

OHIO COURT OF APPEALS, NINTH JUDICIAL DISTRICT

State v. Luster

2023-Ohio-4227 (Ohio Ct. App. 2023) · No. C.A. No. 30669 · Decided November 22, 2023

SUMMARY

The Ninth District Court of Appeals of Ohio affirmed the Summit County Court of Common Pleas judgment awarding Corey Lee Luster 191 days of jail-time credit. The court held that, because the sentencing-hearing transcript was not included in the appellate record, it had to presume the regularity of the trial court’s proceedings and could not review Luster’s claim concerning the terms of his negotiated plea and jail-time credit.

CASE DETAILS

|                       |                                                                                                                                                                                                     |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Ohio Court of Appeals, Ninth Judicial District                                                                                                                                                      |
| WRITING FOR THE COURT | Jill Flagg Lanzinger; Hensal, P. J.; Carr, J.                                                                                                                                                       |
| JURISDICTION          | Ohio                                                                                                                                                                                                |
| DECIDED               | November 22, 2023                                                                                                                                                                                   |
| DOCKET                | C.A. No. 30669                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Luster appealed from the Summit County Court of Common Pleas judgment awarding him a total of 191 days of jail-time credit after partially granting his motion for additional credit.               |
| STANDARD OF REVIEW    | When an appellant fails to provide a transcript necessary to resolve an assignment of error, the appellate court presumes the regularity and validity of the lower court's proceedings and affirms. |
| PRECEDENTIAL VALUE    | Published Ohio Court of Appeals decision                                                                                                                                                            |
| PARTIES               | Corey Lee Luster v. State of Ohio                                                                                                                                                                   |

TOPICS

- appellate procedure
- criminal procedure
- sentencing
- preservation of error

PRACTICE AREAS

- Criminal law
- Appellate procedure
- Sentencing and jail-time credit

## QUESTIONS PRESENTED

1. Whether the trial court erred by failing to award additional jail-time credit allegedly agreed upon by the parties during the negotiated plea and sentencing hearing when the sentencing transcript was not included in the appellate record.

## HOLDINGS

1. When the transcript necessary to resolve an assigned error is omitted from the appellate record, the reviewing court must presume the validity and regularity of the lower court's proceedings and affirm.

## KEY QUOTATIONS

*“When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court’s proceedings, and affirm.” (¶ 6)*

*“Without a transcript of the sentencing hearing, this Court is unable to undertake a complete review of the sentencing hearing or the terms of the negotiated plea and jail-time credit.” (¶ 7)*

## FACTUAL BACKGROUND

Luster was incarcerated on convictions in four prior cases when he was indicted for three counts of aggravated trafficking in drugs. He pleaded guilty to amended second-degree felony charges and received an agreed aggregate prison term of six to seven years, to run concurrently with his prior sentences. The trial court initially awarded 77 days of jail-time credit and later awarded 114 additional days after partially granting Luster's motion. Luster claimed that the parties had orally agreed during sentencing to a greater amount of credit, but the sentencing transcript was absent from the appellate record.

## PROCEDURAL HISTORY

Luster was indicted on drug-trafficking charges, later pleaded guilty to amended charges, and received an agreed concurrent prison sentence. The trial court initially awarded 77 days of jail-time credit. After Luster moved for additional credit, the court awarded 114 additional days, and Luster appealed, arguing that the parties had agreed to a greater amount during sentencing. The Court of Appeals affirmed because the sentencing transcript was not included in the appellate record.

## DISPOSITION

affirmed

## CASES CITED

- Knapp v. Edwards Laboratories, 61 Ohio St.2d 197, 199 (1980)
- Cook v. Bell, 9th Dist. Summit No. 25092, 2010-Ohio-3579, ¶ 10
- Lorson v. Lorson, 9th Dist. Summit No. 28601, 2017-Ohio-8562, ¶¶ 5-7
- State v. Lothes, 9th Dist. Medina Nos. 11CA0015-M, 11CA0016-M, 11CA0017-M, 2012-Ohio-1388, ¶ 7

- State v. Campbell, 9th Dist. Medina No. 10CA0120-M, 2011-Ohio-5433, ¶ 5

## OPINION

### PER CURIAM.

[Cite as State v. Luster, 2023-Ohio-4227.] STATE OF OHIO ) IN THE COURT OF APPEALS )ss:  
NINTH JUDICIAL DISTRICT COUNTY OF SUMMIT ) STATE OF OHIO C.A. No. 30669  
Appellee v. APPEAL FROM JUDGMENT ENTERED IN THE COREY LEE LUSTER COURT  
OF COMMON PLEAS COUNTY OF SUMMIT, OHIO Appellant CASE No. CR 20 11 3451  
DECISION AND JOURNAL ENTRY Dated: November 22, 2023 FLAGG LANZINGER, Judge  
{¶1} Corey Luster appeals the judgment of the Summit County Court of Common Pleas that  
awarded him 191 days of jail-time credit.

This Court affirms. I. {¶2} On December 1, 2020, Luster was indicted on three counts of  
aggravated trafficking in drugs in violation of R.C. 2925.03(A)(1), (C)(1)(d), felonies of the first  
degree. Luster was already incarcerated for convictions in four previous cases when the indictment  
was issued. Luster’s prison term for those previous convictions commenced on September 16,  
2020. {¶3} On June 9, 2021, Luster pled guilty to three amended counts of aggravated trafficking  
in drugs, felonies of the second degree.

The trial court imposed an agreed aggregate prison term of six-to-seven years and ordered the new  
sentence to run concurrently with the prison terms of Luster’s previous cases. In its initial  
sentencing order, the trial court ordered 77 days of jail-time credit. 2 {¶4} On February 9, 2022,  
Luster filed a motion for jail-time credit alleging he did not receive all the jail-time credit to which  
he was entitled.

Luster indicated he was held in custody starting December 7, 2019, even though he was not  
indicted until December 1, 2020. Luster requested an additional 707 days of jail-time credit. The  
trial court granted Luster’s motion in part and awarded an additional 114 days of jail-time credit.  
Luster now appeals raising one assignment of error for our review. II. ASSIGNMENT OF ERROR  
THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DENYING APPELLANTS  
[SIC] FULL JAIL TIME CREDIT PER AGREEMENT OF ALL PARTIES INVOLVED DURING  
SENTENCING. {¶5} Luster argues that the trial court erred by not awarding him additional jail-  
time credit as agreed upon by the parties in a negotiated plea.

Luster asserts that the terms of the negotiated plea were stated orally during his sentencing  
hearing. However, the transcript of the sentencing hearing is not part of the record on appeal. {¶6}  
“When portions of the transcript necessary for resolution of assigned errors are omitted from the  
record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court  
has no choice but to presume the validity of the lower court’s proceedings, and affirm.” Knapp v.  
Edwards Laboratories, 61 Ohio St.2d 197, 199 (1980).

See also *Cook v. Bell*, 9th Dist. Summit No. 25092, 2010-Ohio-3579, ¶ 10 (“[I]n the absence of a complete record, this Court must presume regularity in the trial court’s proceedings and accept its judgment.”). Under Local Rule 9(A), the duty of arranging for the transmission of the record, including transcripts of proceedings, falls to the appellant. See *Lorson v. Lorson*, 9th Dist.

Summit No. 28601, 2017-Ohio- 8562, ¶ 5-7. See also App.R. 9(B). “When an appellant fails to provide a complete and proper 3 transcript, a reviewing court will presume the regularity of the proceedings in the trial court and affirm.” *State v. Lothes*, 9th Dist. Medina Nos. 11CA0015-M, 11CA0016-M, 11CA0017-M, 2012- Ohio-1388, ¶ 7, quoting *State v. Campbell*, 9th Dist.

Medina No. 10CA0120-M, 2011-Ohio-5433, ¶ 5. {¶7} Here, the record does not contain any transcripts. This Court is unable to review the merits of Luster’s argument as there is no written transcript of the sentencing hearing in the record before us. Without a transcript of the sentencing hearing, this Court is unable to undertake a complete review of the sentencing hearing or the terms of the negotiated plea and jail-time credit.

This Court must presume regularity in the trial court’s proceedings and affirm. Luster’s assignment of error is overruled. III. {¶8} Luster’s assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed. Judgment affirmed. There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27. Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run.

App.R. 22(C). The Clerk of the Court of Appeals is instructed to 4 mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30. Costs taxed to Appellant. JILL FLAGG LANZINGER FOR THE COURT HENSAL, P. J. CARR, J. CONCUR. APPEARANCES: COREY LEE LUSTER, pro se, Appellant. SHERRI BEVAN WALSH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant Prosecuting Attorney, for Appellee.