[Cite as *In re J.K.S.*, 2015-Ohio-1312.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 101967 and 101968

IN RE: J.K.S.
A Minor Child

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. DL-12112878 and DL-13111813

BEFORE: Celebrezze, A.J., Jones, J., and McCormack, J.

RELEASED AND JOURNALIZED: April 2, 2015

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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Juvenile appellant, J.K.S., appeals the trial court's calculation of confinement credit in two cases. The state, pursuant to Loc.App.R. 16(B), concedes that the court improperly calculated appellant's credit. Therefore, this court remands the case to the trial court to properly calculate confinement credit to which appellant is entitled.

I. Factual and Procedural History

{¶2} A complaint alleging appellant was a delinquent youth was filed in the Juvenile Division of the Cuyahoga County Common Pleas Court on August 6, 2012. It was assigned Case No. DL-12112878. On August 19, 2013, an additional complaint was filed and assigned Case No. DL-13111813. The first complaint alleged appellant committed aggravated robbery. The second complaint alleged criminal damaging, drug possession, and burglary.

{¶3} On September 11, 2012, appellant admitted to the allegations of an amended complaint in Case No. DL-12112878 charging him with robbery, a third-degree felony if committed by an adult. A dispositional hearing was conducted on October 11, 2012. There, appellant was ordered to be placed in a juvenile detention facility for a minimum period of six months and a maximum period of the attainment of age 21. However, the court suspended this sentence, placed appellant on community control and ordered 50 hours of community service.

{¶4} On January 6, 2014, appellant admitted to the allegations contained in an amended complaint in Case No. DL-13111813 charging him with attempted burglary, a third-degree felony if committed by an adult. The court immediately moved to disposition with the agreement of the parties. Appellant was committed to a juvenile detention facility for a minimum period of 12 months to a maximum period of the attainment of age 21. The court suspended that sentence and ordered appellant placed in a residential facility in Pennsylvania to receive treatment services. Appellant did not flourish in this residential program. According to a motion for violation of probation filed February 14, 2014, appellant punched a staff member in the head. Similar notices followed documenting appellant's noncompliance with facility rules.

{¶5} On March 14, 2014, the court conducted a hearing regarding the violation of the court's order. Appellant admitted to the violation of the court's order. The court then reiterated the findings of delinquency in the two pending cases and the sentences imposed in each. The court then ordered the two previously suspended sentences into effect. The court found that appellant was entitled to 122 days of credit for previous confinement. Appellant filed motions for recalculation of confinement credit on June 23, 2014, in both cases. There, he alleged that he was detained a total of 189 days prior to his commitment to a detention facility. On August 5, 2014, the trial court issued an order granting appellant's motion in part. It found that appellant was entitled to an additional 23 days of credit. However, it denied appellant's motion as it related to 44 days he spent at "Bellefaire JCB" ("Bellefaire"), a residential treatment institution. The

court found "since the youth's placement at Bellefaire was not a pending adjudication or disposition or execution of a court order, [it] * * * should not be deemed detention pursuant to ORC 2152.18(B)." The trial court also denied a motion for reconsideration, stating:

> The Court differentiates the time spent in residential treatment versus community correction facilities or other placement where the youth may be subject to actual lock down or other secured measures. The court further finds that time spent in treatment or rehabilitation facilities differs vastly from the detention at DYS or other correctional facilities and is typically voluntary as a condition of probation in lieu of such types of secured detention. * * *.

{¶6} Appellant then filed notices of appeal in both cases. This court consolidated the two appeals for disposition. Appellant assigns the same error for review in both cases: "The Cuyahoga County Juvenile Court erred when it failed to grant [appellant] credit for the 44 days he was confined at Bellefaire JCB, in violation of R.C. 2152.18(B); the Fifth and Fourteenth Amendments to the U.S. Constitution; and Article I, Section 16, Ohio Constitution."

II. Law and Analysis

{¶7} The juvenile court must calculate credit a youthful offender receives for confinement when the juvenile is committed to the custody of the department of youth services. R.C. 2152.18(B). This statute provides:

> [w]hen a juvenile court commits a delinquent child to the custody of the department of youth services pursuant to this chapter, the court shall state in the order of commitment the total number of days that the child has been *confined in connection with the delinquent child complaint upon which the order of commitment is based.* The court shall not include days that the child has been under electronic monitoring or house arrest or days that the child has been confined in a halfway house. The department shall reduce the minimum period of institutionalization that was ordered by both the total number of days that the child has been so confined as stated by the court in the order of commitment and the total number of any additional days that the child has been confined subsequent to the order of commitment but prior to the transfer of physical custody of the child to the department.

(Emphasis added.) *Id*.

{¶8} This court reviews the trial court's determination for an abuse of discretion. *In re H.V.*, 138 Ohio St.3d 408, 2014-Ohio-812, 7 N.E.3d 1173, ¶ 8 ("A juvenile court's disposition order will be upheld unless the court abused its discretion."). An abuse of discretion is connoted by an unreasonable, arbitrary, or unconscionable decision. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶9} The trial court denied appellant credit for the 44 days he spent in a residential treatment facility because it is not the same type of confinement as "DYS" or other correctional facility. In its decision denying the motion, the court referenced precedent from the Ohio Supreme Court that was precisely on point. *In re Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162,796 N.E.2d 908. There, the Ohio Supreme Court determined that time spent in a residential treatment program as part of community control did not constitute detention within the parameters of former R.C. 2151.355(F)(6). The court held

> [f]ormer R.C. 2151.355(F)(6) (now R.C. 2152.18[B]) required a juvenile court to grant credit toward a delinquent child's commitment to the Department of Youth Services for time served by the child in a rehabilitation or treatment facility only if the time was served awaiting the adjudication or disposition of, or execution of a final court order in connection with, the delinquency complaint or a related charge of a probation violation.

Id. at the syllabus.

> **{¶10}** However,
>
> In 2012 the General Assembly amended R.C. 2152.18, the statute relating to credit that juveniles are entitled to receive towards their DYS commitment. Under the former version of the statute, a youth committed to a DYS facility could only receive credit for days the youth was held in "detention." *See* former R.C. 2152.18(B). The statute defined detention as "the temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children." *See* R.C. 2151.011(B)(14).

In re D.P., 1st Dist. Hamilton No. C-140158, 2014-Ohio-5414, ¶ 10. The First District confronted interpretation of this language and analyzed similar definitions related to adult confinement in community based corrections facilities and the Ohio Supreme Court's jurisprudence related thereto. It concluded that confinement is to be interpreted broadly. The court held

> juvenile courts must review the nature of the facility, to see if it is a secure facility with measures sufficient to ensure the safety of the surrounding community. They must also review the nature of the restrictions on the juvenile at the facility to determine if the juvenile was "free to come and go

> as he wished" or if he was "subject to the control of the staff regarding personal liberties * * *."

Id. at ¶ 18, quoting *State v. Napier*, 93 Ohio St.3d 646, 648, 758 N.E.2d 1127 (2001).

{¶11} The Sixth District has also been confronted with this issue. *In re K.A.*, 6th Dist. Lucas No. L-12-1334, 2013-Ohio-3847. In a very similar situation, that court determined that the General Assembly's replacement of period of "detention" with "confinement" broadened the situations in which a juvenile is entitled to credit. Citing to the definition of confinement set forth by the Ohio Supreme Court in *Napier*, "time spent at any facility in which a person is 'not free to come and go as he wishe[s],'" the court found that time spent in a residential facility while on community control constituted confinement under R.C. 2151.18(B). *In re K.A.* at ¶ 23.

{¶12} Here, appellant provided evidence that he was housed in Bellefaire's locked intensive treatment unit. An email submitted to the court from Jill Sadowsky, the Director of Admissions, Outreach & Early Childhood Services at Bellefaire, indicated appellant was housed in a locked intensive treatment unit while there. He was not free to come and go as he wished. Appellant was housed there as part of community control provisions that he violated and was then committed to a juvenile detention facility. The situation is the same as *In re K.A.* In both cases, juveniles were housed in secure residential facilities as a condition of community control and were later committed to the custody of a juvenile detention center after violating conditions of community control. The residential treatment facilities constituted confinement under the *Napier* standard.

{¶13} The trial court seemed to indicate that the delinquency complaint was not

pending at the time appellant was in Bellefaire. However, appellant was placed in Bellefaire as a part of his community control program and the violation of community control did not result in a separate case. The court ordered the suspended sentence into execution for the delinquency complaints that resulted in appellant's placement into Bellefaire. A plain reading of R.C. 2152.18(B) indicates the court should give credit for any time the juvenile "has been confined *in connection with* the delinquent child complaint upon which the order of commitment is based." (Emphasis added.)

{¶14} Therefore, because appellant demonstrated his freedom of movement was significantly restricted at Bellefaire and his placement there was in connection with the complaints that ultimately resulted in his commitment to a juvenile detention facility, the court abused its discretion in failing to credit appellant with 44 days spent at Bellefaire.

III. Conclusion

{¶15} The trial court erred when it denied appellant's motion to credit him with 44 days spent at a residential treatment facility that occurred in connection with the delinquency complaints that lead to his commitment to a juvenile detention facility.

{¶16} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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., ADMINISTRATIVE JUDGE

LARRY A. JONES, SR., J., and
TIM McCORMACK, J., CONCUR