

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
CHRISTOPHER COURTEZ LUCIUS	:	Case No. 2014CA00225
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2014CR0250

JUDGMENT: Affirmed

DATE OF JUDGMENT: May 11, 2015

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Farmer, J.

{¶1} On July 3, 2014, appellant, Christopher Courtez Lucius, was sentenced to an aggregate term of seven years in prison stemming from an indictment filed on March 26, 2014. Following a negotiated plea, appellant was sentenced to seven years each on one count of aggravated robbery and one count of aggravated burglary, thirty-six months each on one count of aggravated theft and one count of having weapons while under disability, and eighteen months each on three counts of improper handling of a firearm in a motor vehicle, all to be served concurrently.

{¶2} By judgment entry filed July 25, 2014, the trial court credited appellant with 144 days of jail time credit, from the date of his arrest until the date of his transport to prison.

{¶3} On October 17, 2014, appellant filed a motion for additional jail time credit, seeking an additional 858 days because of concurrent sentencing. By judgment entry filed November 12, 2014, the trial court denied the motion.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶5} "THE COURT WAS IN ERROR AND APPELLANT WAS PREJUDICED WHEN THE COURT FAIL TO RECOGNIZE THE STATE SUPREME COURT'S DECISION CONCERNING JAIL TIME CREDIT."

I

{¶6} Appellant claims the trial court erred in denying his motion for additional jail time credit as he is entitled to an additional 858 days under Ohio case law. We disagree.

{¶7} R.C. 2967.191 governs credit for confinement awaiting trial and states the following:

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, and confinement in a juvenile facility. The department of rehabilitation and correction also 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, if any, that the prisoner 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.

{¶8} By judgment entry filed July 25, 2014, the trial court credited appellant with 144 days of jail time credit, from the date of his arrest until the date of his transport to prison.

{¶9} In his motion filed October 17, 2014, appellant argued in pertinent part: "When a Defendant is sentenced to concurrent prison terms for multiple charges, jail time credit pursuant to O.R.C. 2967.191 must be applied toward each concurrent prison term." In support of his argument, appellant cited the case of *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856.

{¶10} *Fugate* involved a defendant serving concurrent prison terms for multiple sentences in two separate cases: an earlier case which resulted in a community control sanction and a subsequent case which resulted in the revocation of the same community control sanction and the imposition of a prison term, to be served concurrently with a prison term imposed in the earlier case. The trial court in *Fugate* granted jail time credit for the earlier case, but none for the subsequent case. On appeal, the Supreme Court of Ohio held the failure to grant the defendant jail time credit for the subsequent case violated the Equal Protection Clause, holding at syllabus: "When 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." The court explained the following at ¶ 22:

When a defendant is sentenced to consecutive terms, the terms of imprisonment are served one after another. Jail-time credit applied to one prison term gives full credit that is due, because the credit reduces the entire length of the prison sentence. However, when a defendant is sentenced to concurrent terms, credit must be applied against all terms, because the sentences are served simultaneously. If an offender is sentenced to concurrent terms, applying credit to one term only would, in effect, negate the credit for time that the offender has been held. To deny such credit would constitute a violation of the Equal Protection Clause. Therefore we hold that when 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.

{¶11} The case sub judice does not involve two separate criminal cases. This case involves one criminal case with multiple offenses and sentences that were ordered to be served concurrently for an aggregate single term of seven years in prison. The trial court credited appellant with 144 days of jail time credit toward the aggregate single term containing all of the charged offenses for which appellant pled guilty.

{¶12} Apparently, appellant is arguing he is entitled to 144 days of jail time credit for each of the seven individual sentences within the aggregate single term i.e., 144 days times seven offenses. *Fugate* does not stand for this proposition. As explained by our brethren from the Seventh District in *State v. Bowers*, 7th Dist. Mahoning No. 13 MA 82, 2013-Ohio-5523, ¶ 17:

Although *Fugate* dealt with multiple offenses in one case, the focus was on the multiple cases and those sentences running concurrent. When there are multiple cases where the sentences are run concurrent, it is necessary to state in each case that the credit is given in each case. However, where there is only one case with multiple offenses, when the trial court states that the sentences are to run concurrent and generally states that an offender is entitled to so many days of jail-time credit, that statement applies to all charges unless otherwise specified.

{¶13} Upon review, we find the trial court did not err in denying appellant's motion for additional jail time credit.

{¶14} The sole assignment of error is denied.

{¶15} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

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