

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-12-042

Appellee

Trial Court No. 12 CR 13

v.

Emmanuel C. Heidelberg

DECISION AND JUDGMENT

Appellant

Decided: November 1, 2013

* * * * *

John A. Brikmanis, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} Appellant, Emmanuel Heidelberg, appeals from the judgment of conviction entered by the Sandusky County Court of Common Pleas, following his plea of guilty to one count of domestic violence in violation of R.C. 2919.25(A), a felony of the third degree. Appellant assigns two errors for our review, which we will address in reverse order:

1. The court erred when it failed to credit appellant with the total number of days of jail time served.

2. The court erred when it ordered appellant to pay the costs of his court appointed attorney.

I. Costs of Court-Appointed Attorney

{¶ 2} In his second assignment of error, appellant argues that his sentence to pay the costs of his court-appointed attorney should be vacated because there is no affirmative evidence in the record supporting the trial court's finding that he has, or may reasonably be expected to have in the future, the means to pay such costs.

{¶ 3} The payment of court-appointed attorney fees is governed by R.C. 2941.51(D), which states in relevant part:

The fees and expenses approved by the court under this section shall not be taxed as part of the costs and shall be paid by the county. However, if the person represented has, or reasonably may be expected to have, the means to meet some part of the cost of the services rendered to the person, the person shall pay the county an amount that the person reasonably can be expected to pay.

{¶ 4} Before court-appointed attorney fees are imposed on a defendant pursuant to R.C. 2941.51(D), "there must be a finding on the record that the defendant has the ability to pay." *State v. Phillips*, 6th Dist. Fulton No. F-05-032, 2006-Ohio-4135, ¶ 20. Further,

“that determination must be supported by clear and convincing evidence of record.”

State v. Jobe, 6th Dist. Lucas No. L-07-1413, 2009-Ohio-4066, ¶ 80.

{¶ 5} Here, although appellant has a history of substance abuse, the record indicates that he has a high school education, has held a few jobs in the past, and was only 37 years old at the time of his conviction. Therefore, we hold that the trial court did not err when it determined that appellant has, or is reasonably expected to have, the ability to pay his court-appointed attorney fees. *Compare State v. Maloy*, 6th Dist. Lucas No. L-10-1350, 2011-Ohio-6919, ¶ 15 (appellant unable to pay where he only made it to his sophomore year in high school, has never been gainfully employed, and will be incarcerated until he is 94 years old) and *Jobe* at ¶ 82 (appellant unable to pay where he only “completed the eighth grade, did not obtain a GED and has never held a job”) with *State v. Willis*, 6th Dist. Lucas No. L-11-1274, 2012-Ohio-6070, ¶ 20 (appellant able to pay where he had some college education and a work history) and *State v. Donaldson*, 6th Dist. Lucas No. L-11-1264, 2012-Ohio-6064, ¶ 31 (appellant able to pay where he had tenth grade education, has held jobs in the past, and is only 41 years old).

{¶ 6} Accordingly, appellant’s second assignment of error is not well-taken.

II. Jail-Time Credit

{¶ 7} Appellant contends in his first assignment that the trial court erred when it only credited him with 53 days for time served. He states that he was confined on this offense on three separate occasions, but was only given credit for the most recent period of custody from June 25, 2012, until he was sentenced on August 17, 2012. He argues

that the record indicates that he was also in custody for two days from January 19-20, 2012, when he was arrested following the issuance of the indictment, and that he was in custody for some indeterminate time around March 2, 2012, when he was undergoing mental health evaluations.

{¶ 8} Our review of the record reveals that on January 18, 2012, a warrant for appellant's arrest was issued upon the indictment for felony domestic violence. On January 20, 2012, appellant was arraigned. Also on that day, the trial court entered its judgment establishing bond requirements, determining that appellant may be released on his own recognizance or on the continuation of an \$11,000 bond from the lower court. In addition, the trial court made the notation that "[appellant] is presently serving a 90 day sentence which began 12/20/11." On March 2, 2012, the trial court entered a judgment ordering appellant to undergo a mental health evaluation, which stated, "The defendant is confined in jail in lieu of bond; therefore the Sheriff shall transport the defendant to such agency at such times as are necessary for such evaluations."

{¶ 9} Thereafter, on April 25, 2012, the state filed a motion for bond revocation based on appellant's violation of the terms of the bond by "trafficking in cocaine, possessing firearms and having contact with the victim." The trial court granted the state's motion, and issued a capias for appellant's immediate arrest. The record indicates that appellant was arrested that same day. On May 29, 2012, appellant requested a furlough to attend an appointment to ascertain his Social Security eligibility on June 11, 2012. On June 5, 2012, the trial court granted this request, and released appellant on a

\$25,000 bond. However, on June 25, 2012, appellant was again arrested, this time for “violation of a protection order and resisting arrest.” The next day, the trial court granted the state’s motion to revoke appellant’s bond. Appellant remained in custody until his sentencing on August 17, 2012.

{¶ 10} At sentencing, the trial court stated, “You would be given credit for any local time that you have served since your arrest.” The details of how many days should be credited, or the conclusion that 53 days would be credited, were not discussed. Notably, appellant’s presentence investigation report indicated that appellant was in custody from April 25, 2012 to June 5, 2012, and from June 25, 2012 to August 10, 2012—the date the report was created—for a total of 96 days.¹

{¶ 11} R.C. 2967.191 requires the department of rehabilitation and correction to 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.

¹ We have counted a total of 89 days for the same period, and assume the remaining seven days incorporate the time until his sentencing hearing on August 17, 2012.

Although R.C. 2967.191 imposes the requirement on the department of rehabilitation and correction, “it is the trial court that makes the factual determination as to the number of days of confinement that a defendant is entitled to have credited toward his sentence.”

State ex rel. Rankin v. Ohio Adult Parole Auth., 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286, ¶ 7. A trial court’s failure to properly calculate a felony offender’s jail-time credit pursuant to R.C. 2967.191 constitutes plain error. *State v. Collier*, 184 Ohio App.3d 247, 2009-Ohio-4652, 920 N.E.2d 416, ¶ 18 (10th Dist.).

{¶ 12} R.C. 2967.191 codifies a principle established in the Equal Protection Clause’s prohibition against disparate treatment of defendants based solely on their economic status: “*all* time spent in any jail prior to trial and commitment by [a prisoner who is] unable to make bail because of indigency *must* be credited to his sentence.” (Emphasis sic.) *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 7, quoting *Workman v. Cardwell*, 338 F.Supp. 893, 901 (N.D. Ohio 1972). Naturally, this principle is limited to “jail-time credit only for confinement that is related to the offense for which [a defendant] is being sentenced.” *State v. Wyburn*, 6th Dist. Lucas No. L-10-1292, 2011-Ohio-5307, ¶ 10; R.C. 2967.191.

{¶ 13} In the present case, the record is clear that appellant was in custody on the present charge, and thus is entitled to jail-time credit, for a total of 96 days, between April 25, 2012 and June 5, 2012, and between June 25, 2012 and August 17, 2012. However, the record is unclear concerning the period beginning with the issuance of the warrant upon indictment and continuing through appellant’s mental health evaluation.

The record indicates that appellant may have been in custody on another charge for 90 days starting December 20, 2011. Nevertheless, in this matter, on January 20, 2012, appellant was released on his own recognizance *and* by the continuance of an \$11,000 bond from the lower court. The record, though, does not indicate whether that \$11,000 bond was posted. Further complicating our determination is the trial court's statement on March 2, 2012, that appellant is "confined in jail in lieu of bond." Thus, we are remanding the matter for the trial court to clarify its application of jail-time credit in order to ensure that appellant receives the full amount of jail-time credit to which he is entitled.

{¶ 14} Accordingly, appellant's first assignment of error is well-taken.

III. Conclusion

{¶ 15} For the foregoing reasons, the judgment of the Sandusky County Court of Common Pleas is affirmed, in part, and reversed, in part. This matter is remanded to the Sandusky County Court of Common Pleas solely for it to make a factual determination regarding the calculation and application of jail-time credit in this case, and to issue a sentencing entry that properly reflects that calculation and application. Costs of this appeal are to be split evenly between the parties pursuant to App.R. 24.

Judgment affirmed, in part,
and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.