[Cite as *State v. Kennedy*, 2015-Ohio-5401.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 15CA32
	:	
JOHN CHARLES KENNEDY	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, case no. 2010 CR 0278
JUDGMENT:	AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
DATE OF JUDGMENT ENTRY:	December 18, 2015

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
BAMBI COUCH PAGE RICHLAND CO. PROSECUTOR MELISSA A. ANGST 38 South Park St. Mansfield, OH 44902	JOHN CHARLES KENNEDY, PRO SE Inmate No. A591300 Richland Correctional Institution P.O. Box 8107 1001 Olivesburg Rd. Mansfield, OH 44901

Delaney, J.

{¶1} Appellant John Charles Kennedy appeals from the October 23, 2014 "Order on Motion to Reconsider Jail Time Credit" of the Richland County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} A statement of the facts underlying appellant's convictions is not necessary to our resolution of this appeal.

{¶3} On May 7, 2010, appellant was charged by indictment with two counts of passing bad checks, nine counts of theft, five counts of forgery, and one count each of attempted burglary, burglary, and possession of criminal tools. On August 17, 2010, appellant entered pleas of guilty as charged and was sentenced to, e.g., an aggregate prison term of 4 years. Appellant was ordered to make restitution to the victims.

{¶4} On December 28, 2010, appellant filed a motion for judicial release noting he was an eligible candidate, had served six months of his prison term, and was accepted into a community-based corrections facility (CBCF). Appellee filed a response noting there was no objection to judicial release.

{¶5} On February 23, 2011, a Judicial Release Order was filed indicating the remainder of appellant's prison term was suspended on the condition he complete a 4-year term of community control. The accompanying community control sanctions order notes appellant was ordered to complete, e.g., "CROSSWAEH CBCF."

{¶6} In 2012, appellant was charged with a number of probation violations including absconding from supervision. Appellant admitted to the violations and was ordered to complete the Reformers Unanimous program [“RU”].

{¶7} In March 2014, appellant was again charged with five probation violations including alleged use of narcotics and commission of additional criminal offenses. Following a hearing, the trial court accepted appellant's admission to four of the five violations and sentenced him to an aggregate prison term of four years. This prison term represents two concurrent 4-year terms imposed upon Count 14 [burglary pursuant to R.C. 2911.12(A)(3), a felony of the third degree] and Count 15 [theft pursuant to R.C. 2913.02(A)(1), a felony of the third degree].

{¶8} On April 9, 2014, appellant filed three motions separately asking that unspecified time spent in a CBCF, at the Community Alternative Center ["CAC"], and at RU be credited toward his sentence.

{¶9} On April 25, 2014, the trial court filed an “Order for Additional Jail Time Credit” denying appellant’s request with respect to CAC and RU. The court granted appellant’s motion for jail-time credit with respect to the CBCF and credited him with 173 days. Attached to the judgment entry is an affidavit from the program director of CAC which states in pertinent part:

> * * * *.
>
> This cause came on for consideration upon defendant’s motions for jail-time credit for time spent at the [CAC], [RU], and Crosswaeh CBCF. The court finds by the attached affidavit of Thomas Trittschuh, the program director for the CAC, the period of time defendant was at the CAC was not “confinement” within the meaning of the jail credit statute. Also, the period of time defendant spent at [RU] was not “confinement” within the meaning of the jail

credit statute. See the decision filed August 13, 2009, in *State of Ohio v. Jack Osborne*, Case No. 05-CR-468-D.

Therefore defendant's motions for jail-time credit for the CAC and [RU] are denied.

* * * *.

{¶10} Appellant filed a motion to reconsider and amend jail time credit which the trial court overruled. Appellant now appeals from the decision of the trial court denying jail-time credit for the time spent in CAC and RU.

{¶11} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶12} "THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO RECOGNIZE AS CONFINEMENT FOR PURPOSES OF JAIL-TIME CREDIT THE DAYS DEFENDANT SERVED IN THE COMMUNITY ALTERNATIVE CENTER AND THE REFORMERS UNANIMOUS PROGRAM AS SANCTIONS FOR VIOLATING HIS PROBATION."

ANALYSIS

{¶13} In his sole assignment of error, appellant argues he should receive jail-time credit for his time spent in RU and CAC. We find there is insufficient evidence in the record for us to determine whether the time spent in RU qualifies as "confinement" for purposes of the jail-time statute. We thus remand this matter to the trial court to determine whether a hearing is necessary or otherwise support why RU does or does not qualify as "confinement." The judgment of the trial court that CAC is not "confinement" is affirmed.

{¶14} We first note this case comes to us on the accelerated calendar. App.R. 11.1 governs accelerated calendar cases and states in pertinent part:

> **(E) Determination and judgment on appeal**
>
> The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.
>
> The decision may be by judgment entry in which case it will not be published in any form.

{¶15} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Association,* 11 Ohio App.3d 158 (10th Dist.1983).

{¶16} This appeal shall be considered in accordance with the aforementioned rules.

{¶17} R.C. 2967.191 governs reduction of prison term for prior confinement and states in pertinent part:

> 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.

{¶18} 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*, 68 Ohio App.3d 567, 589 N.E.2d 113 (10th Dist.1991). Confinement in any community-based correctional facility ("CBCF") constitutes confinement for purposes of R.C. 2967.191. See *State v. Napier,* 93 Ohio St.3d 646, 2001-Ohio-1890*,* 758 N.E.2d 1127 and *State v. Snowder,* 87 Ohio St.3d 335, 1999-Ohio-135*,* 720 N.E.2d 909. A CBCF is a "secure facility that contains lockups and other measures sufficient to ensure the safety of the surrounding community." *Snowder,* supra, at 337. See also R.C. 2301.52. Time spent in a rehabilitation facility where one's ability to leave whenever he or she wishes is restricted may be confinement for the purposes of R.C. 2967.191. *See Napier,* supra.

{¶19} As noted by this Court in *State v. Jones*, 122 Ohio App.3d 430, 432, 702 N.E.2d 1061 (5th Dist.1997), the "court must review the nature of the program to determine whether the restrictions on the participants are so stringent as to constitute 'confinement' as contemplated by the legislature." Id.; see also, *State v. Osborne*, 5th Dist. Richland No. 2009 CA 0119, 2010-Ohio-4100, ¶ 14. "The nature of the review may depend upon the trial court's familiarity with the facility and the defendant's participation in a particular program." *State v. Crittle,* 11th Dist. Lake No. 2000-L-042, unreported, 2001 WL 687435, *3 (June 15, 2001). "The trial court may hold an evidentiary hearing to determine the exact nature and circumstances of the program.

The trial court may choose to take judicial notice or accept evidence by way of affidavits or a stipulation from the parties regarding the [community-based correctional facility]. The evidence would have to be detailed enough to permit this court to effectively review the trial court's determination that the facility does or does not qualify as a [community-based correctional facility] based upon the criteria set forth above." Id.; see also, *State v. Ventra*, 11th Dist. Geauga No. 2010-G-2968, 2011-Ohio-156.

{¶20} In *Jones*, supra, we discussed whether a defendant is entitled to a jail-time credit for time spent in a treatment facility while on probation. We found the sentencing court must review the nature of the program to determine whether the restrictions on the participants are so stringent as to constitute confinement as contemplated by the legislature. Likewise, in *State v. McComb*, 2nd Dist. Montgomery No. 99CA8, 1999 WL 961344 (June 25, 1999), the Court of Appeals for the Second District reviewed similar facts and found "confinement" encompasses a wide range of programs beyond incarceration in a jail facility.

{¶21} As in *Jones*, supra, and *McComb*, supra, the record of the instant case contains no information upon which we can conduct a meaningful review of the status of Reformers Unanimous. There is no indication in the record the trial court took evidence. Appellee's brief states "On or about July 22, 2009, the Trial Court conducted an evidentiary hearing on Appellant's Motions for Jail Time Credit." We find no reference to any such hearing in the record, though, and note this case was initiated in 2010.

{¶22} The only evidence before us, therefore, is the affidavit of the director of CAC, an acceptable means of determining whether CAC qualifies as "confinement." *Ventra*, supra, 2011-Ohio-156 at ¶ 16. The affidavit supports the trial court's conclusion

that time spent at CAC does not qualify as "confinement" because appellant was essentially permitted to come and go for purposes of work release or job searching, "approved errands," and outside counseling meetings. The judgment of the trial court denying jail-time credit for CAC is affirmed.

{¶23} With respect to RU, however, there is no evidence in the record from which we may evaluate whether the program qualifies as "confinement." The trial court's reference to an entry in another case may be an indication of the court's familiarity with the facility and/or its decision to take judicial notice of the requirements of the facility, but the scant record does not permit this court to effectively review the trial court's determination.

{¶24} We vacate the trial court's judgment as to RU and remand the matter to the court with instructions to determine 1) whether a hearing is necessary, and, should the relief requested be denied, 2) to place on the record an explanation of why appellant's participation in Reformers Unanimous was not "confinement" so that this court may conduct a meaningful review. *State v. Glancy*, 5th Dist. Licking No. 03-CA-23, 2003-Ohio-3580, ¶ 8; see also, *State v. Barkus*, 5th Dist. Richland No. 2002 CA 0052, 2003-Ohio-1757.

{¶25} Appellant's sole assignment of error is overruled as to the motion for jail time credit for time spent at CAC and sustained to the extent that we vacate the trial court's judgment regarding RU and remand this matter for further proceedings consistent with this opinion. *State v. Glancy*, supra, 2003-Ohio-3580 at ¶ 8.

CONCLUSION

{¶26} Appellant's sole assignment of error is sustained in part and overruled in part, the judgment entry of the Richland County Court of Common Pleas is vacated as to Reformers Unanimous, and this matter is remanded for further proceedings consistent with this opinion.

By: Delaney, J. and

Farmer, P.J.

Wise, J., concur.