

[Cite as *State v. Palmer*, 2010-Ohio-5200.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

WILLIAM J. PALMER

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 10CAA030026

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Common
Pleas Court, Case No. 09DRI110525

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

October 21, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant William Palmer appeals his sentence in the Delaware County Court of Common Pleas on one count of grand theft, a felony of the first degree. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE

{¶2} On January 8, 2010, Appellant entered a plea of guilty to one count of grand theft, in violation of R.C. 2913.02(A)(1), a felony of the first degree. At the change of plea hearing, the State recommended a presentence investigation and restitution.

{¶3} On February 22, 2010, the trial court conducted a sentencing hearing, during which the State indicated an amenability to a sentence on the lower end of the sentencing guidelines, three to ten years. The court imposed a prison sentence of five years. The trial court denied Appellant's motion for jail time credit.

{¶4} Appellant now appeals, assigning as error:

{¶5} "I. THE TRIAL COURT ERRED BY SENTENCING APPELLANT TO FIVE YEARS IN PRISON.

{¶6} "II. THE TRIAL COURT ERRED BY REFUSING TO GRANT APPELLANT 109 DAYS OF JAIL TIME CREDIT."

I.

{¶7} In the first assignment of error, Appellant maintains the trial court erred in sentencing him to five years imprisonment as his conduct was not more serious than conduct normally constituting the offense, nor does he have a propensity to commit future crimes.

{¶8} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, the Ohio Supreme Court held Appellate courts reviewing felony sentences must apply a two-step approach: first, they must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law; if this first prong is satisfied, the trial court's decision in imposing the term of imprisonment shall be reviewed under an abuse-of-discretion standard.

{¶9} After *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, trial courts have full discretion to impose a prison sentence within the statutory range, and are not required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.

{¶10} Here, the trial court's decision was not contrary to law. The trial court expressly considered the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12. Moreover, the sentence was within the permissible range. Accordingly, the sentence is not clearly and convincingly contrary to law and we find the trial court did not abuse its discretion in sentencing Appellant.

{¶11} The first assignment of error is overruled.

II.

{¶12} In the second assignment of error, Appellant argues the trial court erred in denying him jail time credit. Specifically, Appellant asserts the trial court erred in not properly calculating the number of days to be credited against Appellant's sentence.

{¶13} On November 6, 2009, Appellant was arrested and confined on the charges herein. Appellant maintains he remained in jail until the sentencing hearing on February 22, 2010.

{¶14} R.C. 2967.191 governs the issue of jail time credit, and provides a sentence must be reduced by the total number of days the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted or sentenced. However, a defendant is not entitled to jail time credit for any period of incarceration arising from facts separate and apart from those on which the current sentence is based. *State v. Lynn*, 2007-Ohio-3344; *State v. Brooks*, 2006-Ohio-1485.

{¶15} At the sentencing hearing, the following exchange occurred on the record:

{¶16} “Mr. Jones: I would ask the court to grant Mr. Palmer jail-time credit back to November 6th of 2009 when he was arrested on this offense. Mr. Palmer would like to briefly say something to the court.

{¶17} “The Court: How many days is that?”

{¶18} “Mr. Jones: I can do the math real quick, Your Honor.

{¶19} “The Court: Great.

{¶20} “Ms. O’Brien: Your Honor, I have a question about jail-time credit. This is a general question. If he is being held by a holder from Franklin County, does that also count as jail-time credit on this case?”

{¶21} “The Court: No, not if he’s being held on both.

{¶22} “Ms. O’Brien: Because he’s getting credit for the time in Franklin County?”

{¶23} “The Court: Yeah. He doesn’t get credit for both. If he was serving, he gets credit for that Franklin County case even when he’s brought up here.

{¶24} “Ms. O’Brien: So it would be the State’s position he doesn’t have any jail-time credit for this case, Your Honor.

{¶25} “Mr. Jones: I would disagree with that, Your Honor. At some point, certainly, the time for the Franklin County sentence expired in the meantime, if what Miss O’Brien said is accurate. You said you spoke with probation and they said his time has expired.

{¶26} “Ms. O’Brien: No, I did not say that. What I said, Your Honor, is that by the time he gets back to Franklin County, there will be little, if any, remaining time. He is still under the holder from Franklin County and I think what they said is, he had 785 days on his sentence or something like that and he will have served 770 some. He was at C.B.C.F. - - the time he spent in jail on this case - - the time he spent in jail on the holder.

{¶27} “The Court: All right, Mr. Palmer, if you’d stand. Obviously, we want to make sure you receive all the credit you’re entitled to. So it may be a matter of just re-adjusting later on when we see what Franklin County, what credit they gave you versus what we did or didn’t give you. We want to make sure you receive all the credit you’re entitled to, certainly.”

{¶28} Tr. at 27-29.

{¶29} Upon review, we note Appellant did not object to the State’s statement relative to the Franklin County holder based upon the lack of documentation. Appellant has failed to affirmatively demonstrate in the record as it presently stands he was entitled to the credit sought. Accordingly, Appellant’s second assignment of error is overruled.

{¶30} The judgment of the Delaware County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin

HON. W. SCOTT GWIN

s/ John W. Wise

HON. JOHN W. WISE

