

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee : CASE NO. 25CA19
 :
 v. :
 :
 DUSTIN DECKARD, : DECISION & JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Christopher Pagan, Middletown, Ohio, for appellant.

Jason Holdren, Special Prosecuting Attorney and Amanda Miller, Gallia County Assistant Prosecuting Attorney, Gallipolis, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:5-4-26
ABELE, J.

{¶1} This is an appeal from a Gallia County Common Pleas court judgment. Dustin Deckard, defendant below and appellant herein, raises the following assignment of error for review:

“THE TRIAL COURT ERRED IN ITS JTC [JAIL TIME CREDIT] CALCULATION.”

{¶2} Appellant previously pleaded guilty to two felony offense (1) possession of methamphetamine, a third-degree felony, and (2) breaking and entering a fifth-degree felony. On November 1, 2022, the trial court sentenced appellant to serve a concurrent two-year community control sentence with a CBCF

condition. The court reserved a consecutive 48-month and further stated that jail time credit for a future prison term will be limited to the fifth-degree felony breaking and entering.

{¶3} On September 5, 2024, and October 2, 2024, the State filed a motion that alleged a violation of the terms and conditions of community control. Appellant admitted that he did, in fact, commit violations of community control. The trial court imposed a 30-month term on the possession of methamphetamine offense, but with no jail time credit for the 180 days appellant served at the CBCF. With respect to the breaking and entering offense, the trial court imposed a concurrent 12-month term with jail time credit for the 180 days appellant resided at the CBCF.

{¶4} Subsequently, appellant requested credit for the 180 days in the CBCF but the trial court overruled appellant's motion.

{¶5} Appellant asserts that the trial court committed multiple errors when it calculated jail time credit. In particular, appellant argues (1) the court erred in its initial sentence concerning future jail time credit calculations, (2) the court erred by failing to conduct a new sentencing hearing and adopting the jail time credit calculation at the initial sentencing, and (3) for concurrent prison terms, case authority

and the OAC requires a court to provide for jail time credit in both prison terms.

{¶6} Appellee candidly concedes that appellant raises a valid argument and cites *State v. Fugate*, 2008-Ohio-856 as controlling precedent under these circumstances and agrees that appellant must be credited in both cases for the time spent at the CBCF.

{¶7} In *Fugate* the court held that when a defendant is sentenced to concurrent prison terms, a jail-time credit pursuant to R.C. 2967.191 must be applied against each concurrent prison term.¹ Thus, appellee believes that appellant's argument has merit and the matter should be remanded to the trial court for resentencing.

{¶8} After our review, we agree with the parties and sustain appellant's assignment of error, reverse the trial court's judgment and remand this matter for resentencing consistent with this opinion.

JUDGMENT REVERSED AND CAUSE
REMANDED FOR RESENTENCING
CONSISTENT WITH THIS OPINION.

¹As *Fugate* points out in footnote one, "jail time credit" is a term used as shorthand for custody credit. R.C. 2967.181.

JUDGMENT ENTRY

It is ordered that the judgment be reversed and cause remanded for resentencing consistent with this opinion. Appellant shall recover of appellee the 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 Gallia County Common Pleas Court to carry this judgment into execution.

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

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.