

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

JOHN CHARLES KENNEDY

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Patricia A. Delaney, J.

Case No. 16CA16

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2010-CR-0278

JUDGMENT:

Vacated and Remanded

DATE OF JUDGMENT:

June 29, 2016

APPEARANCES:

For Plaintiff-Appellee

DANIEL M. ROGERS
38 South Park Street
Mansfield, OH 44902

For Defendant-Appellant

JOHN CHARLES KENNEDY, Pro Se
Inmate No. A591300
Richland Correctional Institution
1001 Olivesburg Road
P.O. Box 8107
Mansfield, OH 44905

Farmer, P.J.

{¶1} On July 29, 2010, appellant, John Charles Kennedy, pled guilty to two counts of passing bad checks in violation of R.C. 2913.11, nine counts of theft in violation of R.C. 2913.02, five counts of forgery in violation of R.C. 2913.31, one count of attempted burglary and one count of burglary in violation of R.C. 2911.12, and one count of possession of criminal tools in violation of R.C. 2923.24. By entry filed August 17, 2010, the trial court sentenced appellant to an aggregate term of four years in prison.

{¶2} On February 23, 2011, the trial court granted appellant judicial release and suspended the remainder of his prison term on the condition he complete four years of community control.

{¶3} In 2012, appellant was charged with a number of probation violations. Appellant admitted to the violations and was ordered to complete the Reformers Unanimous program (hereinafter "RU").

{¶4} In 2014, appellant was again charged with probation violations. Appellant admitted to four of the five alleged violations and the trial court sentenced him to an aggregate term of four years in prison.

{¶5} On April 9, 2014, appellant filed three motions asking for jail time credit for the three programs he participated in while on community control, including RU. By order filed April 25, 2014, the trial court denied appellant's request with respect to Community Alternative Center and RU, but granted appellant's motion for jail time credit with respect to Crosswaeh Community Based Correctional Facility and credited him with 173 days.

{¶6} On October 16, 2014, appellant filed a motion to reconsider and amend the jail time credit. By order filed October 23, 2014, the trial court denied the motion.

Appellant filed an appeal. This court vacated the trial court's decision and remanded the matter, stating the following: "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. Kennedy*, 5th Dist Richland No. 15CA32, 2015-Ohio-5401, ¶ 24.

{¶7} On January 4, 2016, appellant filed a motion for an evidentiary hearing on the issue of confinement and time spent at RU. By order filed February 16, 2016, the trial court denied appellant's request for an evidentiary hearing and again denied appellant's motion for jail time credit for time spent at RU. The trial court's decision cited to the attached affidavit of Daniel Gates, program director for RU, who averred appellant's time at RU did not constitute "confinement" for purposes of jail time credit.

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

I

{¶9} "THE TRIAL COURT ABUSED ITS DISCRETION BY RELYING UPON A SINGLE OPINION AS TO WHETHER CONFINEMENT AT REFORMERS UNANIMOUS FACILITY WARRANTS JAIL TIME CREDIT INSTEAD OF CONDUCTING AN EVIDENTIARY HEARING WHERE ALL PARTIES CAN PRODUCE EVIDENCE CONCERNING CONFINEMENT AT REFORMER'S UNANIMOUS FACILITY."

I

{¶10} Appellant claims the trial court erred in not holding an evidentiary hearing on the issue of jail time credit for his time spent at RU and in accepting the affidavit of Daniel Gates. Appellant claims the trial court failed to follow the remand from this court. We agree.

{¶11} In support of his argument, appellant cites the case of *State v. Napier*, 93 Ohio St.3d 646, 2001-Ohio-1890, syllabus, wherein the Supreme Court of Ohio held: "All time served in a community-based correctional facility constitutes confinement for purposes of R.C. 2967.191." The central issue in *Napier* was the meaning of "confinement" given the fact that the defendant could not "come and go as he wished." *Napier* at 648.

{¶12} In his affidavit, Mr. Gates averred the following:

2. Reformers Unanimous in Hammond, Indiana, is a residential treatment program which allows residents to attend necessary appointments in the community, search for and obtain employment, receive treatment and still be accountable for their time when they are not at work.

3. Residents are permitted to go to work each day or to leave the facility to look for work or to attend to other approved errands or otherwise once deemed appropriate by the treatment team and supervising authority.

{¶13} Mr. Gates then opined at ¶ 5: "The period of time defendant was at Reformers Unanimous was from July 2, 2012, until January 9, 2013, and was not 'confinement' within the meaning of the jail credit statute."

{¶14} R.C. 2967.191 governs credit for confinement awaiting trial and commitment and states the following 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***."

{¶15} Mr. Gates's credentials include "program director" for an Indiana residential treatment program. See Gates aff. at ¶ 1 and 2. We find this does not qualify Mr. Gates as an expert in the interpretation of Ohio law. The lack of a clear articulation of "otherwise once deemed appropriate by the treatment team and supervising authority" leaves the issue of free to "come and go as he wished" unanswered.

{¶16} The sole assignment of error is granted.

{¶17} The judgment of the Court of Common Pleas of Richland County, Ohio is vacated, and the matter is remanded for an evidentiary hearing on the issue of "confinement" vis-à-vis the RU program.

By Farmer, P.J.

Gwin, J. and

Delaney, J. concur.

SGF/sg