

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

STATE OF OHIO,	:	APPEAL NO. C-220078
Plaintiff-Appellee,	:	TRIAL NO. B-1907006
vs.	:	<i>OPINION.</i>
LORENA CELIS,	:	
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 20, 2022

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Keith Sauter*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Roger W. Kirk, for Defendant-Appellant.

CROUSE, Judge.

{¶1} Defendant-appellant Lorena Celis appeals the judgment of the Hamilton County Court of Common Pleas, sentencing her to 180 days in prison and an extended term of community control with no credit for time served, for violations of her community-control conditions. For the reasons that follow, we reverse the judgment of the trial court in part, and remand the cause for the trial court to determine the appropriate amount of jail-time credit and include it in the sentencing entry. We affirm the trial court’s judgment in all other respects.

Facts and Procedure

{¶2} Celis pleaded guilty to theft, in violation of R.C. 2913.02(A)(1), a felony of the fourth degree. She was sentenced to two years of community control and six months at River City Correctional Center (“RCCC”), with a period of postresidential community supervision as ordered by RCCC.

{¶3} After Celis completed the residential portion of RCCC, she violated her conditions of community control by committing several “technical violations.” Celis pleaded no contest to and was found guilty of the violations. She was sentenced to 180 days in the Ohio Department of Corrections, plus an additional year of community control with no credit for time served.

Analysis

{¶4} In her first assignment of error, Celis contends that the trial court erred by not crediting her for time served in jail and at RCCC. The state concedes that “Celis should be credited with any time served in jail and at River City Correctional.” We agree.

{¶5} We have stated that R.C. 2967.191 “authorizes a trial court to give a defendant credit for the total number of days that [s]he was ‘confined for any reason arising out of the offense for which [s]he was convicted and sentenced.’ ” *State v. Bowden*, 1st Dist. Hamilton No. C-140462, 2015-Ohio-3740, ¶ 17, quoting R.C. 2967.191. “The trial court is required to determine the appropriate amount of jail-time credit and include it in the sentencing entry.” *Id.*, citing R.C. 2929.19(B)(2)(g) and Ohio Adm.Code 5120-2-04(B).

{¶6} Any time served in a community-based correctional facility, like RCCC, is considered “confinement” under R.C. 2967.191 as well. *See State v. Napier*, 93 Ohio St.3d 646, 758 N.E.2d 1127 (2001), syllabus.

{¶7} “The trial court’s failure to properly award jail-time credit is an error cognizable on direct appeal” and rises to the level of plain error. *Bowden* at ¶ 18, citing *State v. Hargrove*, 1st Dist. Hamilton No. C-120321, 2013-Ohio-1860, ¶ 8-9.

{¶8} While the record does not make clear the exact number of days that Celis has been confined, it is evident that she has served significant time in jail and at RCCC for reasons arising out of this offense. On remand, the trial court should properly calculate and credit those periods of confinement. The first assignment of error is sustained.

{¶9} In her second assignment of error, Celis contends that the trial court erred “by imposing a community control sentence after the serving of a prison sentence for the same singular offense.”

{¶10} However, R.C. 2929.15(B)(1) provides that

[i]f the conditions of a community control sanction imposed for a felony are violated or if the offender violates a law or leaves the state

without the permission of the court or the offender’s probation officer,
the sentencing court may impose on the violator *one or more of the
following penalties*[.]

(Emphasis added.) R.C. 2929.15(B)(1). The statute goes on to list three options, each limited by its own set of conditions, including: “a longer time under the same sanction,” “a more restrictive sanction,” and “a prison term.” R.C. 2929.15(B)(1)(a), (b), (c). Prison terms for technical violations of community control are limited based on the underlying offense. In this case, Celis’s prison term was limited to 180 days. *See* R.C. 2929.15(B)(1)(c)(ii).

{¶11} The Eleventh Appellate District has read R.C. 2929.15(B)(1) to “plainly authorize[] a trial court to impose either a longer term of community control, a more restrictive community control sanction, a prison term, *or a combination of the three options*.” (Emphasis added.) *State v. Oudeman*, 11th Dist. Lake No. 2018-L-100, 2019-Ohio-2667, ¶ 16. We agree with the Eleventh District’s interpretation of R.C. 2929.15(B)(1).

{¶12} The trial court’s imposition of a prison term and a period of community control was authorized under R.C. 2929.15(B)(1). Accordingly, we overrule the second assignment of error.

Conclusion

{¶13} For the foregoing reasons, we sustain Celis’s first assignment of error, reverse the judgment of the trial court in part, and remand the cause for the trial court to determine the appropriate amount of jail-time credit and include it in the sentencing entry. We overrule the second assignment of error, and affirm the trial court’s judgment in all other respects.

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

MYERS, P. J., and **WINKLER, J.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion