IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-140315 TRIAL NO. B-1306585
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N.*
TRACY WASHINGTON,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part, Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: May 15, 2015

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Rachel Lipman Curran*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Ravert Clark, for Defendant-Appellant.

Please note: this case has been removed from the accelerated calendar.

FISCHER, Presiding Judge.

{¶1} Defendant-appellant Tracy Washington appeals from the trial court's judgment, convicting him of felonious assault with an accompanying firearm specification and having a weapon under disability, and sentencing him to 11 years in prison. He argues that the trial court failed to award the correct number of days of jail-time credit toward his prison sentence in the judgment entry of conviction and sentence.

{¶2} We find his argument meritorious. The record reflects that Washington was confined for 212 days prior to and including the date of the sentencing entry. We, therefore, reverse that part of the trial court's judgment that credited Washington with only 210 days of jail-time credit, and remand the cause to the trial court with instructions to enter a judgment crediting him with 212 days of jail-time credit. *See* R.C. 2929.19(B)(2)(g)(iii) and (iv).

Factual and Procedural Posture

{¶3} Washington was arrested on October 30, 2012. On November 6, 2013, the state returned an indictment against Washington, charging him with two counts of felonious assault, two counts of having a weapon under disability, and one count of carrying a concealed weapon. The felonious-assault counts carried both one-year and three-year firearm specifications. Washington and the state subsequently entered into a plea agreement. Washington pleaded guilty to one count of felonious assault, a felony of the second degree, and the accompanying three-year firearm specification, and to one count of having a weapon under disability. In exchange, the state dismissed the remaining counts and specifications.

{¶4} On May 29, 2014, the trial court held a sentencing hearing. It sentenced Washington to eight years in prison for the felonious assault, to three years in prison for the accompanying firearm specification, and to 36 months in prison for the weapon-

under-disability count. The trial court ordered that the prison term for the felonious assault be served consecutively to the term imposed for the firearm specification, but concurrently to the prison term for having a weapon under a disability. The aggregate sentence was 11 years in prison.

{¶5} The trial court's entry was dated May 29, 2014, but it was not journalized until June 5, 2014. In the judgment entry of conviction, the trial court credited Washington with 210 days of jail-time credit. Washington timely appealed.

{¶6} On December 10, 2014, while Washington's appeal was pending, the trial court journalized an entry, at the state's request, which credited Washington with 211 days of jail-time credit "plus conveyance time to the institution." We recognize that a trial court has continuing jurisdiction to correct jail-time credit following sentencing. *See* R.C. 2929.19(B)(2)(g)(iii); s*ee also Heddleston v. Mack*, 84 Ohio St.3d 213, 702 N.E.2d 1198 (1998) (characterizing a motion to correct jail-time credit as an alternate remedy to an appeal or a postconviction petition). However, once a notice of appeal has been filed in a case, a trial court "loses jurisdiction to act, except to take action in aid of the appeal or in a manner not inconsistent with the appeals court's jurisdiction to review, affirm, modify, or reverse the appealed judgment." *See State v. Morgan*, 1st Dist. Hamilton No. C-140416, 2014-Ohio-5325, ¶ 12, citing *State ex rel. Prosecutors v. Judges*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978).

{¶7} In the December 10, 2014 entry, the trial court purported to grant Washington part of the relief he seeks in this appeal, by awarding him an additional day of jail-time credit, for a total of 211 days. But because this issue was pending on appeal, the trial lacked jurisdiction to correct Washington's jail-time credit. Thus, the December 10, 2014 entry constitutes a legal nullity. *See Morgan* at ¶ 12.

Jail-Time Credit

{¶8} In a single assignment of error, Washington asserts the trial court miscalculated his jail-time credit by crediting him with only 210 days.

{¶9} Jail-time credit is prescribed by R.C. 2967.191, which authorizes a trial court to give a defendant credit for the total number of days that he was "confined for any reason arising out of the offense for which he was convicted and sentenced." The trial court is required to include the amount of jail-time credit in the sentencing entry. *See* R.C. 2929.19(B)(1)(g)(i); Ohio Adm.Code 5120-2-04(B). An offender may challenge the amount of jail-time credit on direct appeal. *See Morgan*, 1st Dist. Hamilton No. C-140416, 2014-Ohio-5325 at ¶ 5. A trial court commits plain error when it fails to include the appropriate amount of jail-time credit in the sentencing entry. *State v. Hargrove*, 1st Dist. Hamilton No. C-120321, 2013-Ohio-1860, ¶ 9.

{¶10} The Ohio Administrative Code provides trial courts with guidance on how to calculate jail-time credit. *See, e.g., State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 10-11. Pertinent here, Ohio Adm.Code 5120-2-04(B) provides that the sentencing court must "make a factual determination of the number of days credit to which the offender is entitled by law to have credited" and requires that such information "be included within the journal entry imposing the sentence or stated prison term." *Id.* Ohio Adm.Code 5120-2-04(D) further provides that "the number of days, if any, specified in the court's journal entry * * * is the court's finding of the number of days the offender is entitled to by law, up to and including the date of the journal entry." The provision additionally states that "[t]he bureau of sentence computation shall reduce the offender's minimum and maximum, definite sentence or stated prison term by the number of days specified in the entry, plus the number

of days the offender was confined a result of the offense, between the date of the entry and the date committed to the department, as reflected in the sheriff's record."

{¶11} The record reflects that Washington was arrested on October 30, 2013. Although the trial court held Washington's sentencing hearing on May 29, 2014, and the sentencing entry was dated May 29, 2014, it was not journalized until June 5, 2014. Washington argues that because he was continuously confined during this time, he was entitled to at least 212 days credit, which accounts for the time from the date of his arrest on October 30, 2013, to the date of sentencing on May 29, 2014. He further contends that he may be entitled to 219 days credit, which would encompass the time from the date of his arrest on October 30, 2013, to the date the sentencing entry was journalized on June 5, 2014.

{¶12} The state argues that Washington is not entitled to any additional days of credit for the time between the date of the sentencing entry and the date the entry was journalized. The state's argument is supported by the plain language of Ohio Adm.Code 5120-2-04(D). Under that provision, the trial court must credit the defendant with the number of days he has been confined "up to and including the date of the journal entry imposing sentence." Because the sentencing entry was dated May 29, 2014, the trial court was required to credit Washington with the days he had been confined between his arrest and May 29, 2014. Any days elapsing between the date of the sentencing entry and Washington's commitment to the Ohio Department of Corrections, including any delay in the clerk of courts' journalization of the entry, would then be added on by the bureau of sentence computation as evidenced by the sheriff's record. Were we to read the provision as Washington suggests, any time there would be a delay between the date of the sentencing entry and the journalization of the sentencing entry, the trial court would have to correct the defendant's jail-time credit in a new sentencing entry.

Because Washington was confined from October 30, 2013, to the date of the sentencing entry on May 29, 2014, he was entitled to 212 days of jail-time credit in the sentencing entry.

{¶13} We therefore, sustain Washington's sole assignment of error. We reverse that part of the trial court's judgment crediting Washington with 210 days of jail-time credit, and we remand the cause to the trial court to enter a judgment crediting him with 212 days of jail-time credit and to cause the entry to be delivered to the Ohio Department of Rehabilitation and Correction without delay, and for further proceedings consistent with this opinion and the law. We affirm the trial court's judgment in all other respects.

Judgment affirmed in part, reversed in part, and cause remanded.

DEWINE and **MOCK, JJ.,** concur.

Please note:

The court has recorded its own entry this date.