


was filed, date Defendant entered his guilty plea, and date Defendant was sentenced in each county. The court believes none of this information is disputed by Defendant with the possible exception of the date Defendant was arrested in Northumberland County on the charges filed against him in that county.

Defendant states in his Concise Statement that the arrest date was November 16, 2021. (Concise Statement, ¶2). In this, Defendant is mistaken and is contrary to the statement of undisputed facts agreed upon by all parties at the time of Defendant's sentencing on August 31, 2021. The correct date of Defendant's arrest in Northumberland County on the charges filed in that county is November 9, 2021. (N.T., 8/31/23, pp. 14, 16, 18-19; N.T., 11/30/23, p. 10). Defendant's arrest on November 10, 2021, on the charges filed in Carbon County is undisputed. (N.T., 8/31/23, pp. 13-14; N.T., 11/30/23, p. 8).

Our review of the facts, the applicable law, and our reasoning for the amount of credit we granted Defendant against the sentence we imposed is fully set forth in our Memorandum Opinion of December 19, 2023. Rather than repeating what we stated in that Opinion, we respectfully refer the Court to that Opinion for the reasons why Defendant's credit in this case was capped at eight days. For the Court's convenience, a copy of our December 19, 2023 Memorandum Opinion is attached to this Opinion as Appendix A.

Respectfully submitted,


_____ P.J.

[FN-01-24]

APPENDIX "A"

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

COMMONWEALTH OF PENNSYLVANIA

NO. CR-003-2022

KASIEM STAPLETON,

Defendant

Brian B. Gazo, Esquire
Assistant District Attorney

Counsel for Commonwealth

Jeffrey G. Velandar, Esquire

Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – December 19, 2023

The issue before us is under what circumstances, if any, is a defendant charged with criminal misconduct in one county (here, Carbon County) for which he fails to post bail following his arrest and is later convicted, but who at the time of his arrest is being held in custody in another county (here, Northumberland County) facing unrelated criminal charges committed in that county and for which he has also failed to post bail, entitled to credit at the time of his sentencing in the county where he was first charged (i.e., Carbon County) for the period during which he was incarcerated in another county (i.e., Northumberland County).

PROCEDURAL AND FACTUAL BACKGROUND

Between June 7, 2021 and July 23, 2021, on three separate occasions - June 7, July 20, and July 21, 2021 - the Defendant, Kasiem Stapleton, together with two

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accomplices, sold methamphetamine to a confidential informant. On July 30, 2021, the Commonwealth filed a criminal complaint against Defendant charging Defendant with, *inter alia*, possession with intent to deliver a controlled substance, methamphetamine, an ungraded felony offense.¹ On August 21, 2023, Defendant pled guilty to this offense and, on August 31, 2023, was sentenced to a period of imprisonment in a state correctional institution of not less than 24 months nor more than 60 months, this sentence being within the standard guideline range of 21 to 27 months. Defendant received a total of eight days credit against this sentence for those dates when Defendant was held in custody in the Carbon County Prison awaiting various legal proceedings in Carbon County.²

Defendant's arrest on his Carbon County charges occurred on November 10, 2021, at a time when Defendant was being held in custody in the Northumberland County Prison for two sets of criminal charges filed against him in that county as set forth in criminal complaints docketed to Nos. 1858 CR 2021 and 41 CR 2022 in Northumberland County. Defendant had been arrested in Northumberland County on these charges on November 9, 2021, one day before his arrest on the Carbon County charges. Defendant's preliminary arraignment before Magisterial District Judge Casimir T. Kociolek on the Carbon County charges occurred by videoconferencing on November 10, 2021, while Defendant was in the Northumberland County Prison. (See Magistrate Kociolek's

¹ 35 P.S. §780-113(a)(30).

² Defendant was given credit for the three-day period from January 29 through January 31, 2023, when Defendant was in Carbon County for a hearing on an omnibus pre-trial motion, and an additional five days credit for the period between August 18 and August 22, 2023, when Defendant was in the County to enter his plea.

preliminary arraignment notes of November 10, 2021). At this same time, bail was set by Magistrate Kociolek at \$100,000.00 straight, which amount has never been posted. Except as otherwise stated in this opinion, Defendant has at all times material to these proceedings been incarcerated in Northumberland County prior to his sentencing in Carbon County.

Because Defendant claims he is entitled to credit against his Carbon County sentence for all time he spent in custody in the Northumberland County Prison from the date of his arrest on November 10, 2021, until his sentencing on August 31, 2023, it's important that we provide additional detail with respect to the charges filed against Defendant in Northumberland County. Both Complaints filed against Defendant in Northumberland County were filed on November 9, 2021, the same date as his arrest on the offenses charged. (See page 1 of each Complaint under the heading "Defendant Identification Information", date filed; N.T., 8/31/23, Defense Exhibits A and B). In the case docketed to No. 1858 CR 2021, Defendant was charged, *inter alia*, with delivery of a controlled substance, fentanyl, on November 9, 2021, with bail set at \$40,000.00 straight. Defendant did not post bail. In the case docketed to No. 41 CR 2022, Defendant was charged, *inter alia*, with criminal use of a communication facility, a felony of the third degree,³ related to the delivery of a controlled substance, fentanyl, on February 9, 2021, with bail set at \$100.00, which also has not been posted. Defendant pled guilty to these offenses on February 28, 2022, and was sentenced by the court in Northumberland

³ 18 Pa.C.S.A. §7512(a).

County on September 15, 2023. Defendant was sentenced to a period of imprisonment of not less than 27 months nor more than 54 months in the case docketed to No. 1858 CR 2021 and a period of imprisonment of not less than 24 months nor more than 48 months in the case docketed to No. 41 CR 2022. (N.T., 11/30/23, Com. Ex. Nos. 1 and 2 (Northumberland County Sentencing Orders dated September 15, 2023)). In both of these cases, Defendant was given credit for 660 days served, the same period of time for which Defendant claims credit in the Carbon County case.

At the time of Defendant's plea in Carbon County on August 21, 2023, we were made aware of Defendant's pleas in Northumberland County and that Defendant was scheduled for sentencing in that County on September 15, 2023. Because Defendant spent the majority of his pretrial confinement in the Northumberland County and Snyder County jails (Snyder County houses Northumberland County overflow of prisoners), we requested counsel to brief the issue of what credit Defendant was entitled to receive at the time of his sentencing in Carbon County.⁴ Defendant provided the court with a sentencing memorandum on this issue. Ultimately, after reviewing what counsel had provided and our own independent legal research, we determined Defendant was entitled to eight days credit.

⁴ At the time of Defendant's plea, the Carbon County Adult Probation Office had advised the court that a defendant who was incarcerated due to his inability to post bail is entitled to credit for time spent prior to sentencing only if he is confined in the "home jail," which, in this case, is the Carbon County Correctional Facility.

Following Defendant's sentencing in Carbon County on August 31, 2023, Defendant on September 8, 2023, filed a post sentence motion challenging and again requesting that he be granted 660 days credit against his sentence from the date of his arrest, November 10, 2021, until his sentencing on August 31, 2023. Defendant's post sentence motion was heard on November 30, 2023, following which we denied this motion by order of the same date.

DISCUSSION

In Commonwealth ex rel. Bleecher v. Rundle, 217 A.2d 772 (Pa.Super. 1966), the defendant, Leonard Bleecher, was extradited from New York on charges filed against him in Delaware and Montgomery Counties. Upon his return to this Commonwealth, he was first taken to Delaware County where he was tried and found not guilty of the Delaware County offenses. Bleecher was then transferred to Montgomery County, tried and convicted. The sentence imposed in Montgomery County credited Bleecher for the entire period he was detained in New York and for all time he spent in custody after his transfer to Montgomery County, but did not credit Bleecher for that period of time he was in Delaware County prior to his transfer to Montgomery County, i.e., from June 11, 1962 until September 23, 1963.

The statute in effect at the time of Bleecher's sentencing, 19 P.S. §898, provided that "[a]ny person who has been convicted of an offense in any court in this Commonwealth and sentenced to a term of imprisonment should be given credit for the service of his sentence *for any days spent in custody on this offense* prior to the imposition

of his sentence, including any days spent in custody on this offense prior to the entry of bail." Bleecher, 217 A.2d at 774 (emphasis in original). In denying Bleecher's request for this additional credit, the Superior Court stated that while Bleecher was entitled to credit "for any days spent in custody prior to the imposition of sentence," this applies only "if such commitment is on the offense for which sentence is imposed," that "credit is not given ... for a commitment by reason of a separate and distinct offense." Id. at 774. As applied to Bleecher's circumstances, the Court held, citing to five prior appellate decisions of the Superior Court, that "the period of imprisonment in one county is credited only against the charges there, even though there are charges pending in other counties or states," and that Bleecher's "imprisonment in Delaware County was *not* 'on the offense' for which [he] was sentenced in Montgomery County." Bleecher, 217 A.2d at 776. In accordance with this rationale, as applied here, Defendant's pretrial incarceration in Northumberland County was not time spent in custody by reason of the Carbon County charges.

Sentencing credit for time served is provided for under Section 9760 of the Sentencing Code, 42 Pa.C.S.A. §9760. This Section, in relevant part, provides:

§ 9760. Credit for time served

After reviewing the information submitted under section 9737 (relating to report of outstanding charges and sentences) the court shall give credit as follows:

- (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.

* * * * *

(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.C.S.A. §9760(1) and (4). This Section was transferred from 18 Pa.C.S.A. §1360, which was enacted on December 30, 1974, following the Superior Court's decision in Bleecher. This notwithstanding, in Lantzy v. Commonwealth, 403 A.2d 1069, 1070 (Pa.Cmwlt. 1979) (en banc), the Commonwealth Court found that the principle enunciated in Bleecher – that the period of imprisonment in one county cannot be credited against charges pending in other counties or states - continues to apply absent the applicability of 18 Pa.C.S.A. §1360(4), now codified under 42 Pa.C.S.A. §9760(4). Commonwealth v. Little, 612 A.2d 1053, 1054-55 (Pa.Super. 1992) (citing with approval this interpretation of Lantzy).

Defendant relies heavily on Little in arguing his entitlement to credit for the time he was incarcerated in Northumberland County on wholly unrelated charges prior to his sentencing in Carbon County. In Little, at the time Little was arrested for theft and related charges filed in Centre County, he was already in custody in Allegheny County, where he was being held on different charges and had failed to post bail. Further, the offense for which Little was charged in Centre County occurred prior to his arrest in Allegheny County. Additionally, Little's sentencing in Centre County occurred before any sentence

was imposed by the Allegheny County court. Significantly, Little's arrest and prosecution in Centre County occurred after his arrest in Allegheny County. Under this set of facts, the Superior Court in Little held, pursuant to the clear statutory language in Section 9760(4), that Little was entitled to credit against his Centre County sentence for the entire period of time he was incarcerated in Allegheny County after his arrest in Centre County even though he had yet to be sentenced in Allegheny County.⁵

In contrast to Little, the sequence of events in the instant case does not match the conditions precedent prescribed in 42 Pa.C.S.A. §9760(4). Specifically, Defendant's prosecution on the Carbon County charges began prior to his arrest in Northumberland County. The Carbon County criminal complaint was filed on July 30, 2021; Defendant was not arrested in Northumberland County on the Northumberland County charges until November 9, 2021, nor were the criminal complaints in Northumberland County filed until November 9, 2021. Under these circumstances, Section 9760(4) is inapplicable and, as recognized in Little, the principle enunciated in Bleecher controls: a defendant is not entitled to credit for the period of incarceration occurring in one county on wholly unrelated charges against a sentence imposed by another County court.⁶

⁵ Moreover, the charges in Allegheny County were subsequently *not* proessed after Little was sentenced in Centre County.

⁶ Parenthetically, we note that Defendant has not been prejudiced by our decision not to credit him for the time he was incarcerated in Northumberland County. As already noted, Defendant received full credit against his Northumberland County sentences for all time he spent in prison in Northumberland County. A defendant is not entitled to receive credit twice for a single period of confinement. Lantzy, 403 A.2d at 1070.

CONCLUSION

In general, 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. Credit is not given ... for a commitment by reason of a separate and distinct offense." Bleecher, 217 A.2d at 774. "[C]redit for *pre-sentence custody time* cannot be earned against criminal charges pending in a different county." Doria v. Dept. of Corrections, 630 A.2d 980, 982 (Pa.Cmwlt. 1993) (citing Lantzy, 403 A.2d at 1070), affirmed, 652 A.2d 281 (Pa. 1994). Consequently, "trial courts lack the authority to apply pre-sentence custody credit for time served in a different county." Doria, 630 A.2d at 982. Succinctly stated, "pre-sentence custody [is to] be credited against the sentence imposed by the court in the same county of confinement." Doria, 630 A.2d at 982.⁷

BY THE COURT:



P.J.

⁷ Whether the statute should be amended to require credit for time served under circumstances similar to those in the instant case is for the legislature to determine. See, e.g., 18 U.S.C. §3585(b)(2) providing that "[a] defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences ... as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed [] that has not been credited against another sentence."