[Cite as *State v. Key*, 2015-Ohio-1925.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
JERRY L. KEY	:	Case No. 14CA88
	:	
Defendant- Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 2014CR0196
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	May 19, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
LILLIAN R. SHUN 38 South Park Street Mansfield, OH 44902	JERRY L. KEY, Pro Se Inmate No. 660-450 Richland Correctional Institute P.O. Box 8107 Mansfield, OH 44901

Farmer, P.J.

{¶1} On April 10, 2014, the Richland County Grand Jury indicted appellant, Jerry Key, on one count of receiving stolen property in violation of R.C. 2913.51, one count of failure to comply with order or signal of police officer in violation of R.C. 2921.331, and one count of grand theft of a motor vehicle in violation of R.C. 2913.02.

{¶2} On August 4, 2014, appellant pled guilty to the failure to comply count pursuant to a plea agreement. The remaining two counts were dismissed. By sentencing entry filed August 5, 2014, the trial court sentenced appellant to two years in prison. By order filed August 8, 2014, the trial court credited appellant with fifty-two days of jail time credit.

{¶3} On September 5, 2014, appellant filed a motion for jail time credit, arguing he was entitled to one hundred sixty days instead of fifty-two days. By judgment entry filed October 23, 2014, the trial court overruled 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} "TRIAL COURT IN ABUSE OF DISCRETION BREACHED PLEA AGREEMENT BY DENYING THE APPELLANT'S MOTION FOR JAIL TIME CREDIT IN VIOLATION OF HIS FIFTH AND FOURTEENTH AMENDMENTS RIGHT TO DUE PROCESS UNDER THE UNITED STATES CONSTITUTION AND OHIO COSTITUTION SECTION 16, ARTICLE I."

I

{¶6} Appellant claims the trial court "breached" the plea agreement because it failed to give him five months of jail time credit as agreed upon. We disagree.

{¶7} Appellant was indicted on three counts, and pled guilty to one count in exchange for the dismissal of the remaining two counts. Appellant argues as part of the plea agreement, he was promised five months of jail time credit, but in actuality, he received only fifty-two days.

{¶8} We note the record is devoid of any evidence of an agreement to five months of jail time credit. The only mention of jail time credit was when defense counsel asked the trial court if appellant would get credit "for the time he sat on this case" and the trial court stated: "Yes. The whole time he's confined on this case will be credited against that two years." T. at 9.

{¶9} R.C. 2929.19(B)(2)(g)(i) instructs a trial court during sentencing to:

> 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.

{¶10} R.C. 2967.191 governs credit for confinement awaiting trial and commitment 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.

{¶11} In the case sub judice, appellant was arrested on March 5, 2014 and placed in the Richland County Jail. According to appellant's September 5, 2014 motion for jail time credit, on March 20, 2014, appellant was transferred to the Lorain Correctional Institution to answer a probation violation charge. Apparently the probation violation charge involved a totally unrelated case from another county. On April 9, 2014, appellant was found guilty of the probation violation and sentenced to ninety days in jail. On July 7, 2014, appellant was released from the Lorain Correctional Institution and transported back to the Richland County Jail to answer the pending felony counts in this case. Appellant was sentenced in this case on August 4, 2014. Appellant argues he is entitled to jail time credit from the time of his arrest, March 5, 2014, until the day of his transport out of the Richland County Jail to prison on August 11, 2014, for a total of one hundred sixty days.

{¶12} By order filed August 8, 2014, the trial court credited appellant with fifty-two days, noting sixteen days from March 5, 2014 to March 20, 2014, and thirty-six days from July 7, 2014 to August 11, 2014. The trial court did not give appellant jail time credit for his time served in the Lorain Correctional Institution.

{¶13} As thoroughly analyzed by this court in *State v. Marini,* 5th Dist. Tuscarawas No. 09-CA-6, 2009-Ohio-4633, ¶ 16, "Ohio courts have repeatedly recognized that time spent serving a jail sentence in another case will not be credited toward another felony case, even if the felony was pending at the time of the service of the jail sentence." The *Marini* court stated the following at ¶ 15:

> The case law confirms that the felony offense of conviction must be a legal cause for the defendant's prior confinement in order for that confinement to be creditable. As the Tenth District Court of Appeals stated in *State v. Smith* (1992), 71 Ohio App.3d 302, 304, 593 N.E.2d 402, "R.C. 2967.191 requires that jail credit be given only for the time the prisoner was confined for any reason arising out of the offense for which he was convicted and sentenced. It does not entitle a defendant to jail-time credit for any period of incarceration which arose from facts which are separate and apart from those on which his current sentence is based."

{¶14} As the statutes and case law indicate, appellant cannot receive jail time credit in this case for his confinement on the previous case. Each sentence arose out of unrelated cases. As stated by the *Marini* court at ¶ 22: "The language of R.C. 2967.191 does not allow the convicted person to turn his confinement for various convictions into a 'bank' of jail time that he 'withdraw' as needed for pending felony offenses."

{¶15} Appellant argues when he left the Richland County Jail, he was transported to the Lorain Correctional Institution to answer a probation violation charge stemming from his arrest in the case sub judice. Therefore, appellant argues his incarceration in the Lorain Correctional Institution was related to the Richland County case. The state argues appellant was transported to the Lorain County Jail "where he had pending felony charges for receiving stolen property and a parole violation." Appellee's Brief at 2. We note there is no evidence in the record to substantiate what county the previous case was in, what charges appellant was facing, and what facility

appellant was transported to on March 20, 2014. Regardless, using appellant's recitation of the facts, he is attempting to link his probation violation in the previous case to this Richland County case. In *State v. Chasteen,* 12th Dist. Butler No. CA2013-11-204, 2014-Ohio-3780, our brethren from the Twelfth District reviewed jail time credit involving time served for a probation violation in an unrelated case and explained the following at ¶ 11:

> Despite Chasteen's argument, the trial court properly credited the 133 days toward Chasteen's 2011 crimes under case number CR2011–10–1689. "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." *State v. Haley,* 12th Dist. Butler No. CA2012-10-212, 2013-Ohio-4531, ¶ 21, quoting *State v. Chafin,* 10th Dist. Franklin No. 06AP-1108, 2007-Ohio-1840, ¶ 9. An offender is not entitled to jail time credit for any period of incarceration that arose from facts which are separate and apart from those on which his current sentence is based. *Haley* at ¶ 21, citing *State v. DeMarco,* 8th Dist. Cuyahoga No. 96605, 2011-Ohio-5187, ¶ 10. As such, a trial court does not give jail-time credit for time served on unrelated offenses, "even if that time served runs concurrently during the pre-detention phase of another matter." *Haley* at ¶ 21, quoting *State v. Maddox,* 8th Dist. Cuyahoga No. 99120, 2013-Ohio-3140, ¶ 31.

{¶16} Appellant in this case received the correct amount of jail time credit due him. The trial court did not "breach" the plea agreement, and appellant was not deprived of due process.

{¶17} Upon review, we find the trial court did not err in computing appellant's jail time credit.

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

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

By Farmer, P.J.

Delaney, J. and

Baldwin, J. concur.

SGF/sg 422