IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	NO. 1207 CR 13
	:	225 CR 14
vs.	:	330 CR 14
	:	414 CR 14
JAMES V. KUTCHERA, JR.,	:	419 CR 14
Defendant	:	538 CR 14

Criminal Law - Sentencing - Sentencing Code, Section 9760(1) - Entitlement to Credit for "Time Spent in Custody" before Sentencing - Meaning of the term "Custody" - Functional Equivalent of Incarceration - Mandatory Credit for Court-Ordered Institutionalized Rehabilitation and Treatment Programs - Discretionary Credit for Voluntary Inpatient Treatment in a Drug or Alcohol Facility

1. A criminal defendant who is placed in custody on charges for which he is later sentenced is entitled to credit for all time spent in custody against any prison sentence imposed on such charges.

2. Section 9760(1) of the Sentencing Code provides that a defendant be given credit for "all time spent in custody as a result of the criminal charge for which a prison sentence is imposed." At a minimum, Section 9760(1) requires that a defendant is entitled to credit for all time spent in prison prior to sentencing on the offense for which he was placed in custody.

3. The meaning of the word "custody" in Section 9760(1) of the Sentencing Code extends beyond imprisonment alone, with imprisonment being but one form of custody.

4. Pre-sentencing constraints on a defendant's freedom imposed by a court which are the functional equivalent of those existing in a prison, if unilaterally and independently imposed by the court, constitute "custody" as that term is used in Section 9760(1) of the Sentencing Code and entitle the defendant to credit against a prison sentence. Consequently, a defendant who is court ordered to confinement in an institutional rehabilitation or treatment facility before being sentenced, which facility strictly

supervises its residents and confines them to the grounds of the facility, is entitled to credit for such time spent in rehabilitation or treatment.

5. A defendant who voluntarily admits himself into a long-term inpatient treatment program prior to sentencing is not automatically entitled to credit, as a matter of right, for the time spent in inpatient treatment; however, if the treatment was provided in an "institutional setting" with restrictions placed on the defendant tantamount to those which exist in prison, it is within the trial court's discretion to grant credit for the time spent in inpatient treatment.

6. Whether a defendant is entitled to credit, as a matter of right, for time spent in an inpatient drug or alcohol treatment and rehabilitation facility which occurs in an "institutional setting" with restrictions which are the functional equivalent of imprisonment is determined by whether the defendant was court ordered into inpatient treatment or voluntarily admitted himself for treatment.

7. Bail conditions which coerce a defendant into an inpatient treatment program only to avoid pre-trial imprisonment is the equivalent of court ordered treatment such that the defendant is entitled to credit for this time against a prison sentence. In contrast, where the defendant requests a change in bail conditions to allow the defendant's admission into an inpatient treatment facility and the court accommodates the defendant's request by reducing the monetary amount of bail to a nominal figure, but conditions defendant's release from jail on admission into an inpatient treatment program, because the impetus for treatment and the request to be placed in an inpatient facility originates with the defendant, whether the defendant is granted credit for any time spent in inpatient treatment rests in the sound discretion of the trial court.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	NO. 1207 CR 13
	:	225 CR 14
vs.	:	330 CR 14
	:	414 CR 14
JAMES V. KUTCHERA, JR.,	:	419 CR 14
Defendant	:	538 CR 14

Seth E. Miller, Esquire Counsel for Commonwealth
Assistant District Attorney
Adam R. Weaver, Esquire Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – October 31, 2016

Is a criminal defendant entitled to receive credit against his sentence for time spent in treatment in a privately-run drug or alcohol facility? Or is the decision within the sentencing court's discretion? Does the answer depend on whether the defendant voluntarily enters the facility on his own or is court ordered to do so? And does the nature or extent of the restrictions placed on a resident make a difference?

These questions are at the heart of Defendant's appeal in this case.

FACTUAL AND PROCEDURAL BACKGROUND

On May 26, 2016, the Defendant, James V. Kutchera, Jr., pled guilty to four counts of driving under the influence (drug

related),[1] one count of possession with intent to deliver[2] and one count of theft,[3] as detailed below:

CASE NO.	DATE OF OFFENSE	PLEA	GRADE OF OFFENSE	SENTENCE IMPOSED
1207 CR 2013	7/6/13	DUI	M-1	6 months to 5 years, SCI
538 CR 2014	11/14/13	DUI	M-1	1 to 5 years, SCI
330 CR 2014	11/21/13	DUI	M-1	1 to 5 years, SCI
225 CR 2014	11/22/13	Theft	M-1	6 months to 2 years less 1 day, SCI
419 CR 2014	1/11/14	DUI	M-1	1 to 5 years, SCI
414 CR 2014	1/30/2014 to 1/31/2014	PWID	F	1 year less 1 day to 2 years less 1 day, SCI

Defendant was sentenced on August 8, 2016, to an aggregate term of imprisonment of 2 years to 12 years less one day in a state correctional institute, against which he was granted 318 days credit, consisting of 27 days spent at White Deer Run for inpatient treatment and detoxification (N.T., 8/8/16, p.41) and 291 days in the Salvation Army's Four Step Program.[4] Defendant's motion to modify this sentence to include additional credit for his participation in extended optional rehabilitation was denied by order dated August 29, 2016, followed by Defendant's appeal taken on September 6, 2016. In this appeal, Defendant claims we erred in denying his request for an additional 373 days credit: 310 days for time spent in the Salvation Army's Extended Alumni Program between February 28, 2015 and January 4, 2016, and 63 days spent in the Joy of Living Recovery Program from

---

[1] 75 Pa.C.S.A. §3802(d)(1).
[2] 35 P.S. §780-113(a)(30).
[3] 18 Pa.C.S.A.§3921(a).
[4] In addition, in the case docketed to No. 414 CR 2014, Defendant was allowed 42 additional days credit for time spent in jail between the date of his arrest on March 18, 2014, and his release on bail on April 28, 2014.

January 20, 2016 to March 23, 2016. (*See* Defendant's Concise Statement of Matters Complained of on Appeal Pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure).

DISCUSSION

Defendant is twenty-nine years old. The offenses to which he pled guilty occurred during a period of slightly less than seven months and were all drug related. To Defendant's credit, he recognized his addiction and before being sentenced or spending time in prison for any of these charges voluntarily entered an inpatient detoxification program at White Deer Run in Allenwood, Pennsylvania, where he received treatment from February 12, 2014, to March 10, 2014. After he was arrested on March 18, 2014, in the case docketed to No. 414 CR 2014 for possession with intent to deliver and before he was released on bail on April 28, 2014, Defendant requested permission from the court to participate in a long-term treatment program at the Salvation Army. (*See* Defendant's Petition filed on April 7, 2014, requesting permission for Defendant to enter a long-term treatment program of six months or more, Paragraph 5).[5] The bail conditions subsequently imposed by the court accommodated this request and allowed Defendant to enter the Salvation Army's

[5] This *pro se* petition was filed in the cases then pending before the court, those docketed to Nos. 1207 CR 2013, 225 CR 2014 and 330 CR 2014 (MJ-56302-CR-0000370-2013), and case numbers 414 CR 2014 (MJ-56303-CR-0000054-2014) and 419 CR 2014 (MJ-56301-CR-0000088-2014), then pending before the magisterial district courts.

basic rehabilitation program on May 13, 2014, which he successfully completed on February 27, 2015. The treatment Defendant later received in the Salvation Army's Extended Alumni Program and the Joy of Living Recovery Program was voluntarily undertaken by Defendant and was not court ordered.

As a general rule, a defendant is entitled to credit for all time spent in jail prior to sentencing attributable to the offense for which he is sentenced. Specifically, Section 9760(1) of the Sentencing Code provides as follows:

> §9760. Credit for Time Served.
> (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.

42 Pa.C.S.A. § 9760(1). Under this Section, if before being sentenced to a period of imprisonment, the defendant has been held in prison on the same charge for which he is sentenced, he has an unquestioned right to receive sentencing credit for the time spent in prison. Commonwealth v. Kyle, 874 A.2d 12, 17 (Pa. 2005).

Nevertheless, because the meaning of the word "custody" in Section 9760(1) extends beyond imprisonment alone, with imprisonment being but one type of custody, Kyle, 874 A.2d at 19

(citing Commonwealth v. Chiappini, 782 A.2d 490 (Pa. 2001)), the more difficult question is, excepting imprisonment, what restrictions, if any, on a defendant's freedom of movement are tantamount to presentence custody for which credit is due. Nonmonetary conditions of release on bail pending trial or sentencing which require reporting or impose travel restrictions, or which otherwise subject a defendant to supervision while the defendant remains free on bail, including home confinement, with or without electronic monitoring, do not count. Kyle, 874 A.2d at 21-22. As expounded by Kyle, such constraints are not the functional equivalent of those existing in an institutional setting and, therefore, do not meet the statutory requirement of "custody" under Section 9760. *Id.* at 18 (citing Commonwealth v. Shartle, 652 A.2d 874, 877 (Pa.Super. 1995), *appeal denied*, 663 A.2d 690 (Pa. 1995)). In contrast, time spent in institutionalized rehabilitation and treatment programs which strictly supervise patients, monitor progress, and confine patients to the treatment facility is "time spent in custody" for purposes of Section 9760. Commonwealth v. Conahan, 589 A.2d 1107, 1109 (Pa. 1991); Kyle, 874 A.2d at 18 ("Courts have interpreted the word 'custody,' as used in Section 9760, to mean time spent in an institutional setting such as, at a minimum, an inpatient alcohol treatment facility."). Therefore, if a defendant is court ordered to confinement in an

institutional treatment facility before being sentenced, he is entitled to credit for the time spent in treatment. Commonwealth v. Conahan, 589 A.2d at 1109.

But suppose a drug-addicted defendant facing a long prison sentence finally comes to grips with the reality of his addiction, realizes that if he doesn't change course he will likely die, and, with the support of his family, voluntarily enters a long-term inpatient treatment program to save his life. He does well in the program, successfully completes the program, and, at sentencing, seeks credit for the time he was in inpatient treatment. As a matter of law is he automatically entitled to credit for the time he voluntarily spent in inpatient treatment? No. *See* Commonwealth v. Conahan, 589 A.2d at 1110. May the sentencing court within its discretion grant credit for this time voluntarily spent at an institutionalized rehabilitation facility? Yes. *Id*; *see also* Commonwealth v. Mincone, 592 A.2d 1375 (Pa.Super. 1991) (*en banc*) (discussing Conahan).

In Conahan, the defendant was convicted for the second time of driving under the influence and under the laws as they then existed was required to be sentenced to a mandatory minimum term of imprisonment of not less than 30 days. Before pleading guilty to this offense, the defendant voluntarily entered and successfully completed inpatient treatment for alcoholism in

three hospitals over a period of 95 consecutive days. The trial court sentenced the defendant to imprisonment for a minimum of 30 days and a maximum of one year but, pursuant to 42 Pa.C.S.A. § 9760, credited the defendant for 95 days of "custodial treatment" and granted immediate parole.

On appeal by the Commonwealth, the Superior Court reversed, finding that because defendant's confinement was not involuntary and because inpatient alcohol treatment was not the same as imprisonment, the defendant was not entitled to credit for this treatment. On review by our Supreme Court, the Supreme Court reversed and held that while the defendant was not entitled *as a matter of right* to credit for the time spent in inpatient treatment, because the treatment he received took place in an "institutional setting" and the restrictions placed on his liberties were sufficient to constitute "imprisonment," it was within the trial court's *sound discretion* to grant the defendant credit for the inpatient institutional rehabilitation he received. Conahan, 589 A.2d at 1109.[6]

[6] In Commonwealth v. Conahan, 589 A.2d 1107 (Pa. 1991), defendant's conviction of driving under the influence required that he be imprisoned for a minimum of 30 days. At the time the defendant in Conahan was sentenced, intermediate punishment as an alternative to imprisonment did not exist and, therefore, for the defendant to be given credit for his time in treatment the court needed to determine whether defendant's inpatient rehabilitation qualified as imprisonment. In answering this question, the Court first found that Section 9760 "time spent in custody" includes time spent in institutionalized rehabilitation and treatment programs, *Id.* at 1109, and further that "'institutionalized' rehabilitation is sufficient 'custody' for purposes of crediting 'time served' because it falls within the definition of 'imprisonment.'" *Id.* at 1108. This interpretation was premised on the

In Commonwealth v. Cozzone, 593 A.2d 860 (Pa.Super. 1991), as a condition of defendant's release on bail for his second driving under the influence offense, he entered an inpatient alcohol treatment center where he remained for 32 days. Defendant pled guilty to the offense, was sentenced to a term of imprisonment of not less than 30 days nor more than 23 months, and was given no credit for the time spent in inpatient treatment prior to his guilty plea.

In Cozzone, the circumstances preceding defendant's bail were that he failed to appear for a preliminary hearing, a warrant for his arrest was issued, and an explicit condition of his release on bail in lieu of being committed to the county prison was that he admit himself to an alcohol treatment facility. Given this background, the Cozzone Court found the

---

statutory framework as it then existed when the defendant in Conahan was sentenced and the court's construction of the statutory term "imprisonment" to encompass not only punishment but the treatment of addiction.

Since Conahan was decided, the Sentencing Code was amended to permit a sentencing court to impose a sentence of intermediate punishment in lieu of a mandatory prison sentence for defendants convicted of driving under the influence. *See* 42 Pa.C.S.A. § 9721(a)(6) (sentencing generally) and 9763(c) (stating that a defendant convicted of DUI may be sentenced to county intermediate punishment in a residential inpatient program or residential rehabilitation center, or to house arrest with electronic surveillance combined with drug and alcohol treatment). With the enactment of Section 9763(c), the Legislature has evidenced its intent that imprisonment and intermediate punishment are mutually exclusive sentencing options available to the court in driving under the influence cases and are to be treated differently. Commonwealth v. Koskey, 812 A.2d 509, 514 (Pa. 2002). With this development, whether Conahan would be decided the same today where a convicted driving under the influence offender facing a mandatory minimum prison sentence is sentenced to neither actual confinement in a prison or intermediate punishment is an open question. *See also* Commonwealth v. Mendez, 749 A.2d 511, 512 (Pa.Super. 2000)(equating inpatient rehabilitation as a form of intermediate punishment, citing 42 Pa.C.S.A. § 9763(b)(7)).

defendant did not voluntarily admit himself for treatment but did so only to avoid pretrial imprisonment, thus making the case distinguishable from Conahan, where the defendant voluntarily admitted himself into a treatment facility. Finding the time the defendant spent in inpatient treatment was "time spent in custody" within the contemplation of 42 Pa.C.S.A. § 9760(1), the Superior Court held the defendant was entitled to credit for this time against his prison sentence.

In Commonwealth v. Toland, in reviewing and analyzing the decisions in Cozzone and Conahan, the Court stated:

> Looking at these cases together, therefore, it seems that whether a defendant is entitled to credit for time spent in an inpatient drug or alcohol rehabilitation facility turns on the question of voluntariness. If a defendant is ordered into inpatient treatment by the court, *e.g.,* as an express condition of pre-trial bail, then he is entitled to credit for that time against his sentence. Cozzone. By contrast, if a defendant chooses to voluntarily commit himself to inpatient rehabilitation, then whether to approve credit for such commitment is a matter within the sound discretion of the court. Conahan. *See also* Commonwealth v. Mincone, 405 Pa.Super. 599, 592 A.2d 1375 (1991) (*en banc*) (trial court may exercise its discretion in determining whether to grant defendant credit towards his mandatory minimum sentence of imprisonment for time voluntarily spent at Gateway Rehabilitation Center, an institutionalized rehabilitation facility) (discussing Conahan, supra).

Commonwealth v. Toland, 995 A.2d 1242, 1250–51 (Pa.Super. 2010), *appeal denied*, 29 A.3d 797 (Pa. 2011).

In Toland, the magisterial district court imposed as a bail condition that defendant "shall enter and complete [a] comprehensive in-patient alcohol/drug treatment program." 995 A.2d at 1247. Despite this language in the bail bond, the trial court determined that defendant had voluntarily checked himself into inpatient treatment and was not entitled to credit. In affirming the trial court, the Superior Court found that the trial court's conclusion that defendant had voluntarily committed himself to residential rehabilitative treatment was supported by the record - upon release from prison, defendant did not immediately admit himself for treatment until one month after his release on bail, defendant continued his preliminary hearing numerous times to remain in treatment, and before defendant was found guilty he acknowledged that his entry into the inpatient treatment facility was not to avoid going to jail but to "save his life," claiming for the first time that he began treatment as a condition of bail only after the trial court denied him credit - and that the programs defendant entered were not custodial and did not rise to the level of "imprisonment." Toland, 995 A.2d at 1251; *see also* Commonwealth v. Shull, 2016 WL 4769512 (Pa.Super. 2016) (denying defendant's request for credit for pre-trial time spent in inpatient treatment, notwithstanding that defendant's bail bond was modified to include as an additional condition of his release

from jail that he remain in treatment at the facility where he voluntarily began treatment one week earlier and not leave unless accompanied by a facility employee or for the purpose of attending a court hearing; finding, as in Toland, that defendant had voluntarily admitted himself into a treatment facility "not to avoid pretrial detention but, instead, to acquire for himself the best treatment available for his addiction and medical difficulties").

In Defendant's *pro se* Petition filed on April 7, 2014, Defendant admitted having voluntarily admitted himself for inpatient treatment at White Deer Run for twenty-seven days which ended on March 10, 2014, and that at the conclusion of this stay he was advised to enter a long-term treatment program, the basis for his request seeking court approval for admission into a long-term treatment facility for six months or more. In this Petition, Defendant expressly identifies the Salvation Army as the facility for which he was "waiting on a bed date" and also states that his father, mother and future wife supported his request. Implied, if not specifically stated in the Petition, is that his life and future depended on his getting long-term treatment.

On April 23, 2014, in response to Defendant's request, the magisterial district justice in the case docketed to No. 419 CR 2014 set bail at $1,000.00, 10%, and imposed as a condition of

Defendant being released on bail that "Defendant must report to a Rehab within 30 days from today or bail will be revoked." Additionally, new charges in the cases docketed to Nos. 419 CR 2014 and 414 CR 2014, formed the basis for a petition to revoke Defendant's bail filed by the Carbon County Adult Probation Office on April 24, 2014, in the case docketed to No. 1207 CR 2013. By amended order dated April 28, 2014,[7] the Honorable Joseph J. Matika of this court revoked Defendant's bail previously set at $5,000.00 unsecured; reset bail at $1,000.00, 10%; and noted that if bail was posted, Defendant would have "30 days from April 23, 2014,[8] to enter the Salvation Army Rehabilitation Center and successfully complete the program." On April 28, 2014, Defendant, through his mother, posted the $100.00 bail amount required for his release in each of the three cases for which a monetary bail condition had been imposed,[9] and was admitted into the Salvation Army's Four Step Program on May 13, 2014.

It is apparent from the sequence and timing of Defendant's Petition for admission into a long-term treatment facility filed on April 7, 2014, the nominal amount of bail set, the bail conditions set by the magisterial district judge on April 23,

---

[7] This order is identical to the original order filed on April 28, 2014, the only difference being to correct the date of the order.

[8] This is the same date and time period set by the magisterial district justice in the case docketed to No. 419 CR 2014.

[9] The three cases are those docketed to Nos. 1207 CR 2013, 414 CR 2014, and 419 CR 2014.

2014, Judge Matika's order dated April 28, 2014, and the posting of Defendant's bail on April 28, 2014 by his mother, all of which allowed Defendant to enter into the Salvation Army's long-term program, that the courts were responding to Defendant's decision and request to be admitted into the Salvation Army's rehabilitation program. (N.T., 8/8/16, pp.41-42). Similar to the numerous continuances noted by the Court in Toland, after Defendant entered the Salvation Army Program, he repeatedly applied to continue his plea date, which was unopposed by the District Attorney's office, to allow him to complete the Salvation Army's Four Step Program, and later to participate in and complete both the Extended Alumni Program and the Joy of Living Recovery Program. Though Defendant's treatment in both the Salvation Army's basic and extended rehabilitation programs was continuous, a sixteen day break occurred between his completion of this treatment and his entry into the Joy of Living Recovery Program, a break which the Toland Court construed as supporting the sentencing court's conclusion that notwithstanding the literal wording of the bail bond, defendant's receipt of inpatient treatment was voluntary.

With these considerations in mind, and in accordance with the cases cited above, we believe the instant case is more closely aligned with Toland and Shull, then with Cozzone, and that the decision to grant Defendant any credit for the

treatment he received was one within our discretion, and not as of right. It was Defendant who initiated and requested he be allowed to participate in the Salvation Army Rehabilitation Program before the terms of his release on bail were changed to include rehabilitation, and it was Defendant who arranged to be admitted and thereafter voluntarily chose to remain in the program to better his life. Fairly stated, Defendant was not coerced into any treatment program by the bail conditions set by the court; rather, the bail conditions were changed to accommodate Defendant's request to enroll in and attend a treatment program outside of the prison setting.

This notwithstanding, in exercising our discretion we in fact gave Defendant full credit for the 291 days he spent in the Salvation Army's Four Step Program between May 13, 2014, and February 27, 2015, and also full credit for the 27 days he spent in the inpatient detoxification program at White Deer Run from February 12, 2014, to March 10, 2014, before any bail conditions were set in relation to Defendant receiving treatment for his addiction. Moreover, this credit was granted not only in the case docketed to No. 419 CR 2014, but also in the cases docketed to Nos. 330 CR 2014, 414 CR 2014 and 538 CR 2014. In doing so, we accepted that Defendant was committed to addressing his addiction; that he had devoted a significant amount of time in rehabilitation which he had successfully completed and where his

life had been structured and his liberties restricted; and that Defendant appeared to have turned his life around and should be rewarded for his efforts.[10], [11]

---

[10] With respect to the restrictions placed on Defendant in the Four Step Program, it is important to note first that the Salvation Army is neither an inpatient facility nor is it a licensed treatment center. (N.T., 8/8/16, pp. 8, 10). It is more accurately described as an adult rehabilitation center, with participants referred to as "beneficiaries," not patients. Participants are required to attend in-house individual and group counseling five to six days a week for an hour or two a day and to work for the Salvation Army forty hours a week as part of a work therapy program. (N.T., 8/8/16, pp. 9-10, 21). The participants in the Salvation Army program are not paid for this work, but in exchange receive food, shelter, clothing and counseling. (N.T., 8/8/16, p.9). In Defendant's case, he worked on trucks and in the kitchen and was also allowed to leave the property and make house calls to collect donations for the Salvation Army. (N.T., 8/8/16, pp. 45-46).

The four step basic program at the Salvation Army takes approximately thirty weeks to complete. (N.T., 8/8/16, p. 19). During the first phase, which is known as orientation and which lasts between twenty-eight (28) and thirty-five (35) days, the participant is unable to leave the property or to use a telephone. (N.T., 8/8/16, pp. 10-11). During the next three steps, the participants are allowed to leave the property unescorted for pre-approved meetings or events and must return by set curfews: 10:00 p.m. for steps two and three, and 10:30 p.m. for step four. (N.T., 8/8/16, p. 11). During their time away from the property, the participants are required to attend community-based self-help programs and outside fellowships (*e.g.*, Twelve Step Fellowships, Bible Studies, AA and NA Meetings) and are also allowed to visit and meet with family and to shop. (N.T., 8/8/16, pp. 11, 15, 46-47, 55). Upon their return to the property, the participants are required to submit to a breathalyzer test. These steps are the same for all participants enrolled in the program, whether or not they have been charged with a crime. (N.T., 8/8/16, pp. 17-18).

[11] In each of the six cases involved in this appeal, the Commonwealth and Defendant executed stipulations which provided that Defendant would be granted credit against his sentence for successful inpatient treatment. Although multiple stipulations with different dates appear in each case, the original of these stipulations bear dates of either June 17, 2014, or July 31, 2014 (*i.e.*, shortly after Defendant first entered the Salvation Army Program on May 13, 2014) and the most recent stipulations in each case are dated February 25, 2015 (*i.e.*, shortly before Defendant completed the Salvation Army's Four Step Program). Although we believe it significant that Defendant entered the Salvation Army Program before the first of the stipulations was agreed to, we believe these stipulations also provide an additional basis for the exercise of our discretion in awarding the Defendant credit for his successful completion of the Salvation Army's Basic Four Step Program. *Cf.* Commonwealth v. Kriston, 588 A.2d 898 (Pa. 1991) (holding that while generally credit is not due against a prison sentence for time spent on home electronic monitoring, where a defendant has been assured by prison authorities that such time would be counted towards his minimum sentence, equitable considerations required that credit be awarded).

In contrast to Defendant's completion of the Salvation Army's Four Step Program, not only was Defendant's participation in the Salvation Army's Extended Alumni Program and the Joy of Living Recovery Program also completely voluntary, his participation in these two programs was entirely optional on his part and was not a requirement of successful completion of the basic program. Moreover, the restrictions placed on Defendant in these two programs were less onerous than those in the Four Step Program and were not so coercive as to constitute custody. (N.T., 8/8/16, pp. 12, 15-16). In both of these programs, the Defendant was not locked in or confined to the facility; he was permitted to leave unescorted for appointments, work and leisure activities; if he chose to leave the program, he could do so without being physically restrained – albeit he would be terminated from the program; and if he left and did not return he would not be charged with escape. (N.T., 8/8/16, pp.11-13,

---

At the same time, we do not believe it was the intent of these stipulations that Defendant be granted credit for multiple and sequential treatment programs regardless of their duration. To find otherwise, would allow Defendant to game the system and control how much time he would spend in jail simply by continuing in treatment outside of a prison facility. It appears unlikely that such a result was reasonably contemplated by the parties at the time the stipulations were entered (N.T., 8/8/16, p.52) and was certainly not what we understood the stipulations to mean or what we felt bound to follow at the time Defendant's pleas were taken. To the contrary, we believe our reading of the stipulations was reasonable and the 318 days of credit which we awarded for Defendant's long-term treatment in the Salvation Army's Four Step Program, combined with his treatment at White Deer Run, was both fair and just.

15-24, 43-47, 55).[12] *Cf.* Commonwealth v. Fowler, 930 A.2d 586 (Pa.Super. 2007) (affirming denial of credit time for time voluntarily spent in a drug treatment court program from which defendant was revoked, which he was permitted to opt out of at any time, and where defendant's stay was not so restrictive as to constitute custody; *e.g.*, defendant was not physically prevented from leaving the facility, at no time was defendant locked down, there were no bars in the windows, perimeter fencing of the premises was for privacy and not for security purposes, and individuals there as part of the county drug court program were treated no differently than other residents), *appeal denied*, 944 A.2d 756 (Pa. 2008). By comparison, both these programs appear to more closely resemble home confinement restrictions for which credit is not allowed. Kyle, 874 A.2d at 21-22.

CONCLUSION

A criminal defendant is entitled to credit for time spent in custody before being sentenced. But, what constitutes

---

[12] In the Alumni Program, which provides participants with safe housing and is purely optional - most graduates of the Four Step Program do not continue with this extended time - participants often no longer work for the Salvation Army, but work off-site while living at the Salvation Army Center. (N.T., 8/8/16, pp. 19-23). In this case, Defendant worked in an outside restaurant since February 2015. (N.T., 8/8/16, p. 21; Pre-Sentence Investigation Report dated June 13, 2016, P.9).

Similarly, as a resident in the Joy of Living Recovery Program, Defendant continued his employment with the same restaurant at which he was working in the Salvation Army's Alumni Program and had outside counseling available to him. This program, basically a recovery house, provided Defendant with a structured living environment, with an emphasis on rehabilitation through community service, and required sign in/out rosters and curfews.

custody? In jail? Of course. In inpatient treatment? If court ordered, yes. If voluntarily entered by the defendant, the decision to grant or deny credit is within the discretion of the sentencing court.[13]

Bail restrictions which on their face condition release from prison on admission to an inpatient facility are more complicated. If the restrictions were imposed *sua sponte* by the court with the effect of coercing the defendant into treatment he would not otherwise have sought, the defendant is entitled to credit for the time spent in treatment. If instead the impetus for treatment originates with the defendant – oftentimes the defendant acknowledges his addiction and asks to be released into an inpatient facility for treatment - and the court in response to defendant's request imposes or modifies bail conditions to allow defendant to receive this treatment, defendant's entry into inpatient care may fairly be deemed to be voluntary, with the nature of the restrictions placed on the defendant while in the treatment program, his commitment to the

---

[13] With respect to the exercise of this discretion by the sentencing court, the standard of review on appeal is well-settled:

> Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Toland, 995 A.2d 1242, 1248 (Pa.Super. 2010) (citations omitted).

program, and whether he successfully completes the program being factors for the court to consider in exercising its discretion as to whether the defendant should be given credit against a prison sentence for his time spent in treatment.

Here, Defendant sought to be admitted to the Salvation Army's long-term treatment program for a period of six months or more. Defendant's bail conditions were set to accommodate this request and we considered all of Defendant's time spent in treatment to be voluntary. Our decision to grant Defendant credit for the 291 days he spent in the Salvation Army's Four Step Program – almost four months more than the six month minimum he originally requested - as well as the 27 days he voluntarily spent at White Deer Run before any monetary conditions of bail were imposed, was well within our discretion. Further, the limited restrictions and supervision Defendant faced while at the Salvation Army's Extended Alumni Program and the Joy of Living Recovery Program, as well as the duration of these stays in the context of the credit already given, justified our denial of this additional credit.

BY THE COURT:

____
P.J.