

[Cite as *State v. Stewart*, 2009-Ohio-5700.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92790**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DWAYNE STEWART**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-511440

**BEFORE:** Celebrezze, J., Kilbane, P.J., and Boyle, J.

**RELEASED:** October 29, 2009

**JOURNALIZED:**  
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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).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Dwayne Stewart, a.k.a. Dwayne James, appeals the trial court's grant of his motion for specific jail credit because the trial court credited appellant with 15 days rather than the 57 days appellant claims he was entitled to. After a thorough review of the record, and for the following reasons, we affirm.

{¶ 2} On June 13, 2003, appellant was indicted in case number CR-430878 on multiple counts relating to drug possession and trafficking. He was found guilty of drug possession, drug trafficking, and possession of criminal tools, and was sentenced to 11 months in prison. Pending appeal, appellant was released on bond. Although his sentence was affirmed on appeal on March 7, 2005, appellant remained free until a capias warrant was issued for his arrest in May of 2008.

{¶ 3} When appellant was taken into custody pursuant to this warrant on May 5, 2008, he was found to have heroin in his possession. He was transported to Lorain Correctional Institution ("LCI") to serve the remainder of the sentence imposed in CR-430878. He was charged with drug trafficking in connection with this heroin possession and indicted on June 3, 2008 in case number CR-511440. Appellant appealed the imposition of a prison term so long after conviction, and in *State v. James*, Cuyahoga App. No. 91605, 2008-Ohio-6139, this court eliminated his 11-month sentence on November 26, 2008.

{¶ 4} On June 30, 2008, appellant was released after posting bond in CR-511440 as well as an appeal bond in CR-430878. He pleaded guilty on September 30, 2008 and was sentenced on October 29, 2008 to 15 months in prison. The judgment entry imposing his sentence specified that “defendant [is] to receive credit for all time served. Sheriff to calculate.” Appellant filed a motion for specific jail time credit pursuant to R.C. 2949.08, which the trial court granted, crediting him with 15 days and specifically denying him credit for any time served for CR-430878.

{¶ 5} On appeal, appellant claims that the trial court erred by not crediting him with 57 days time served before sentencing. Specifically, appellant assigns as error:

{¶ 6} “I. “The trial court erred in failing to allow the defendant fifty-seven days jail credit because his presentencing confinement arose out of the offense for which the defendant was convicted and sentenced as contemplated under R.C. 2949.08(B).”

### **Law and Analysis**

{¶ 7} R.C. 2949.08(B) states that, “[t]he record of the person’s conviction shall specify the total number of days, if any, that the person was confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper under this section. The record shall be used to determine any reduction of sentence under division (C) of this section.”

{¶ 8} From the record it is clear that in case CR-511440, appellant was transferred from LCI, taken into custody by Cuyahoga County on June 26, 2008, and released after posting bail on July 1, 2008. Appellant was sentenced on October 29, 2008 and left Cuyahoga County jail for LCI on November 6, 2008. Appellant is therefore entitled to 15 days credit.

{¶ 9} Appellant argues that because the prison term in CR-430878 was eliminated on appeal, he should be credited with that time served in this case. Appellant was taken into custody pursuant to a capias warrant issued in CR-430878. The facts and circumstances in that case are separate and unrelated to the charges in CR-511440. R.C. 2967.191 states that a prisoner's sentence shall be reduced "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." (Emphasis added.) Here appellant was not removed to LCI as a result of his arrest for trafficking in heroin that gave rise to CR-511440, but for his prior conviction in CR-430878. This incarceration did not "arise out of the offenses" for which appellant was convicted in CR-511440.

{¶ 10} "R.C. 2967.191 requires that jail credit be given only for the time the prisoner was confined for any reason arising out of the offense for which he was convicted and sentenced. It does not entitle a defendant to jail-time credit for any period of incarceration which arose from facts which are separate and apart from those on which his current sentence is based." *State v. Smith* (1992), 71

Ohio App.3d 302, 304, 593 N.E.2d 402, 403, citing *State v. Dawn* (1975), 45 Ohio App.2d 43, 304 N.E.2d 421.

{¶ 11} Appellant's assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant 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.

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and  
MARY JANE BOYLE, J., CONCUR