

[Cite as *State v. Holley*, 2017-Ohio-1559.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104955

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RAMONE HOLLEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-10-535777-A

BEFORE: Keough, A.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: April 27, 2017

APPELLANT

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ATTORNEYS FOR APPELLEE

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Defendant-appellant, Ramone Holley (“Holley”), appeals from the trial court’s decision denying his request for additional jail-time credit. For the reasons that follow, we affirm the trial court’s decision.

{¶2} In April 2010, Holley was indicted for drug trafficking, drug possession, possessing criminal tools, and tampering with evidence. The indictment contained schoolyard specifications and also sought forfeiture of money. In January 2011, Holley pleaded guilty to drug trafficking, including the forfeiture specification; possessing criminal tools with a forfeiture specification; and tampering with evidence. The drug possession charge and schoolyard specifications were nolle. The trial court sentenced Holley to five years of community control sanctions commencing after he was released from the prison terms he was serving for convictions in both Lake and Ashtabula counties.

{¶3} On February 10, 2012, the trial court issued a capias for Holley for a “probation violation.” On December 27, 2013, the court held a hearing and set forth Holley’s community control conditions. On May 27, 2014, the court issued a capias for Holley for alleged probation violations: he had been arrested in Ashtabula on a new charge and had failed to obtain employment, which was a condition of his community control.

{¶4} On December 9, 2015, Holley appeared in the trial court for the alleged probation violations. Following a hearing, the court found Holley in violation of his

community control sanctions and ordered him to serve a total prison sentence of 30 months. The court ordered that Holley receive 65 days of a jail-time credit. No appeal was taken from this sentence.

{¶5} In January 2016, Holley petitioned the court for additional jail-time credit. Specifically, he sought credit for an additional 595 days for the time he spent in the Ashtabula county jail and in Ashtabula Turning Point Treatment Program. Those dates ranged from April 19, 2014 until December 9, 2015. Subsequently, in July 2016, Holley filed another motion to correct jail-time credit, seeking 572 days. The state opposed Holley's motion as filed, but stated that it would not oppose the trial court granting Holley 2 additional days credit; thus, increasing the credit amount from 65 days to 67 days.

{¶6} The trial court denied Holley's motion to correct jail-time credit, but concluded that Holley should receive a total jail credit of 67 days spent in the Cuyahoga County jail. The court, although acknowledging that Holley spent time in another municipal or county jail, stated that it could only grant jail credit for time spent in Cuyahoga County jail.

{¶7} Holley now appeals, raising as his sole assignment of error:

The trial court's sentence imposed on appellant for violating community control was erroneous because the trial court incorrectly calculated jail-time credit.

Holley contends that once the Cuyahoga County court issued the capias for his arrest, the time he spent incarcerated in Ashtabula should be credited to his Cuyahoga County case. Accordingly, he contends that he should receive jail-time credit from the date the capias

was issued, May 27, 2014, until he was transferred to the Cuyahoga County jail on December 9, 2015.

{¶8} In some circumstances, inmates are entitled to receive credit toward a sentence of imprisonment for any incarceration time served during the pendency of their trial. R.C. 2967.191 provides:

The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner 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, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term.

{¶9} Holley contends that his confinement in the Ashtabula County Jail was partially based on the alleged community control violation in Cuyahoga County. Although we agree that the trial court in Cuyahoga County issued a *capias* for Holley, we disagree that he was solely being held in Ashtabula on the Cuyahoga County *capias*. If he had been, then Holley's argument would possibly have merit.

{¶10} In support of his argument, Holley cites *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, and *State v. Caccamo*, 11th Dist. Lake No. 2015-L-048, 2016-Ohio-3006.

{¶11} In *Fugate*, the defendant committed burglary and theft while on community control. He was held in jail awaiting disposition of his community control violation and burglary and theft case. The trial court imposed a 12-month sentence for

the community control violation and credited him with the time he spent in jail. The trial court also imposed a two-year sentence for the defendant's burglary conviction, to run concurrently to his term for the community control violation. However, the court did not apply any jail-time credit in that case.

{¶12} The Supreme Court of Ohio reversed, holding:

[W]hen concurrent prison terms are imposed, courts do not have the discretion to select only one term from those that are run concurrently against which to apply jail-time credit. R.C. 2967.191 requires that jail-time credit be applied to all prison terms imposed for charges on which the offender has been held. If courts were permitted to apply jail-time credit to only one of the concurrent terms, the practical result would be * * * to deny credit for time that an offender was confined while being held on pending charges. So long as an offender is held on a charge while awaiting trial or sentencing, the offender is entitled to jail-time credit for that sentence; a court cannot choose one of several concurrent terms against which to apply the credit.

Fugate at ¶ 12. However, “*Fugate* did not negate the basic principle that ‘a defendant is not entitled to jail-time credit for time incarcerated in another county for unrelated offenses.’” *State v. McKinney*, 7th Dist. Mahoning No. 12 MA 163, 2013-Ohio-4357, ¶ 12, quoting *State v. Daughenbaugh*, 3d Dist. Wyandot No. 16-09-05, 2009-Ohio-3823, ¶ 19.

{¶13} *Fugate* is distinguishable from facts in this matter, primarily because Holley was not sentenced to concurrent sentences for his conviction on the drug offense in Ashtabula and the probation violation in Cuyahoga County. In this case, Holley was in custody in Ashtabula for an unrelated drug offense and was waiting for the resolution of that case. He was ultimately placed on community control sanctions for that offense; he did not receive any jail or prison sentence. Although he was also being held on a Cuyahoga County warrant for a probation violation case, the warrant was not issued solely for the new offense in Ashtabula, but also for failing to obtain employment — an express term of his community control sanctions. Therefore, *Fugate* does not apply in this case.

{¶14} In *Caccamo*, the Eleventh District considered facts similar to those in this case where the defendant was confined in Cuyahoga County on a new offense and a resulting community control violation in Lake County because of the new offense. The Eleventh District in *Caccamo* went against its own precedent in *State v. Struble*, 11th Dist. Lake No. 2005-L-115, 2006-Ohio-3417, and held that the defendant was entitled to the same jail credit on his Lake County sentence as on the Cuyahoga County sentence because he was subject to a detainer filed by the Lake county probation department while he was in the Cuyahoga County jail on an unrelated matter. *See Caccamo*, 11th Dist. Lake No. 2015-L-048, 2016-Ohio-3006 at ¶ 33-34 (Rice, J., dissenting).

{¶15} We disagree with *Caccamo* and instead rely on the cases from our district that hold that there is no jail-time credit for time served on unrelated offenses, even if that

time runs concurrently during the pre-detention phase of another matter. *See, e.g., State v. Smiley*, 8th Dist. Cuyahoga No. 99486, 2013-Ohio-4495, *State v. Maddox*, 8th Dist. Cuyahoga No. 99120, 2013-Ohio-3140; *State v. DeMarco*, 8th Dist. Cuyahoga No. 96605, 2011-Ohio-5187 (offender not entitled to jail-time credit for any period of incarceration that arose from facts that are separate and apart from those on which his current sentence is based); *see also State v. Smith*, 71 Ohio App.3d 302, 304, 593 N.E.2d 402 (10th Dist.1992), *Struble*, 11th Dist. Lake No. 2005-L-115, 2006-Ohio-3417, *State v. Marini*, 5th Dist. Tuscarawas No. 09-CA-06, 2009-Ohio-4633.

{¶16} In this case, a probation violation capias was issued against Holley for two reasons — the new offense in Ashtabula and for failing to obtain employment, a condition of community control. The record before this court does not reveal why the trial court found Holley in violation of community control. Accordingly, it is possible that the court found Holley in violation for failing to obtain employment, a separate and distinct matter from the drug offense in Ashtabula. Accordingly, Holley would not be entitled to jail credit in the Cuyahoga County case for the Ashtabula case because jail credit is only required “for the time the prisoner was confined for any reasons arising out of the offense for which he was convicted and sentenced.” R.C. 2967.191. Holley properly received jail credit for his time spent in Cuyahoga County jail for his Cuyahoga County case, and he properly received jail credit for his time spent in Ashtabula for his Ashtabula case.

{¶17} Accordingly, his assignment of error is overruled.

{¶18} Judgment affirmed. We note that after Holley filed his notice of appeal, the trial court vacated the order that Holley appealed and issued a new journal entry awarding Holley 70 days of jail-time credit. The trial court acted without jurisdiction when it vacated the order that was the subject of this appeal. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978) (once an appeal is taken, the trial court is divested of jurisdiction except “over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment”). Accordingly, if the trial court concludes that Holley is entitled to more jail-time credit than the 67 days it originally awarded to Holley in its September 2, 2016 journal entry, the trial court must reissue a new journal entry with the appropriate amount of time.

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. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. 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.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR