[Cite as *State v. Hall*, 2011-Ohio-221.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95216

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JOAN HALL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-475449

BEFORE: Cooney, J., Kilbane, A.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: January 20, 2011

FOR APPELLANT

Joan Hall, pro se
Inmate No. 69706
Ohio Reformatory for Women
1479 Collins Avenue
Marysville, Ohio 43040

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Mary McGrath
Assistant County Prosecutor
8th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Joan M. Hall ("Hall"), pro se, appeals the trial court's denial of her motion for jail-time credit. Finding no merit to the appeal, we affirm.

{¶ 2} The facts of this case were previously set forth by this court in *State v. Hall*, Cuyahoga App. No. 90366, 2009-Ohio-462, in which we stated:

> "On January 19, 2006, defendant was charged as follows: Count 1, engaging in a pattern of corrupt activity in violation of R.C. 2923.32; Counts 2 through 4, tampering with records in violation of R.C. 2913.42; Count 7, possessing criminal tools in violation of R.C. 2923.24; Counts 8 and 15, theft in violation of R.C. 2913.02; Counts 10 through 13 and 16 through 26, tampering with records in violation of R.C. 2913.42; Count 14, illegal use of food stamps in violation of R.C. 2913.46(C)(1); Counts 27 through 78, forgery in violation of R.C. 2913.31; and Count 79, money laundering in violation of R.C. 1315.55.
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> "The case was tried to the court beginning on March 15, 2007. On May 8, 2007, the court found defendant guilty of all counts and subsequently sentenced her to an aggregate of seven years in prison. Additionally, the court imposed the following financial sanctions: Restitution under R.C. 2929.18(A)(1), $258,941.34; Prosecution costs under R.C. 2923.32(B)(2), $179,039.27; Fines under R.C. 2923.32(B), $776,824.02; Fines under R.C. 2929.18, $355,000."

{¶ 3} This court affirmed the judgment as to Hall's convictions and restitution but reversed and remanded as to the calculation of fines, for the limited purpose of correcting the journal entry.[1]

{¶ 4} In May 2010, Hall moved for jail-time credit of 457 days — the time she spent wearing an electronic monitoring device in her home. The trial court denied her motion.

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[1]Hall was unsuccessful in her attempt to appeal our judgment to the Ohio Supreme Court and her motion to reopen her appeal.

{¶ 5} Hall appeals again, arguing in her single assignment of error that the trial court erred in denying her motion for jail-time credit.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} "[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*.

{¶ 9} 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.

{¶ 10} 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 and 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.

{¶ 11} Hall argues that the confinement she experienced in her home, while wearing an electronic monitoring device, constituted detention. She claims that the period from April 30, 2006 to July 31, 2007 constituted "community control." However, the record reflects this was pretrial detention and the electronic monitor was a condition of bond. She was sentenced July 31, 2007.

{¶ 12} This court rejected a similar argument in *State v. Towns*, Cuyahoga App. No. 88059, 2007-Ohio-529. As this court stated in *Towns*:

> "A person not under detention/confinement while awaiting trial does not obtain credit for time served. Pretrial electronic monitoring does not count as custody time for speedy trial purposes under R.C. 2945.71 either. *State v. Sutton*, Lucas App. No. L-03-1104, 2004-Ohio-2679; *State v. Radcliff*, Vinton App. No. 99CA535, 2000-Ohio-2012; *State v. Holt* (May 12, 2000), Montgomery App. No. 18035; *State v. Truesdale* (Dec. 15, 1995), Montgomery App. No. 15174; *State v. Brown* (July 7, 1992), Montgomery App. No. 13155; *State v. Brownlow* (1991), 75 Ohio App.3d 88, 91-92.

> "We have determined that a defendant's pretrial 'period of electronic home monitoring clearly does not equate to confinement in [jail].' *State v. Shearer* (Dec. 17, 1999), Wood App. No. WD-98-078, citing *Bailey v. Chance* (Sept. 18, 1998), Mahoning App. No. 98 CA 169. Other appellate courts concur. *State v. Kyser* (Aug. 10, 2000), Mahoning App. No. 98 CA 144; *State v. Peters* (May 13, 1999), Licking App. Nos. 98-CA-00118, 98-CA-00119. Additionally, it is commonly held that pretrial electronic monitoring is a condition of bond. *State v. Kyser* (Aug. 10, 2000), Mahoning App. No. 98 CA 144; *Akron v. Stutz* (Nov. 1, 2000), Summit App. No. 19925; *State v. Peters* (May 13, 1999), Licking App. Nos. 98-CA-00118, 98-CA-00119; *State v. Setting* (Mar. 20, 1996), Wayne App. No. 95CA0057; *State v. Faulkner* (1995), 102 Ohio App.3d 602, 604.
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> "Appellant's electronic monitoring was not a sentencing condition; it was a pretrial condition of bond. As a condition of bond, it does not constitute detention. Without detention, appellant cannot receive jail credit."

Towns at ¶12-14.

{¶ 13} As was the case in *Towns*, Hall's time spent at home while wearing an electronic monitor prior to sentencing was not detention. The trial court properly denied Hall's motion for a recalculation of jail-time credit.

{¶ 14} The single assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of 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. Case remanded to the trial court for execution of sentence.

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

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COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR