

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	William B. Hoffman, J.
Plaintiff-Appellee	:	Patricia A. Delaney, J.
	:	
-vs-	:	Case No. 2009 CA 0119
	:	
JACK OSBORNE	:	<u>OPINION</u>
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING: Criminal Appeal from Richland County Court of Common Pleas Case No. 05 CR 0468 D

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: August 23, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Edwards, P.J.*

{¶1} Defendant-appellant, Jack Osborne, appeals from the August 13, 2009, Order of the Richland County Court of Common Pleas granting his Motion for Jail Time Credit in part and denying the same in part. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 14, 2005, the Richland County Grand Jury indicted appellant on two counts of driving while under the influence of alcohol or drugs in violation of R.C. 4511.19(A)(1), felonies of the fourth degree. Both counts were accompanied by specifications indicating that appellant previously had been convicted of or pleaded guilty to five or more equivalent offenses within twenty years of committing the offenses. At his arraignment on August 4, 2005, appellant entered a plea of not guilty to the charges.

{¶3} Subsequently, on October 25, 2005, appellant withdrew his former not guilty plea and pleaded no contest to one of the counts. The remaining count and the specifications were dismissed. As memorialized in a Sentencing Entry filed on December 6, 2005, appellant was fined \$10,000.00 and placed on community control for a period of four years. As a part of his community control, appellant was ordered to successfully complete a program at Crossroads halfway house.

{¶4} After it was alleged that appellant had violated the terms and conditions of his community control, a community control violation hearing was held on December 17, 2007. At the hearing, appellant was found guilty of one of the violations and, pursuant to a Journal Entry filed on December 18, 2007, appellant was sentenced to fifteen (15) months in prison.

{¶5} On August 11, 2008, appellant filed a motion seeking jail time credit for time served at Crossroads Center for Change from December 19, 2005, to May 26, 2006, for a total of 170 days. Appellant, in his motion, stated that he had completed the program at Crossroads. Appellant did not submit any type of documentation in support of his motion. As memorialized in a Judgment Entry filed on August 18, 2008, the trial court overruled such motion, finding that “Crossroads Center for Change is a residential program for substance abusing offenders, not ‘confinement’ within the meaning of the jail credit statute.”

{¶6} Thereafter, on September 3, 2008, appellant filed a Motion for Reconsideration. Appellant, in his motion, noted that while Crossroads was not a lock-down facility, it was still within the trial court's discretion to grant credit for time spent at Crossroads. Appellant attached a copy of an August 5, 2008, Order from another case in which the same Judge had granted a defendant jail time credit for time spent at Crossroads Center for Change. The trial court overruled appellant's Motion for Reconsideration via a Judgment Entry filed on September 10, 2008.

{¶7} Appellant then appealed. In an Opinion filed in *State v. Osborne*, Richland App. No. 2008 CA 0084, 2009-Ohio-2866, this Court stated, in relevant part, as follows: “In the case sub judice, the record contains no information whatsoever from which this Court may conduct a meaningful review of the nature of the program that appellant was in at Crossroads Center for Change.

{¶8} “Accordingly, the judgment of the trial court is vacated and this matter is remanded to the trial court with instructions to conduct a hearing on the nature of

appellant's participation in the Crossroad Center program and determine whether or not he was "confined" for purposes of the statute." Id at paragraphs 12-13.

{¶9} An evidentiary hearing was held before the trial court on July 22, 2009. Pursuant to an Order filed on August 13, 2009, the trial court found that appellant was entitled to jail time credit for the first thirty (30) days that appellant spent at Crossroads. The trial court noted that appellant "was restricted to the facility as a felony DUI client for only the first thirty days of his time at Crossroads." The trial court found that appellant was not entitled to any additional jail time credit because, after the first thirty days, he was not confined.

{¶10} Appellant now raises the following assignment of error on appeal:

{¶11} "THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING 136 DAYS OF JAIL TIME CREDIT FOR TIME SPENT CONFINED AT CROSSROADS CENTER FOR CHANGE RESIDENTIAL ALCOHOL TREATMENT PROGRAM, CONTRARY TO LAW UNDER OHIO REVISED CODE, SECTION 2949.08(A)(B)(C)(2)(D) AND SECTION 2967.191."

I

{¶12} Appellant, in his sole assignment of error, argues that the trial court erred in granting him jail time credit for only the first thirty (30) days that appellant spent at Crossroads and not for the remainder of the time that he spent at the facility. We disagree.

{¶13} R.C. § 2967.191 governs reduction of prison term for prior confinement and states as follows: "The department of rehabilitation and correction shall reduce the stated prison term of a 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.”

{¶14} Time spent in a rehabilitation facility where one's ability to leave whenever he or she wishes is restricted may be confinement for the purposes of R.C. 2967.191. See *State v. Napier*, 93 Ohio St.3d 646, 2001-Ohio-1890, 758 N.E.2d 1127. As noted by this Court in *State v. Jones* (1997), 122 Ohio App.3d 430, 432, 702 N.E.2d 1061, the “court must review the nature of the program to determine whether the restrictions on the participants are so stringent as to constitute ‘confinement’ as contemplated by the legislature.” *Id.*

{¶15} In *Jones*, supra, the defendant, who was sentenced to prison after violating his probation, filed a motion for jail time credit seeking credit for time that he spent at Crossroads Center for Change. After the trial court overruled his motion, the defendant appealed. This Court, on appeal, noted that the record contained no information from which this Court could conduct a meaningful review of the nature of the program at Crossroads. For such reason, we vacated the trial court's judgment and remanded the matter to the trial court “with instructions to conduct a hearing on the nature of appellant's participation in the Crossroads Center program and determine whether he was ‘confined’ for purposes of the statute.” *Id.* at 432, 702 N.E.2d 106.

{¶16} Following remand, the trial court, in the *Jones* case, held a hearing and held that the appellant was not entitled to jail time credit for the time he spent at

Crossroads. The appellant then appealed. Pursuant to an Opinion filed in *State v. Jones* (June 25, 1998), Richland App. No. 97 CA 107, 1998 WL 430031, this Court affirmed the judgment of the trial court.

{¶17} At issue in the case sub judice is whether or not appellant was entitled to jail time credit for the time that he spent at Crossroads after the first thirty (30) days. At the hearing before the trial court, Lynn Spencer, the Executive Director of Crossroads Center for Change, testified that Crossroads was a six month residential treatment facility that provides substance abuse and other programming to its resident clients. While the facility has security personnel, Spencer testified that they are not in uniform, do not carry weapons and do not carry any type of restraining devices. According to Spencer, the security was “basically visual security.” Transcript at 6. She further testified that the security personnel were not there to keep people in and that they were told to contact the police if a problem arose. Spencer testified that while the six exit doors to the facility were locked from the outside to keep unauthorized people from entering the same, the doors were unlocked from the inside. Two of the six doors have alarms that are activated from 10:00 p.m. to 6:00 a.m. There are no bars on the windows or key passes to open doors. Nor are there perimeter fences.

{¶18} Spencer testified that the facility kept a head count through visual supervision. She also testified that, as part of the program, residents are required to go out and seek work and that they are not escorted when doing so. She also testified that residents may leave for medical or mental health appointments, church services, NA or AA appointments and that they could apply for leisure passes to go home on a weekend. The leisure passes range from eight (8) to thirty-six hours (36). Testimony

also was adduced that the residents may leave to go to the library or to buy personal items.

{¶19} Spencer also testified that there are less restrictions on a resident the further along he or she gets in his or her treatment. The following is an excerpt from her testimony:

{¶20} “A. The further along a client gets in their treatment program the less restriction they have as far as movement. I think maybe up to 60 days, you know, they are limited to a twelve hour pass. Then from 60 to 90 days then they are eligible for an overnight pass. After 90 days they are eligible for weekend passes.

{¶21} “Q. Is that based on the level of progress or period of time that they have been there?

{¶22} “A. Currently it’s based on your level of progress. Before it was based on the amount of time you were at Crossroads. Now it’s really based upon what you do in treatment.” Transcript at 11.

{¶23} At the facility, the residents are required to consent to random searches of their belongings or personal space. Spencer testified that the searches are conducted three or four times a week and that once residents return to the facility after being out, they are asked to empty their pockets, remove their jackets and hats and to lift up their pant legs. The purpose of the search is to prevent contraband from entering the facility.

{¶24} At the hearing, appellant testified that he was permitted to leave the facility to go to work a little more than thirty days after he entered the facility, and he was permitted to go to AA meetings and the library if he had a pass. When asked how long he was allotted to go to the library, appellant testified as follows: “An hour or two you

could go...they didn't check on you. They was pretty reasonable about that as long as you put in for it." Transcript at 31-32.

{¶25} Appellant also testified that although the facility's rules required residents to be in their room from 10:00 p.m. to 6:00 a.m., except for bathroom breaks, it was an honor system. He testified that the only time that he was not permitted to leave after the first thirty (30) days was when a dollar bill machine was missing and the facility was locked down.

{¶26} Based on the foregoing, we find that the trial court did not err in holding that appellant's "participation in the Crossroads Halfway House did not amount to confinement within the meaning of the jail credit statute" and in denying appellant's motion for jail time credit for time that he spent in the facility after the first thirty (30) days.

{¶27} Appellant's sole assignment of error is, therefore, overruled.

{¶28} Accordingly, the judgment of the Richland County Court of Common Pleas is affirmed.

By: Edwards, P.J.

Hoffman, J. and

Delaney, J. concur

s/Julie A. Edwards

s/William B. Hoffman

s/Patricia A. Delaney

JUDGES

JAE/d0527

