

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 12AP-144
 : (C.P.C. No. 10CR-08-4537)
 Ruby M. Thomas, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 28, 2012

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Bellinger & Donahue, and *Kerry M. Donahue*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Appellant, Ruby M. Thomas, appeals from a judgment of the Franklin County Court of Common Pleas revoking her community control and sentencing her to a period of 12 months incarceration.

I. BACKGROUND

{¶ 2} On February 3, 2011, appellant entered a plea of guilty to one count of possession of cocaine, a fifth-degree felony, in violation of R.C. 2925.11. By judgment entry dated June 15, 2011, appellant was sentenced to four years of community control. The entry indicates appellant was notified of the sentence to be imposed in the event she violated the terms of her community control.

{¶ 3} A probation revocation request was filed on January 24, 2012, and on February 13, 2012, a probation revocation hearing was held. After appellant stipulated to

violating the terms of her community control, the trial court revoked appellant's community control and imposed the promised sentence of 12 months incarceration. Additionally, the trial court awarded appellant 69 days of jail-time credit.

II. ASSIGNMENTS OF ERROR

{¶ 4} This appeal followed, and appellant brings the following three assignments of error for our review:

I. It was error for the court not to grant jail time credit to appellant for time spent after she was available for return.

II. It was error for the court to fail to take evidence of the nature of appellant's time spent at Alvis House into consideration when deciding jail time credit.

III. Appellant was denied her constitutional right to due process of law.

III. DISCUSSION

{¶ 5} Because appellant's three assignments of error are interrelated and all challenge the trial court's award of jail-time credit, appellant's three assigned errors will be addressed together. Essentially, it is appellant's position that the trial court erred in failing to award her an additional 35 days of jail-time credit.

{¶ 6} Jail-time credit is prescribed by R.C. 2967.191, which authorizes 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 and sentenced." Therefore, R.C. 2967.191 requires a connection between the jail-time confinement and the offense upon which the defendant is convicted. *State v. Slager*, 10th Dist. No. 08AP-581, 2009-Ohio-1804, ¶ 25, citing *State v. Hunter*, 10th Dist. No. 08AP-183, 2008-Ohio-6962, ¶ 17. Accordingly, "[t]here is no jail-time credit for time served on unrelated offenses, even if that time served runs concurrently during the pre-detention phase of another matter." *Hunter* at ¶ 20.

{¶ 7} Though R.C. 2967.191 mandates that the Ohio Department of Rehabilitation and Correction credit an inmate with jail time already served, it is the trial court that makes the factual determination as to the number of days of confinement that a

defendant is entitled to have credited toward his or her sentence. *Id.* at ¶ 12, citing *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, ¶ 7.

{¶ 8} In the present matter, appellant contends that at the time she was initially placed on community control, she was also ordered to complete an inpatient drug rehabilitation program at Alvis House. Her stay at Alvis House was interrupted, however, when appellant was sent to West Virginia to answer for a parole violation. After the West Virginia case concluded, appellant alleges she was incarcerated for 35 days in West Virginia waiting for a bed to become available at Alvis House. It is appellant's position that she should have been awarded jail-time credit for these 35 days, and the trial court's failure to do so constitutes error.

{¶ 9} Though arguing she is entitled to an additional 35 days of jail-time credit, the record herein is devoid of any evidence supporting appellant's contention as there is no evidence regarding the circumstances surrounding her incarceration in West Virginia. It is the duty of the appellant upon appeal to show an error in the jail-time credit calculation. *Hunter* at ¶ 17, citing *State v. Evans*, 2d Dist No. 21751, 2007-Ohio-4892, ¶ 13. If the appellant has failed to demonstrate error and no miscalculation in the jail-time credit is apparent from the record, any claimed error must be overruled. *Id.*

{¶ 10} To support her position, appellant directs this court to three exhibits attached to her appellate brief. The first exhibit is a "note" indicating that though the trial court's entry states the parties stipulated to jail-time credit, no such stipulation occurred. The second exhibit is a copy of a document from the West Virginia Regional Jail and Correctional Facility titled "Inmate Bookings." The third exhibit is a copy of the transcript of the revocation proceedings held before the trial court.

{¶ 11} Problematic for appellant is that the three exhibits attached to her appellate brief cannot be considered by this court because they are not part of the record in this matter. App.R. 9(A)(1) provides that the record on appeal, in all cases, constitutes "[t]he original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court." It is well established that "[a]n exhibit merely appended to an appellate brief is not part of the record, and we may not consider it in determining the appeal." *HSBC Mtge. Corp. v. Rider*, 10th Dist. No. 12AP-78, 2012-Ohio-3476, ¶ 15, citing

Jefferson Golf & Country Club v. Leonard, 10th Dist. No. 11AP-434, 2011-Ohio-6829, ¶ 10. Appellate review is limited to the record as it existed at the time the trial court rendered its judgment. *Franks v. Rankin*, 10th Dist. No. 11AP-962, 2012-Ohio-1920, ¶ 73, citing *Wiltz v. Clark Schaefer Hackett & Co.*, 10th Dist. No. 11AP-64, 2011-Ohio-5616, ¶ 13. Accordingly, we will not consider the exhibits attached to appellant's appellate brief.

{¶ 12} In implied recognition of the limitations of our review, appellant asks this court to simply remand the matter to the trial court for consideration of the exhibits attached to her appellate brief. However, "a remand by an appellate court to the trial court for further proceedings must be premised on a determination that error occurred below and a ruling on that error." *Hungler v. Cincinnati*, 25 Ohio St.3d 338, 342 (1986). "[S]ince a reviewing court can only reverse the judgment of a trial court if it finds error in the proceedings of such court, it follows that a reviewing court should be limited to what transpired in the trial court as reflected by the record made of the proceedings." *Id.*, quoting *State v. Ishmail*, 54 Ohio St.2d 402, 405-06 (1978).

{¶ 13} Additionally, even consideration of the exhibits attached to appellant's brief does not establish error in the trial court's calculation of jail-time credit. Though indicating appellant may have been incarcerated in West Virginia during the relevant timeframes, the exhibits do not establish the circumstances surrounding said incarceration; therefore, appellant has not established the required connection between the jail-time confinement and the offense upon which the defendant was convicted. *Slager* at ¶ 25; *Hunter* at ¶ 17.

{¶ 14} Because the evidence before this court supports the trial court's jail-time credit determination and appellant has failed to support her argument with any evidence in the record, we must find that the trial court properly calculated her jail-time credit. *Id.* Accordingly, we overrule appellant's three assignments of error.

IV. CONCLUSION

{¶ 15} Having overruled appellant's three assignments of error, the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN, P.J., and CONNOR, J., concur.
