

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008 CA 0084
JACK OSBORNE, Pro se,	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Criminal Appeal From Richland County Court Of Common Pleas Case No. 05 CR 0468D
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JUDGMENT:	Judgment Vacated and Remanded
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DATE OF JUDGMENT ENTRY:	June 15, 2009
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APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JAMES MAYER, JR. Prosecuting Attorney 38 South Park Street Mansfield, Ohio 44902	JACK OSBORNE, PRO SE N.C.C.T.F. #541-187 2000 S. Avon Belden Road Grafton, Ohio 44044

*Edwards, J.*

{¶1} Defendant-appellant, Jack Osborne, appeals from the trial court's denial of his Motion for Credit for Time Served. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 14, 2005, the Richland County Grand Jury indicted appellant on two counts of driving while under the influence of alcohol or drugs in violation of R.C. 4511.19(A)(1), felonies of the fourth degree. Both counts were accompanied by specifications indicating that appellant previously had been convicted of or pleaded guilty to five or more equivalent offenses within twenty years of committing the offenses. At his arraignment on August 4, 2005, appellant entered a plea of not guilty to the charges.

{¶3} Subsequently, on October 25, 2005, appellant withdrew his former not guilty plea and pleaded no contest to one of the counts. The remaining count and the specifications were dismissed. As memorialized in a Sentencing Entry filed on December 6, 2005, appellant was fined \$10,000.00 and placed on community control for a period of four years. As a part of his community control, appellant was ordered to successfully complete a program at Crossroads halfway house.

{¶4} After it was alleged that appellant had violated the terms and conditions of his community control, a community control violation hearing was held on December 17, 2007. At the hearing, appellant was found guilty of one of the violations and, pursuant to a Journal Entry filed on December 18, 2007, appellant was sentenced to fifteen (15) months in prison.

{¶5} On August 11, 2008, appellant filed a motion seeking jail time credit for time served at Crossroads Center for Change from December 19, 2005, to May 26, 2006, for a total of 170 days. Appellant, in his motion, stated that he had completed the program at Crossroads. Appellant did not submit any type of documentation in support of his motion. As memorialized in a Judgment Entry filed on August 18, 2008, the trial court overruled such motion, finding that “Crossroads Center for Change is a residential program for substance abusing offenders, not ‘confinement’ within the meaning of the jail credit statute.”

{¶6} Thereafter, on September 3, 2008, appellant filed a Motion for Reconsideration. Appellant, in his motion, noted that while Crossroads was not a lock-down facility, it was still within the trial court’s discretion to grant credit for time spent at Crossroads. Appellant attached a copy of an August 5, 2008 Order from another case in which the same Judge had granted a defendant jail time credit for time spent at Crossroads Center for Change. The trial court overruled appellant’s Motion for Reconsideration via a Judgment Entry filed on September 10, 2008.

{¶7} On September 16, 2008, appellant filed a Notice of Appeal raising the following assignment of error on appeal:

{¶8} “THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING THE MOTION FOR JAIL TIME CREDIT FOR DAYS SPENT INCARCERATED WHILE PARTICIPATING IN CROSSROADS CENTER FOR CHANGE ALCOHOL TREATMENT PROGRAM, CONTRARY TO LAW UNDER OHIO REVISED CODE, SECTION 2949.08(B)(C)(2)(D).”

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{¶9} Appellant, in his sole assignment of error, argues that the trial court erred in denying appellant's Motion for Jail Time Credit for time appellant spent at Crossroads Center for Change.

{¶10} R.C. 2967.191 governs reduction of prison term for prior confinement and states as follows: "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, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term." Although it is the department's duty to reduce the term of incarceration by the number of days served prior to sentencing, it is the responsibility of the sentencing court to properly calculate the amount of days for which such credit may be extended. See *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113.

{¶11} In *State v. Jones* (1997), 122 Ohio App.3d 430, 432, 702 N.E.2d 1061, the defendant, who was sentenced to prison after violating his probation, filed a motion for jail time credit seeking credit for time that he spent at Crossroads Center for Change. After the trial court overruled his motion, the defendant appealed. This Court, on appeal, noted that the record contained no information from which this Court could conduct a meaningful review of the nature of the program at Crossroads. For such reason, we vacated the trial court's judgment and remanded the matter to the trial court "with

instructions to conduct a hearing on the nature of appellant's participation in the Crossroads Center program and determine whether he was 'confined' for purposes of the statute." *Id.* at 432, 702 N.E.2d 106. This Court, in *Jones*, noted that the trial court was to determine whether the restrictions on the participants in the Crossroads program were so stringent as to constitute "confinement" as contemplated by the legislature. *Id.* at 432. See similarly, *State v. Barkus*, Richland App. No. 2002 CA 0052, 2003-Ohio-1757 (The issue in such case was whether the appellant was entitled to jail time credit for time served while participating in the Teen Challenge Program).

{¶12} In the case sub judice, the record contains no information whatsoever from which this Court may conduct a meaningful review of the nature of the program that appellant was in at Crossroads Center for Change.<sup>1</sup>

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<sup>1</sup> Both parties, in their respective briefs, attached materials in support of their arguments, including affidavits. However, most of the materials were not filed in the trial court in the case sub judice and, therefore, cannot be considered by this Court.

{¶13} Accordingly, the judgment of the trial court is vacated and this matter is remanded to the trial court with instructions to conduct a hearing on the nature of appellant's participation in the Crossroad Center program and determine whether or not he was "confined" for purposes of the statute.

By: Edwards, J.

Farmer, P.J. and

Delaney, J. concur

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JUDGES

JAЕ/d0224

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

JACK OSBORNE, Pro se,

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 2008 CA 0084

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is vacated and this case is remanded to the trial court for further proceedings. Costs assessed to appellee.

## JUDGES