of review applies to findings made under those statutes. *Id.* at ¶ 23 (stating that "it is fully consistent for appellate courts to review those sentences that are imposed solely after consideration of the factors in R.C. 2929.11 and 2929.12 under a standard that is equally deferential to the sentencing court," meaning that "an appellate court may vacate or modify any sentence that is

not clearly and convincingly contrary to law only if the appellate court finds by clear and convincing evidence that the record does not support the sentence").

{¶9} "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.' " *Bass, supra,* at 6, quoting *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *Id.* at ¶ 22.

{¶10} Further, as noted by the Eighth District Court of Appeals: "It is important to understand that the 'clear and convincing' standard applied in R.C. 2953.08(G)(2) is not discretionary. In fact, R.C. 2953.08(G)(2) makes it clear that '[t]he appellate court's standard for review is not whether the sentencing court abused its discretion.' As a practical consideration, this means that appellate courts are prohibited from substituting their judgment for that of the trial judge. It is also important to understand that the clear and convincing standard used by R.C. 2953.08(G)(2) is written in the negative. It does not say that the trial judge must have clear and convincing evidence to support its findings. Instead, it is the court of appeals that must clearly

and convincingly find that the record does not support the court's findings. In other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review." *Bass supra*, at 7, quoting *State v. Venes*, 8th Dist. Cuyahoga No. 98682, 2013-Ohio-1891, ¶ 20–21, 992 N.E.2d 453.

LEGAL ANALYSIS

A. Assignment of Error One–Maximum Sentence

{¶11} Appellant contends his maximum sentence of 36 months as to one count of burglary is not clearly and convincingly supported by the record. Appellant argues, given the record in this case, the 36-month maximum prison sentence pursuant to R.C. 2929.11 is not guided by the overriding principles of felony sentencing. Appellant requests this court, pursuant to the authority of R.C. 2953.08(G)(2), to reduce his sentence to community control. Appellant emphasizes these facts in support:

> 1) The underlying cause of Appellant's offense was his drug addiction;
>
> 2) The victim suffered no harm and explicitly requested treatment and rehabilitation as the punishment;
>
> 3) The State recommended community control; and,
>
> 4) The court found Appellant amenable to community control at the same hearing for a different offense.

{¶12} Although trial courts have full discretion to impose any term of imprisonment within the statutory range, they must consider the sentencing purposes in R.C. 2929.11 and the guidelines contained in R.C. 2929.12. *State v. Sawyer,* 4th Dist. Meigs No. 16CA2, 2017-Ohio-1433, ¶ 16; *State v. Lister,* 4th Dist. Pickaway No. 13CA15, 2014-Ohio-1405, at ¶ 14. R.C. 2929.11(A) states:

> "A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both."

{¶13} R.C. 2929.12 also provides a non-exhaustive list of factors a trial court must consider when determining the seriousness of the offense and the likelihood that the offender will commit future offenses. *Sawyer, supra,* at ¶ 17; *Lister, supra*, at ¶ 15. And, while the trial court is required to consider the R.C. 2929.12 factors, "the court is not required to 'use specific language or make specific findings on the record in order to evince the requisite consideration of the applicable seriousness and recidivism factors (of R.C. 2929.12.)' " *Sawyer, supra,* at ¶ 19, quoting *State v. Latimer,* 11th

Dist. Portage No. 2011–P–0089, 2012–Ohio–3845, ¶ 18, quoting *State v. Webb,* 11th Dist. Lake No. 2003–L–078, 2004–Ohio–4198, ¶ 10, quoting *State v. Arnett*, 88 Ohio St.3d 28, 215, 724 N.E.2d 793 (2000).

{¶14} At the pretrial settlement conference hearing on June 27, 2016, the following dialogue took place:

The Court: How about that? These are- - Mr. Carpenter, have you had the opportunity to read these guilty pleas and findings of guilt?

Defendant: Yes, I have read them.

The Court: You understand what they say, sir?

Defendant: Yes, I do.

The Court: Do you understand they are a recommendation? Do you understand that?

Defendant: Yes, sir. I do.

The Court: And you understand the Court is free to do what the Court wants to do? You understand that?

Defendant: Yes, sir. I do.

* * *

The Court: You understand that while you and the State have presented the Court a recommendation for sentencing, this Court is not bound to accept that recommendation? Do you understand that?

Defendant: Yes, sir, I do.

{¶15} At this point, the trial court explained that in 14CR231, Appellant would be pleading to burglary, a felony of the third degree

carrying a maximum sentence of 36 months. The trial court further explained Appellant's constitutional rights. The prosecutor explained the plea agreement as follows:

> "Thank you, Your Honor. In the 2014 case, the defendant has pled as indicted to the burglary charged, felony of the third degree. And then in the 2016 case, he pled as indicted to both of the forgery counts * * *. Defendant is to successfully complete the SEPTA program and then upon release from SEPTA program, he would have a Vivitrol assessment and any outpatient drug and alcohol counseling and enter into the Vivitrol program if ordered. Then anything in the violation there would be a violation of his community control. Community control would be for five (5) years."

{¶16} After this recitation, the trial court again addressed Appellant:

> "Do you understand if any promises or inducements have been made to you…Excuse me… by any person to cause you to plead guilty, they are not binding on this Court; that if you plead guilty, the court alone, that is the Judge, will decide your sentence after considering a pre-sentence investigation report and recommendation prepared by the probation department and that you may receive the maximum sentence prescribed by law, you understand that?"

{¶17} After Appellant answered affirmatively, the trial court accepted Appellant's pleas of guilty. Appellant was scheduled for sentencing on August 22, 2016. On the sentencing date, he was given the maximum sentence of 36 months.

{¶18} In this case, the record reveals the trial court stated at the

sentencing hearing and in the judgment entry that it considered the principles and purposes of sentencing in R.C. 2929.11, as well as the seriousness and recidivism factors of R.C. 2929.12. The trial court also stated at the hearing and in the judgment entry of sentencing that it considered the victim's statement. The victim was Appellant's father, Roger Carpenter, who did not appear at the change of plea and sentencing hearings. Mr. Carpenter indicated on his victim's impact statement that he suffered no harm and incurred no expense. The victim's advocate spoke on his behalf, stating as follows:

> "Your Honor, the victim in this case number 14CR231 is the defendant's father and the only thing that he requested is that he receive some type of rehabilitation for his drug addiction; that he believes that that's what's caused all of this."[1]

{¶19} While the trial court stated it considered the victim impact information, the trial court is not required to ascribe any weight to the victim's statement. *See generally State v. Bennett*, 3rd Dist. Hancock No. 5-2000-05, 2000-Ohio-1888 (Upon appeal of felonious assault conviction, appellate court noted that while pursuant to R.C. 2929.19(B)(1) and prior to imposing sentence, a trial court is required to consider any victim impact statement made under R.C. 2947.051, the statute does not require the trial

[1] In the forgery cases, 16CR008, the victim was Appellant's mother who, according to the advocate, requested that Appellant receive drug treatment but did not return a victim impact statement.

court to ascribe any weight to the victim's statement.). *See also State v. Henry*, 7th Dist. Belmont No. 14BE40, 2015-Ohio-4145, ¶ 31 (A sentencing judge need not adopt a domestic violence victim's plea of leniency.). We find Appellant's maximum sentence is not clearly and convincingly contrary to law due to the trial court's imposition of a sentence that the victims did not request.

{¶20} The trial court also advised it considered the "statements regarding negotiations," which we construe as being the joint recommendation for community control. While this is also a factor for consideration, it is also undisputed that the trial court is not bound by the state's sentencing recommendation. *State v. Wiseman*, 4th Dist. Washington No. 11CA9, 2011-Ohio-6253, ¶ 17; *State v. Keyes*, 4th Dist. No. 05CA16, 2006–Ohio5032, at ¶ 10. *See also State v. Hartrun*, 5th Dist. Licking No. (not given), 2015-Ohio-3333, ¶ 4 (A trial court does not err by imposing a sentence greater than a sentence recommended by the State when the trial court forewarns the defendant of the range of penalties which may be imposed upon conviction.); *State v. Ybarra*, 5th Dist. Licking No. 14CA8, 2014-Ohio-3485, ¶ 22 (When a trial court imposes a greater sentence than recommended in the plea agreement, and when the defendant is forewarned of the applicable maximum penalties, there is no error on behalf of the trial

court if it imposes a more severe sentence than was recommended by the prosecutor). As previously set forth, the trial court advised Appellant of the maximum penalties, and twice, explained to Appellant that the joint recommendation was not binding on the court and that "the court alone, that is the Judge, will decide your sentence." Once again, the sentence imposed is not clearly and convincingly contrary to law due to the trial court's failure to impose the jointly recommended sentence.

{¶21} Appellant also points out the trial court's statements on the record made prior to sentencing indicated the court's willingness to sentence Appellant to community control. On November 9, 2015, Appellant failed to attend a pretrial hearing. At that time, the victim's advocate and the attorneys discussed drug treatment as an option. Despite Appellant's failure to appear, the trial court conveyed a willingness to sentence Appellant to drug treatment. The court stated: "If you guys are all in agreement that he gets drug treatment and all that, tell Dad that the Judge will go along with it * * *." It is true, the trial court's thoughts on sentencing from the pretrial date changed considerably after the court received and reviewed the presentence investigation. However, nothing surrounding the circumstances of the court's imposition of the maximum sentence in this case appears to be clearly and convincingly contrary to law.

{¶22} At the June 27, 2016 pretrial settlement conference, the trial court also advised Appellant it would be considering the pre-sentence investigation report. At sentencing, the court made the finding that Appellant was not amenable to community control. While imposing the maximum sentence, the trial court stated:

> "The reason why the Court did this was upon review of the record of the defendant, in'05 he pled to theft, criminal damaging and domestic…Excuse me… obstructing official business in '05. In '06 and '07, he pled to breaking and entering and burglary. And in '09, he pled guilty to an assault was guilty to a lesser which I assume is disorderly conduct. In '12, he pleaded guilty to attempted burglary, guilty. And then he pled guilty to breaking and entering and resisting arrest and it may have been the same case * * * and I believe he might still be on community control from that. * * * As far as the Court's concerned, it's given your record."

{¶23} "[A] maximum sentence is not contrary to law when it is within the statutory range and the trial court considered the statutory principles and purposes of sentencing as well as the statutory seriousness and recidivism factors." *Sawyer*, *supra,* at 20, quoting *State v. Talley*, 2nd Dist. Lucas No. L–15–1187, 2016–Ohio–8010, ¶ 15. Appellant's sentence is within the statutory range and the court engaged in the considerations required by R.C. 2929.11 and R.C. 2929.12. Appellant was advised repeatedly that the trial court was not bound by the joint sentencing recommendation. We cannot speculate as to why the trial court did not impose the jointly recommended

sentence, given that the attorneys forthrightly informed the court early on that Appellant had some prior criminal history. However, based on our review of the record, we find the trial court's imposition of the maximum 36-month sentence on Appellant's sentence on the burglary conviction is supported by the record and not clearly and convincingly contrary to law.

{¶24} As such, we find no merit to Appellant's first assignment of error. We hereby overrule the first assignment of error and affirm the sentence of the trial court.

B. Assignment of Error Two – Jail-Time Credit

{¶25} The practice of awarding jail-time credit, although now covered by state statute, has its roots in the Equal Protection Clauses of the Ohio and United States Constitutions. *State v. Butcher,* 4th Dist. Athens No. 15CA33, 15CA34, 2017-Ohio-1544, 107, citing *State v. Williams,* 8th Dist. Cuyahoga No. 104155, 2016–Ohio–8049, ¶¶ 12–14, *State v. Fugate,* 117 Ohio St.3d 261, 2009–Ohio–856, 883 N.E.2d 440, ¶ 7. The rationale for giving jail-time credit "is quite simple[;][a] person with money will make bail while a person without money will not." *Id.* at ¶ 25 (Stratton, J., concurring). That means for "two equally culpable codefendants who are found guilty of multiple offenses and receive identical concurrent sentences," the poorer codefendant will serve more time in jail than the wealthier one who was able

to post bail. *Id.* at ¶ 25–26. "[T]he Equal Protection Clause does not tolerate disparate treatment of defendants based solely on their economic status." *Id.* at ¶ 7.

{¶26} In Ohio, this principle is codified in R.C. 2967.191, which provides in relevant part:

> "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, confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term, as determined by the sentencing court under division (B)(2)(g)(i) of section 2929.19 of the Revised Code * * * ."

{¶27} In particular, R.C. 2929.19(B)(2)(g)(i) further provides,

> "Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:
> * * *
> Determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the stated prison term under section 2967.191 of the Revised Code. The court's calculation shall not include the number of days, if any, that the offender previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced."

1) Did the court commit plain error by failing to notify Appellant of his jail-time credit at the sentencing hearing?

{¶28} Appellant first argues the trial court erred by failing to address his jail-time credit at the sentencing hearing, and only included in the sentencing entry that Appellant was entitled to 9 days of credit. In *State v. Gordon*, 2017-Ohio-7147, -- N.E.3d --, (9th Dist.), the appellant argued that the trial court erred by failing to orally pronounce a specific amount of jail-time credit days during his sentencing hearing.

{¶29} At Gordon's sentencing hearing, the trial court stated: "We'll give you credit for the time you have served. I don't know that we have an accurate statement of that. The probation department will make an accurate finding of that [sic] credit you have at this point in time." Mr. Gordon's sentencing entry stated: "Based upon an investigation conducted by the Adult Probation Department, the defendant is given credit for 111 days served in the Summit County Jail as of the date of sentencing * * *." *Id.* at 37. The appellate court observed that because Gordon did not object at the trial court level he had forfeited all but plain error. *Id.* at 38. *See State v. Wallace*, 9th Dist. Lorain Nos. 14CA010609, 14CA010610, 2015–Ohio–4222, ¶ 20.

{¶30} On appeal, Gordon conceded that he was granted jail-time credit in his sentencing entry, but argued that he was denied the ability to contest the amount of credit or seek a hearing under R.C. 2929.19(B)(2)(g)(ii) because the trial court failed to determine the exact number of days that he would be credited in open court during the sentencing hearing. The appellate court disagreed, based on the language of R.C. 2929.19(B)(2)(g)(ii), which states: "In making a determination under division (B)(2)(g)(i) of this section, the court shall consider the arguments of the parties and conduct a hearing if one is requested." At the sentencing hearing, the parties made no arguments regarding jail-time credit, nor did either side seek a hearing under R.C. 2929.19(B)(2)(g)(ii). The appellate court found nothing in the record to support a claim that Gordon was denied the ability to request a hearing.

{¶31} In further support of his argument, Gordon asserted that the number of days of credit "must be specifically stated on the record," citing to an earlier decision in *State v. Clark*, 9th Dist. Summit No. 27511, 2016–Ohio–91, ¶ 25. However, the appellate court pointed out *Clark* was reversed and remanded partly because the sentencing entry granted a specific amount of jail-time credit days "as agreed to by all parties" even though "[n]either party nor the trial court mentioned any jail-time credit at the sentencing

hearing." (Emphasis deleted.) *Id.* at ¶ 24–25. In *Gordon*, there was no alleged agreement regarding jail-time credit stated in the entry, nor did the trial court remain silent as to the right to jail-time credit during the sentencing hearing.

{¶32} Here, we note Appellant failed to request a hearing under R.C. 2929.19(B)(2)(g)(ii), or to raise any objection with regard to jail-time credit at the sentencing hearing. The sentencing entry states Appellant is entitled to jail-time credit. He has raised the issue regarding the exact number of days to which he is entitled on direct appeal. We fail to see how the failure to discuss the issue of jail-time credit at the sentencing hearing has prejudiced Appellant. As such, we decline to notice plain error due to the omission.

2) Is Appellant entitled to additional jail-time credit?

{¶33} Appellant argues he was confined between December 2, 2014 and December 11, 2014, and from April 19, 2016 until sentencing on August 22, 2016. He concludes he is entitled to an additional 125 days of credit. However, Appellee points out Appellant was arrested on April 19, 2016 upon an indictment for 16CR008, the forgery counts, as well as on a warrant for failing to appear in this case. Appellee argues Appellant was in jail from April 19, 2016 until the sentencing date on the subsequent case number. He

was allowed to sign his own recognizance bond in 14CR231. As such, the trial court did not err.

{¶34} "Although the principle of crediting time served seems fairly simple on its face, in practice, it can be complicated when, inter alia, the defendant is charged with multiple crimes committed at different times, or when the defendant is incarcerated due to a probation violation." *Williams* at 15, quoting *State v. Chafin,* 10th Dist. Franklin No. 06AP–1108, 2007–Ohio–1840, ¶ 9. According to R.C. 2967.191, an offender is not entitled to jail-time credit for any period of incarceration that arose from facts that are separate and apart from those on which his current sentence is based. *State v. DeMarco,* 8th Dist. Cuyahoga No. 96605, 2011–Ohio–5187, ¶ 10. Thus, R.C. 2967.191 is inapplicable when the offender is imprisoned as a result of another unrelated offense. *State v. Williams,* 126 Ohio App.3d 398, 399, 710 N.E.2d 729 (2nd Dist.1998). This means that there is no jail-time credit for time served on unrelated offenses, even if that time served runs concurrently during the predetention phase of another matter. *See State v. Cook*, 7th Dist. Mahoning No. 00CA184, 2002–Ohio–7170, ¶ 17.

{¶35} In *State v. Copas,* 2015-Ohio-5362, 49 N.E.3d 755 (4th Dist.), Copas challenged that the jail credit requested in one case, Case No. 20100025 was applied to, and included with, his sentence in a separate case,

Case No. 20100026. Citing *State v. Fugate,* 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, Copas argued that the trial court erroneously lumped together all of his jail-time credit from both case numbers and then applied it only to the latter case, rather than applying the credit equally to both cases. In *Fugate,* the Supreme Court of Ohio held at the syllabus that "if a defendant is sentenced to concurrent prison terms for multiple charges, jail time credit pursuant to R.C. 2967.191 must be applied toward each concurrent prison term." *See Copas, supra,* at 16. In *Copas* at 20, we further commented: "Fugate does not negate the proposition that R.C. 2967.191 does not entitle a defendant to jail credit for incarceration on unrelated offenses." *See also State v. Bailey,* 4th Dist. Highland No. 16CA1, 2016-Ohio-7249, ¶ 14.

{¶36} In *State v. Pritschau,* 11th Dist. Lake No. 2015-L-115, 2016-Ohio-7147, Pritschau was arrested in June 2015 pursuant to a burglary indictment. She was unable to post bond. As such, she remained in the Lake County Jail until she eventually entered a guilty plea and was sentenced in September 2015. During this time, she was convicted of several pending misdemeanor charges from 2014, and was given relatively short sentences which she served during her incarceration.

{¶37} On appeal, Pritschau asserted the trial court erred in not granting her jail-time credit for the entire period she was held in the county jail from the date of her arrest on the felony case until the date of her sentencing hearing. According to her, a total of 107 days elapsed during that time frame, and the trial court only gave her credit for 40 of those days. The basis for the trial court's ruling was that, during the first 67 days of her incarceration, she was serving the sentences that had just been imposed on three of her pending misdemeanor charges in the earlier cases. However, the appellate court disagreed, holding: "there is no jail-time credit for time served on unrelated offenses, even if that time served runs concurrently during the pre-detention phase of another matter." *Id.* at 27, quoting *State v. Struble*, 11th Dist. Lake No. 2015–L–115, 2006–Ohio–3417, ¶ 11. The *Pritschau* court observed:

> "Even if [] would have been able to post bond when she was first arrested in the underlying case, she would not have been released because she was serving the sentences from the other cases. As a result, she is not entitled to any jail-time credit for that period."

{¶38} In this case, the appeal involves only one judgment in a single case, case number 14CR231. However, the arguments herein involve charges in another case. The parties agree Appellant was incarcerated

between December 2 and 11, 2014 on case number 14CR231. The record, including the hearing transcripts, reveal the following facts:

April 19, 2016	Appellant picked up on new indictment, 16CR008 and a cash bond was set. 14CR231 set for April 25, 2016.
April 25, 2016	Appellant unable to make bond on case number 16CR008. 14CR231 case given own recognizance with GPS payment up front.

{¶39} In Appellant's reply brief, he points out he was unable to post bond in 14CR231 due to the required GPS payment. However, like Pritschau, even if Appellant was able to make bond, he was being held on other offenses. Clearly, from April 19, 2016 forward, Appellant was being held on both the 2014 case, and an unrelated offense which carried the 2016 case number. Appellant is not entitled to additional jail-time credit on the 2014 case from the time period between April 19, 2016 and his sentencing on August 22, 2016.

3) Is granting the 125 days of credit on the unrelated case fundamentally unfair?

{¶40} Appellant argues that granting credit for the 125 days he was held on both cases, 14CR231 and 16CR008, solely on case number 16CR008, is fundamentally unfair because the 16CR008 case carries a community control sentence. Appellant points out that the trial court does

not know whether he will ever be incarcerated for case number 16CR008. Therefore, he may never receive actual credit for the 125 days at issue - making it "dead time." Appellant cites *State v. Klein*, 1st Dist. Hamilton No. C-040176, C-040224, 2005-Ohio-1761, ¶ 31, wherein the First District Court of Appeals held that a trial court erred when it refused to give credit on a case for time served in jail prior to sentencing and instead gave credit on another case yet to be resolved.

{¶41} For the reason which follows, however, we need not consider Appellant's fundamental unfairness argument. While the sentencing transcript in case number 14CR231 makes mention of the 16CR008 case and the associated sentence of community control, the sentencing entry is silent as to the exact length of community control in the 16CR008 case or any jail-time credit given. More importantly, the Notice of Appeal filed in this Court in this case is from the trial court's judgment in Case Number 14CR231. The only case before us at this time is Case Number 14CR231. Thus, we hereby decline to consider any argument related to a case not currently before us on appeal. *See Copas, supra*, at 8.

{¶42} For the foregoing reasons, we find no merit to Appellant's second assignment of error and it is hereby overruled. Accordingly, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court 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.

Harsha, J. & Hoover, J.: Concur in Judgment Only.

For the Court,

BY: _____
Matthew W. McFarland, 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.