

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Jonathan S. Hall, II
Howard R. Young Correctional Institute
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Defendant, *pro se*

Re: State of Delaware v. Jonathan S. Hall, II
I.D. Nos. 0901007769
0905014917

Submitted: July 15, 2011
Decided: August 31, 2011

On Defendant Jonathan S. Hall, II's Motion to Compel.
DENIED.

Dear Ms. Keller and Mr. Hall:

INTRODUCTION

Defendant Jonathan S. Hall, II's ("Defendant") "Motion to Compel" seeks to compel the Department of Correction to award him "good time" credit towards the completion of his sentence. Defendant is currently serving a minimum mandatory sentence, pursuant to 11 Del. C. § 1448, and the Department of Correction has accordingly declined to award Defendant "good time" credit.

Upon review of the facts, the law, and the parties' submissions, Defendant's Motion to Compel is **DENIED**.

FACTS AND PROCEDURAL HISTORY

On September 9, 2009, Defendant was sentenced to, *inter alia*, three years at Level V incarceration for the offense of Possession of a Deadly Weapon by a Person Prohibited.¹ Thereafter, Defendant filed two motions for modification of sentence, both of which were denied by this Court.²

DISCUSSION

Defendant's three year sentence for the offense of Possession of a Deadly Weapon by a Person Prohibition is a statutorily required mandatory minimum.³ In contrast to Defendant's instant assertion, 11 Del. C. § 1448(e)(1)(b) provides that "[a]ny sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed."⁴

Defendant is correct in that 11 Del. C. § 4381(a) states that "all sentences, other than a life sentence, imposed for any offense pursuant to any provision of this title, Title 16 and/or Title 21 may be reduced by good time credit under the provisions of this subchapter and rules and regulations adopted by the Commissioner of Corrections." Accordingly, the State acknowledges that the terms of § 1448 and § 4381(a) "appear to conflict."⁵

¹ Def.'s Mot. to Compel. Defendant was also sentenced to one year at Level V incarceration, suspended for one year at Level III supervision, for his conviction of Assault Third Degree, one year at Level V incarceration, suspended for one year at Level III supervision, for his conviction of Resisting Arrest, and two years at Level V incarceration, suspended for one year at Level III supervision, for his conviction of noncompliance with condition of bond. *See* Sentence Order of Sept. 9, 2009.

² *See State v. Hall*, Del. Super., I.D. No. 0901007769, Cooch, R. J. (Jan. 13, 2010) (ORDER); *State v. Hall*, Del. Super., I.D. No. 0901007769, Cooch, R. J. (Mar. 8, 2010) (ORDER).

³ 11 Del. C. § 1448(e)(1)(b) ("Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of: . . . Three years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date.").

⁴ 11 Del. C. § 1148(e)(4).

⁵ State's Resp. at 2.

However, 11 Del. § 4381(b) forecloses Defendant’s instant contention. Under § 4381(b),

[t]he awarding of good time credit set forth in subsection (a) of this section above will not apply to sentences imposed pursuant to § 4214 or § 4204(k) of this title **or sentences imposed prior to the enactment of this statute.**⁶

The current language of § 4381(a)-(b) is completely new to this statute; the 2010 amendment re-designated the existing subsections (b), (c), and (d) as (c), (d), and (e), respectively, in order to accommodate the inclusion of subsections (a) and (b) as they currently read. Put differently, under the 2010 amendments to § 4381, the most recent version of section (b) was added contemporaneously with the newly introduced subsection (a). Accordingly, section (b)’s restriction on the applicability of subsection (a) to “sentences imposed prior to the enactment of this statute” precludes Defendant from utilizing § 4381(a) to overcome his ineligibility for good time credit pursuant to 11 Del. C. § 1148(e)(4). Thus, under to the terms of the relevant statutes, Defendant is not entitled to good time credit.⁷

Therefore, for all the reasons stated above, Defendant’s Motion to Compel is **DENIED**.

Richard R. Cooch, R.J.

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oc: Prothonotary

⁶ 11 Del. C. § 4381(b) (emphasis added).

⁷ Nonetheless, the Court notes that the argument advanced by the State in advance of its position was also incorrect; the State relied on language contained in a 2008 amendment to § 4381 which provided that the amendment would not be effective until “30 days after enactment.” The State appears to have mistakenly attributed this language to the relevant 2010 amendment⁷ and accordingly misapplied this 30 day standard to Defendant’s conviction. Consequently, this Court’s holding is predicated entirely on its independent application of § 4381(b) to Defendant’s motion.