

[Cite as *State ex rel. Ferguson v. Villanueva*, 2009-Ohio-5387.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93171

**STATE OF OHIO, EX REL.,
MARK FERGUSON**

RELATOR

vs.

**JUDGE JOSE A. VILLANUEVA
and TERRY COLLINS, ET AL.**

RESPONDENTS

**JUDGMENT:
WRIT GRANTED**

WRIT OF MANDAMUS
MOTION NOS. 422173 and 421921
ORDER NO. 426286

RELEASE DATE: October 6, 2009
FOR RELATOR

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} On April 20, 2009, the petitioner, Darian Woodson,¹ commenced this mandamus action against the respondents, Judge Jose Villanueva and

¹ The record indicates that Darian Woodson is also known as Aries Slazor and Mark Ferguson. Ohio Department of Rehabilitation and Correction records use the name Darian Woodson for this man; this court will do the same.

Terry Collins, the Director of the Ohio Department of Rehabilitation and Correction, to compel them to grant him an additional twenty-eight days of jail time credit in the underlying cases: *State of Ohio v. Mark Ferguson*, Cuyahoga County Common Pleas Court Case No. CR-479322; *State of Ohio v. Darian Woodson*, Cuyahoga County Common Pleas Court Case No. CR-494452; *State of Ohio v. Darian Woodson*, Cuyahoga County Common Pleas Court Case No. CR-488923; and *State of Ohio v. Aries Slazor*, Cuyahoga County Common Pleas Court Case No. CR-452513.² On May 8, 2009, Judge Villanueva moved for summary judgment on the grounds of pleading defect and adequate remedy at law. On May 15, 2009, Collins filed a motion to dismiss on the grounds of pleading defect and adequate remedy at law. Woodson filed a brief in opposition on May 28, 2009. For the following reasons, this court grants Collins's motion to dismiss, denies the judge's motion for summary judgment, and grants the application for a writ of mandamus.

{¶ 2} The instant case presents a peculiar procedural posture. The dockets of the underlying cases reveal the following: In Case No. CR-479322 (Case I), Woodson pled guilty to attempted drug possession, a first

² In the subject motion Woodson also list *State of Ohio v. Darian Woodson*, Cuyahoga County Common Pleas Court Case No. CR-493525, but this case is moot, because it was dismissed on October 17, 2007.

degree misdemeanor. On January 29, 2008, the judge sentenced him to six months in prison, to run concurrently with the sentences in the other three underlying cases. The judge did not specify the number of days of jail time credit, but ordered that Woodson be given credit for time served and that the sheriff's department would calculate the credit.

{¶ 3} In Case No. CR-452513 (Case II), Woodson pled guilty to receiving stolen property and failure to comply with the order of a police officer. On January 29, 2008, the trial judge sentenced him to one-and-one-half years in prison, six months on the receiving charge, and one year and six months on the failure to comply. The judge further ordered this sentence to run consecutively to the sentence in CR-494452. Again, the judge ordered that Woodson be given credit for time served with the sheriff's department calculating the amount. He did not specify a number of days of jail time credit.

{¶ 4} In Case No. CR-488923 (Case III), Woodson pled guilty to six counts of forgery, six counts of tampering with records, and one count of identity theft. On January 29, 2008, the judge sentenced him to one year on each count, to run concurrently with each other and concurrently to the other three underlying cases. Once again the judge did not specify the number of

days of jail time credit, but ordered that Woodson should get the credit with the sheriff's department calculating the amount.

{¶ 5} Finally, in Case No. CR-494452 (Case IV), Woodson pled guilty to one count of failure to comply with the order of a police officer, one count of receiving stolen property, and one count of drug possession. On January 28, 2008, the trial judge sentenced him to six months for drug possession, six months for receiving stolen property, and one year for failure to comply. The two six-month sentences were to run concurrent to each other but consecutive to the one-year sentence. This one-and-one-half year sentence is consecutive to the sentence in Case II. Again, the trial judge ordered Woodson to receive credit for time served, but did not specify the number of days; rather the sheriff's department was to calculate.

{¶ 6} In summary, at the end of January 2008, Woodson had a total sentence of three years. He was to receive full jail time credit, but the trial judge had not specified the number of days. The sheriff's department was to provide that information.

{¶ 7} In Case I, the misdemeanor case, on February 21, 2008, Woodson filed a motion for jail time credit. On March 6, 2008, the trial judge granted him 362 days of jail time credit. Although this appears only on the docket of Case I, it appears that he received this credit on all of his cases. The

offender search page for Darian Woodson on the Ohio Department of Rehabilitation and Correction's website shows that his term expires on January 30, 2010.

{¶ 8} Next, on April 22, 2008, Woodson filed a motion for additional jail time credit in Case I only. On May 6, 2008, the trial judge granted him an additional 28 days for time spent at North Coast Behavioral Healthcare. However, receiving an additional 28 days of jail time credit in the misdemeanor case with a six-month sentence had no affect.

{¶ 9} On July 29, 2008, Woodson filed a motion for jail time credit in Case IV only, and the trial judge denied that motion on the grounds that he had already given Woodson credit for all his time in jail and at North Coast Healthcare.

{¶ 10} On January 29, 2009, Woodson filed the subject motion, an irregularly titled "Motion of defendant for nun [sic] pro tunc." In substance it is a motion asking that the respondent give him an additional 28 days in Cases II, III and IV. The trial judge has not ruled on this motion, and Woodson commenced the instant mandamus action.

{¶ 11} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be

no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Although mandamus should be used with caution, the court has discretion in issuing it.

In *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St.2d 141, 28 N.E.2d 631, paragraph seven of the syllabus, the Ohio Supreme Court ruled that “in considering the allowance or denial of the writ of mandamus on the merits, [the court] will exercise sound legal and judicial discretion based upon all the facts and circumstances in the individual case and the justice to be done.” The Court elaborated that, in exercising that discretion, the court should consider “the exigency which calls for the exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing on the particular case. * * * Among the facts and circumstances which the court will consider are the applicant’s rights, the interests of third persons, the importance or unimportance of the case, the applicant’s conduct, the equity and justice of the relator’s case, public policy and the public’s interest, whether the performance of the act by the respondent would give the relator any effective relief, and whether such act would be impossible, illegal, or

useless.” 11 Ohio St.2d at 161-162. *State ex rel. Bennett v. Lime* (1978), 55 Ohio St.2d 62, 378 N.E.2d 152; *State ex rel. Dollison v. Reddy* (1978), 55 Ohio St.2d 59, 378 N.E.2d 150; and *State ex rel. Mettler v. Commissioners of Athens County* (1941), 139 Ohio St. 86, 38 N.E.2d 393.

{¶ 12} A defendant who is imprisoned is entitled by law to have credited to his sentence of incarceration the number of days that he was confined prior to conviction and sentence. R.C. 2949.08; R.C. 2949.12; R.C. 2967.191; and *State ex rel. Sanchez v. Cuyahoga County Common Pleas Court* (May 22, 1997), Cuyahoga App. No. 72085. In addition, a trial court has the clear legal duty to specify in the record of conviction and sentence the number of days a defendant was confined prior to conviction. Ohio Adm. Code 5120-2-04(B); *State ex rel. Rankin v. Ohio Adult Parole Authority*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286; and *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113. Moreover, summary denial of a motion for jail time credit, without specifying the number of days due as jail time credit, does not fulfill the trial court’s legal duty. *Sanchez, supra*; *State ex rel. Wright v. Court of Common Pleas* (Nov. 6, 1995), Cuyahoga App. No. 69200; *State ex rel. Goolsby v. Cleary* (Aug. 14, 1995), Cuyahoga App. No. 69119; *State ex rel. Spruce v. Cleary* (Aug. 17, 1995),

Cuyahoga App. No. 69047; and *State ex rel. Jones v. McMonagle*, Cuyahoga App. No. 92401, 2009-Ohio-1601.

{¶ 13} In the exercise of its discretion, this court grants the writ of mandamus and directs the respondent judge to rule on the outstanding January 29, 2009 motion for jail time credit. In the instant case, the length of time of the outstanding motion, the need for clarity on the issue, and the failure to state a specific number of days in Cases II, III and IV outweigh the procedural defect of an insufficient supporting affidavit under Loc.App.R. 45. In granting the writ, this court notes that it is not specifying what the ruling should be, but only that the motion be resolved in the underlying cases. The court further rules that Woodson has not established that Collins has a duty to fulfill at this time.

{¶ 14} Accordingly, this court grants Collins's motion to dismiss, denies the respondent judge's motion for summary judgment, and grants the writ of mandamus: the judge is to rule on the outstanding January 29, 2009 motion. Costs assessed against the respondent judge. The court further directs the Clerk of Court of the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR