

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

JONATHAN JOEL PUPPO

Defendant/Appellant

:
:
:
:
:
:
:

No. CR 1138-2014

Seth Miller, Esquire

Kim M. Gillen, Esquire

Counsel for Commonwealth
Assistant District Attorney
Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - November 16, 2016

Defendant, Jonathan Joel Puppo, has appealed from the judgment of sentence imposed by this Court on June 2, 2016 after accepting Defendant's guilty plea to one count of aggravated assault¹. In his Concise Statement of Matters Complained of on Appeal, Defendant raises one issue arguing that the trial court erred in not awarding him additional credit for time served in the amount of 187 days. This memorandum opinion is filed in accordance with Pennsylvania Rule of Appellate Procedure 1925(a).

FACTUAL AND PROCEDURAL BACKGROUND

On January 15, 2015, this Court sentenced Defendant to no less than six (6) months nor more than twelve (12) months in the

¹ 18 Pa. Cons. Stat. § 2702 (a)(6). Defendant also simultaneously entered guilty pleas for charges in two other cases, CR 007-2014 and CR 270-2015, but the present appeal stems from the sentence imposed on the aggravated assault charge.

Carbon County Correctional Facility for a probation violation in case CR 200-2011. That sentence was made effective as of November 3, 2014. On May 13, 2015, Joseph Bettine of Carbon County Adult Probation visited Defendant at the Carbon County Correctional Facility. During that visit, Defendant indicated to Mr. Bettine that he wanted to max out his sentence because he knew he would not be released due to the new charges from the present case². Mr. Bettine responded that that was acceptable³. There was no discussion clarifying whether Defendant would receive credit for time served in the present case without being paroled for the sentence he was then serving for CR 200-2011⁴. As a result of that conversation, Defendant never applied for nor received parole, and he served the remainder of his sentence.

On January 19, 2016, Defendant entered a guilty plea for the aggravated assault charge in the present case⁵. On June 2, 2016, this Court sentenced Defendant to no less than fifteen (15) months to no more than thirty (30) months in a state correctional institution, followed by one (1) year of state probation⁶. This

² 6/2/16 Tr. at 9.

³ *Id.*

⁴ *Id.* at 9-10.

⁵ Defendant simultaneously entered guilty pleas for charges in cases CR 007-2014 and CR 270-2015.

⁶ For case CR 270-2015, this Court sentenced Defendant to no less than three (3) months nor more than twenty-four (24) months in a state correctional institution. For case CR 007-2014, this Court sentenced Defendant to one (1) year of state probation. Both sentences were to run concurrent with the sentence imposed for the aggravated assault charge.

Court awarded Defendant credit for 210 days served. This Court noted that because Defendant had never been paroled from his sentence in CR 200-2011, it could not apply that time toward the new sentence⁷.

On June 10, 2016, Defendant, through counsel, filed a Post-Sentence Motion arguing that he should receive additional credit for time served in the amount of 187 days, or the period from May 3, 2015 to November 5, 2015. He further argued this Court should reconsider making him eligible for the boot camp program, the RRRI (Recidivism Risk Reduction Incentive) program, and/or the SIP (State Intermediate Punishment) program. This Court scheduled a hearing on Defendant's Post-Sentence Motion for August 19, 2016.

On June 29, 2016, Defendant, through counsel, appealed this Court's June 2, 2016 Order. That same day, this Court directed that Defendant file a Concise Statement of Matters Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). On July 19, 2016, Defendant filed a Concise Statement raising the following issues: "(1) Whether the trial court erred in not awarding Defendant credit for time served in the Carbon County Correctional Facility from May 2, 2015 through November 5, 2015, a period of 187 days; (2) Whether the court erred in not making Defendant eligible for a boot camp program in the State

⁷ 6/2/16 Tr. at 20.

Correctional Facility; (3) Whether the court erred in not allowing Defendant to become eligible for the RRRI (Recidivism Risk Reduction Incentive) or SIP Program (State Intermediate Punishment); and (4) Whether the Defendant should be resentenced under the circumstances of his case."

On August 19, 2016, a hearing was held on Defendant's Post-Sentence Motion. On August 24, 2016, Defendant, through counsel, withdrew and discontinued his appeal filed June 29, 2016. On August 30, 2016 this Court entered an Order granting in part and denying in part Defendant's Post-Sentence Motion⁸.

On September 27, 2016, Defendant, through counsel, filed the instant appeal. That same day, this Court directed that Defendant file a Concise Statement of Matters Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). On October 27, 2016, Defendant filed a Concise Statement raising the following issues: "(1) Whether the trial court erred in not awarding Defendant credit for time served in the Carbon County Correctional Facility from May 2, 2015 through November 5, 2015, a period of 187 days; [and] (2) Whether the Defendant should be resentenced under the circumstances of his case."

⁸ This Court denied Defendant's request for SIP (State Intermediate Punishment), RRRI (Recidivism Risk Reduction Incentive), and the additional credit for time served, but granted Defendant's request for consideration for the Motivational Boot Camp Program.

DISCUSSION

The issue Defendant has raised on appeal is that this Court erred when it did not award Defendant credit for time served for the period of May 2, 2015 through November 5, 2015.

I. TIMELINESS AND WAIVER OF ISSUES RAISED ON APPEAL

This Court notes, as a threshold matter, that "[w]hen a trial court orders an appellant to file a concise statement of matters complained of on appeal pursuant to Rule 1925(b), the appellant must comply in a timely manner." *Hess v. Fox Rothschild, LLP*, 925 A.2d 798, 803 (Pa. Super. Ct. 2007) (citing *Commonwealth v. Castillo*, 888 A.2d 775, 780 (Pa. 2005)). "Failure to comply with a Rule 1925(b) order will result in waiver of all issues raised on appeal." *Id.* On September 27, 2016, this Court directed Defendant to file a Concise Statement of Matters Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b) within 21 days. Defendant did not file his Concise Statement of Matters Complained of on Appeal until October 27, 2016, nine days past the deadline this Court had set. Because Defendant failed to comply with this Court's Order, he has waived all issues raised on appeal and his appeal should be denied as a result. However, assuming *arguendo* that Defendant's issues raised on appeal are not waived, this Court will proceed to address those issues on the merits.

II. CREDIT FOR TIME SERVED

In criminal cases, credit for time served shall be awarded in the following circumstances:

(1) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

(2) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody under a prior sentence if he is later reprobated and resented for the same offense or for another offense based on the same act or acts. This shall include credit in accordance with paragraph (1) of this section for all time spent in custody as a result of both the original charge and any subsequent charge for the same offense or for another offense based on the same act or acts.

(3) If the defendant is serving multiple sentences, and if one of the sentences is set aside as the result of direct or collateral attack, credit against the maximum and any minimum term of the remaining sentences shall be given for all time served in relation to the sentence set aside since the commission of the offenses on which the sentences were based.

(4) If the defendant is arrested on one charge and later prosecuted on another charge growing out of an act or acts that occurred prior to his arrest, credit against the maximum term and any minimum term of any sentence resulting from such prosecution shall be given for all time spent in custody under the former charge that has not been credited against another sentence.

42 Pa. Cons. Stat. § 9760.

For purposes of analysis in the matter *sub judice*, the relevant passages of § 9760 are subsections (1) and (4). On that

[FM-46-16]

point, "[a] defendant shall be given credit for any days spent in custody prior to the imposition of sentence, but only if such commitment is on the offense for which sentence is imposed." *Commonwealth v. Infante*, 63 A.3d 358, 367 (Pa. Super. Ct. 2013) (citation omitted). Credit will not be awarded when a defendant is committed for a separate and distinct offense. *Commonwealth v. Clark*, 885 A.2d 1030, 1034 (Pa. Super. Ct. 2005). A sentencing judge does not have the authority to provide credit for time served on a prior unrelated charge. *Wassell v. Commonwealth*, 658 A.2d 466, 469 (Pa. Commw. Ct. 1995).

In this case, the time Defendant served from May 2, 2015 to November 5, 2015 counted toward his sentence for CR 200-2011 because he was never paroled. Whether the failure to seek parole was the result of negligence or misunderstanding on Defendant's part or a miscommunication between Defendant and Mr. Bettine of Carbon County Adult Probation cannot be known. In any event, Defendant indicated to Mr. Bettine that he wished to max out his sentence for CR 200-2011 and that he did not want to be paroled⁹. Because Defendant was committed for a separate and distinct offense from May 2, 2015 to November 5, 2015, this Court was without authority to award credit for that time served toward the new, unrelated charge in the present case. For this reason, this Court

⁹ 6/2/16 Tr. at 6, 13.

believes the awarded credit of 210 days was appropriate.

Based upon the foregoing, this Court respectfully recommends that Defendant's issue raised on appeal be dismissed on the merits, as the awarded credit for time served was appropriate under this Court's authority. Accordingly, this Court respectfully recommends that its Order of Sentence dated June 2, 2016, imposing a period of incarceration in a state correctional institution of not less than fifteen (15) months nor more than thirty (30) months, followed by one (1) year of state probation, with a credit of 210 days for time served, be affirmed.

BY THE COURT:



Joseph J. Matika, J.