[Cite as *In re D.S.*, 2015-Ohio-518.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101161

IN RE: D.S.
A Minor Child

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL 14102017

BEFORE: Stewart, J., Kilbane, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: February 12, 2015

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MELODY J. STEWART, J.:

{¶1} The issue in this appeal is whether the court erred by refusing to grant appellant D.S. confinement credit for time spent in jail in connection with a previously filed case in which D.S. had been bound over to be tried as an adult. The state concedes error, but our review shows that the court did not err, so we affirm.

{¶2} D.S. was originally charged in the juvenile division in Case No. DL-13106887 with committing acts which, if committed by an adult, would constitute the crime of aggravated robbery with a firearm specification. The juvenile division remanded D.S. to the juvenile detention center following notice by the state that it intended to try him as an adult. It found probable cause to believe that D.S. committed the charged acts and then bound him over to the general division to be tried as an adult. A judge of the general division imposed a $50,000 bond and transferred D.S. to the county jail pending trial.

{¶3} Discovery and motion practice stretched out for several months, during which time the 17-year-old D.S. was confined in the county jail and could not post bond. Defense counsel asked that D.S. be released into his mother's custody, under house arrest. The length of D.S.'s detention concerned the court, but the judge believed that the proper course of action was to request a reduction of the bond. Shortly thereafter, the parties told the court that they had reached an agreement in the case whereby the state would dismiss the felony case against D.S. without prejudice and transfer D.S. back to the juvenile division, where the state had refiled a new delinquency complaint in DL-14102017. In exchange for the dismissal of the felony charges and a transfer back to the juvenile division, D.S. would admit allegations that would constitute the crime of robbery with a one-year firearm specification. The judge of the general

division dismissed the case without prejudice and ordered D.S.'s transfer to the juvenile detention center for arraignment on the new juvenile division charges.

{¶4} As agreed, D.S. was arraigned in the juvenile division and admitted the allegations in DL-14102017, with his agreement to serve a minimum one-year commitment with the Department of Youth Services and a mandatory one-year commitment on the firearm specification. The court accepted the admission and for disposition imposed the agreed, two-year commitment. The court refused, however, to grant D.S.'s request for confinement credit for the time he spent awaiting resolution of the charges because the confinement occurred in DL-13106887, the originally filed case, not DL-14102017. The court noted that DL-14102017 was a newly filed case, that the parties were in court for arraignment in the new case, and the parties at no time stated that D.S.'s admission to the complaint was premised on confinement credit. The parties immediately objected to the court's refusal to grant confinement credit on grounds that it was their understanding that D.S. would receive credit for confinement under the original case, but the court overruled those objections.

{¶5} D.S. argues on appeal that the court erred by refusing to grant him confinement credit in violation of R.C. 2152.18(B). That section states in relevant part:

> When 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.

{¶6} When interpreting a statute, we examine its plain language to determine legislative intent, *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394,

2007-Ohio-2203, 865 N.E.2d 1275, ¶ 12, and a plain reading of R.C. 2152.18(B) does not support the parties' argument that the court erred by refusing to grant D.S. confinement credit. The statute states that credit is applied "in connection with the delinquent child *complaint upon which the order of commitment is based*." (Emphasis added.) The statute permits no interpretation other than that the confinement relates to the underlying complaint, not any proceedings under previously dismissed complaints or indictments.

{¶7} Our interpretation of R.C. 2152.18(B) is supported by the maxim of statutory construction stating that the expression of one thing is the exclusion of the other. R.C. 2967.191, dealing with the reduction of a prison term for related days of confinement for adult offenders, instructs the department of rehabilitation and correction to reduce a state prison term "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.) The difference between the two statutes is manifest: R.C. 2152.18(B) speaks of confinement related to the "complaint"; R.C. 2967.191 speaks of confinement arising out of the "offense." The word "complaint" must be viewed in the context of juvenile delinquency proceedings as "the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction." Juv.R. 2(F). The use of the word "complaint" in R.C. 2152.18(B) suggests that confinement credit for juveniles is limited in application to the facts and circumstances making up the allegations in a complaint.

{¶8} D.S. argues that we should construe the word "confined" broadly to encompass not only DL-14102017, but DL-13106887 too. He cites *In re Thomas*, 100 Ohio St.3d 89, 2003-Ohio-5162, 796 N.E.2d 908, for the proposition that an amended complaint concerning the

same facts and circumstances of the original complaint is filed in connection with the original complaint.

{¶9} *Thomas* is not authority for the proposition asserted by D.S. In *Thomas*, the Ohio Supreme Court held that a juvenile is entitled to credit for time spent in detention while awaiting the final disposition of an alleged probation violation because this detention "relates back to the complaint of delinquency and is in 'connection with' that complaint[.]" *Id*. at ¶ 13. This is an obvious holding — a probation violation can only stem from the complaint under which a juvenile has been adjudicated, so the violation is fully committed "in connection" with the complaint under which probation had been ordered.

{¶10} More analogous is *In re O.H.*, 4th Dist. Washington No. 09CA38, 2010-Ohio-1244, where the court of appeals applied a narrow reading of the word "complaint" as used in R.C. 2152.18(B) to find that a juvenile was not entitled to confinement credit for time spent in detention pending the resolution of a domestic violence complaint, the existence of which would constitute a violation of the juvenile's probation in a previously adjudicated assault case. The court of appeals distinguished *Thomas*, stating that although factually related to the probation violation allegations, the domestic violence charge constituted a separate criminal offense from the assault adjudication. *Id*. at ¶ 11.

{¶11} Admittedly, neither *Thomas* nor *O.H*. are directly on point. But we believe that *O.H*. is more similar to this case than *Thomas* because *O.H.* involved a complaint in a separate case. The complaint in DL-13106887 terminated in the general division with the dismissal of felony charges against D.S. The state filed an entirely new complaint under DL-14102017. That complaint made no mention of the allegations contained in DL-13106887, so it superseded the previous complaint. While it is true that the same judge of the juvenile division presided

over both delinquency cases, it is not clear that the judge understood that the parties had an agreement that D.S. be given credit for confinement in the previous case. As the court noted, D.S. had yet to be arraigned under DL-14102017 (his admission to the complaint came during his arraignment), so he had not been confined in connection with that complaint.

{¶12} If the confinement credit was an integral consideration for D.S.'s admission, it should have been stated on the record as a part of the deal. The court correctly noted that neither party did so, so it was not bound by any agreement for confinement credit. It follows that there was no period of confinement in connection with the delinquent child complaint upon which the order of commitment was based. We therefore reject the state's concession and overrule the assignment of error.

{¶13} Judgment affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Common Pleas Court, Juvenile Division, 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.

MELODY J. STEWART, JUDGE

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