

[Cite as *State v. Clemons*, 2009-Ohio-2726.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92054

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARLON CLEMONS

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-477687

BEFORE: Cooney, A.J., Blackmon, J., and Sweeney, J.

RELEASED: June 11, 2009

JOURNALIZED:

FOR APPELLANT

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendant-appellant, Marlon Clemons (“Clemons”), appeals the trial court’s denial of his motion for jail-time credit. Finding some merit to the appeal, we reverse and remand.

{¶ 2} On January 12, 2006, Clemons was arrested for failure to comply with the order or signal of a police officer, a third degree felony. He claims he was initially confined in the Cleveland jail and later moved to the Cuyahoga County jail. Thereafter, he was indicted and, in July 2007, pled guilty to the offense. The trial court sentenced him to two years in prison and granted credit for 140 days served in jail.

{¶ 3} In August 2008, Clemons moved for jail-time credit of 26 additional days for the period between January 12 and February 7, 2006. The trial court denied this motion.

{¶ 4} Clemons now appeals. In his single assignment of error, he claims that the trial court erred in denying his motion for jail-time credit. The State concedes Clemons has proved he is entitled to 22 days jail-time credit.

{¶ 5} Under Ohio law, a defendant serving a prison sentence is entitled to jail-time credit for “the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted.” R.C. 2967.191; *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-

Ohio-2061, 786 N.E.2d 1286, ¶5. A defendant may challenge the trial court's determination by appealing the criminal case. *Id.* at ¶10.

{¶ 6} Accordingly, the trial court must determine and document how many days of jail-time credit a defendant is owed. *State ex rel. Jones v. McMonagle*, Cuyahoga App. No. 92401, 2009-Ohio-1601, ¶6, citing Ohio Adm. Code 5120-2-04(B); *State ex rel. Rankin*; *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113.

{¶ 7} “[E]rrors in calculating jail-time credit may be raised by means of a ‘motion for correction,’ so long as the appellant is claiming that the trial court erred in the calculation of the credit and not an erroneous legal determination.” *State v. Parsons*, Franklin App. No. 03AP-1176, 2005-Ohio-457, at ¶8, citing *State ex rel. Corder*.

{¶ 8} However, if the trial court makes a mathematical mistake, rather than an erroneous legal determination, in calculating the jail-time credit, then a defendant may seek judicial review via a motion for correction before the trial court. *State ex rel. Corder*. See, also, *State v. Eble*, Franklin App. No. 04AP-334, 2004-Ohio-6721, at ¶10; *State v. Fincher* (Mar. 31, 1998), Franklin App. No. 97APA08-1084.

{¶ 9} On appeal, the defendant bears the burden of showing that the trial court has erred in the jail-time credit calculation. *State v. Slager*, Franklin App. Nos. 08AP-581-582, 08AP-709-710, 2009-Ohio-1804, ¶25. “If the defendant fails to demonstrate error, and no miscalculation in the jail-time credit is apparent from the

record, any claimed error must be overruled.” *Id.*, citing *State v. Hunter*, Franklin App. No. 08AP-183, 2008-Ohio-6962, ¶17.

{¶ 10} In the instant case, Clemons claims that the trial court miscalculated the jail-time credit owed to him. Consequently, we treat his motion for jail-time credit as a motion for correction.

{¶ 11} Clemons has supported his motion for jail-time credit with a letter from Cleveland’s jail manager verifying that Clemons was incarcerated from January 12 to February 2, 2006 at that facility. Therefore, Clemons has met his burden of demonstrating that he is entitled to jail-time credit for this 22-day period. However, he did not provide evidence of the additional four days, which he claims he served at the Cuyahoga County Justice Center.

{¶ 12} Based on the foregoing, Clemons has met his burden to prove that he is entitled to 22 additional days of jail-time credit, as the State has conceded.

Judgment reversed. Case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

PATRICIA A. BLACKMON, J., and
JAMES J. SWEENEY, J., CONCUR