

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Keith Coleman,	:
Petitioner	:
	:
v.	:
	:
Department of Corrections,	: No. 423 M.D. 2010
Respondent	: Submitted: October 8, 2010

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

Filed: January 4, 2011

Before this Court are the preliminary objections of the Department of Corrections (Department) to the petition for review in the nature of an action in mandamus filed by Keith Coleman (Coleman), an inmate at the State Correctional Institute at Cresson. Also before the Court is Coleman's application for summary relief.

The relevant facts alleged by the parties are as follows. In January of 1995, when Coleman was only 16 years old, he was arrested in Philadelphia and charged with numerous offenses stemming from incidents which occurred on December 2, 1994, and January 2, 1995. He was later certified for trial as an adult on these charges. On February 21, 1996, he entered a guilty plea to carrying a firearm

without a license and two counts each of robbery and burglary. He was sentenced to 2 ½ to 5 years on the firearms charge and 6 ½ to 15 years on each of the robbery and burglary charges, all of which were to run concurrent.¹ The initial DC-300B Court Commitment Forms issued on February 21, 1996 for the robbery and burglary charges all indicate that Coleman was to receive credit for time served from June 8, 1995 through February 21, 1996, *if not already credited*.

When Coleman was transferred to SCI Camp Hill after his sentencing part of his inmate file was inadvertently destroyed. Therefore, on December 28, 2006, Valerie Bloom, the Corrections Records Specialist at SCI Camp Hill sent a letter to the Philadelphia County Clerk of Quarter Sessions requesting copies of court orders regarding Coleman's sentence and any other pertinent documents concerning his incarceration on the robbery and burglary charges. As a result of this request, corrected DC-300B forms were issued for the robbery and burglary charges stating that Coleman was to receive zero days credit for time served.

On July 21, 2009, Coleman filed a *pro se* motion for credit for time served with the sentencing court, alleging that his maximum commitment date was erroneously set at February 21, 2011. Based upon the petition and supporting documents, it does not appear the sentencing court has taken any action with respect to this motion and Coleman has not pursued the matter further. However, the Clerk of Quarter Sessions of Philadelphia did send two memos to the Department indicating that Coleman was to be credited with time served while incarcerated in the

¹ Coleman was charged with several additional offenses stemming from each of the two incidents, but those charges were nolle prossed.

Philadelphia County Prison System from March 24, 1995 to February 21, 1996, *if not already applied to another matter*.

For unknown reasons, Kenneth R. Cameron (Superintendent Cameron), the Superintendent of SCI Cresson, sent a letter to Coleman's sentencing judge on September 9, 2009. Superintendent Cameron stated that the initial court order the Department received indicated that Coleman was to receive *no credit* for time served on his robbery and burglary sentence, but a letter received from the Philadelphia Prison System stated he *should* receive credit. Superintendent Cameron correctly cited this Court's decision in *Oakman v. Department of Corrections*, 903 A.2d 106 (Pa. Cmwlth. 2006), for the proposition that credit is controlled by the trial court's order, not a prison credit memo. However, Superintendent Cameron went on to state that the Department calculated Coleman's sentence with the credit as set forth in the memo from the Philadelphia Prison System and that if it did not receive further clarification from the court within 60 days, this tentative sentence computation would become permanent. On January 27, 2010, the Department filed a DC16E Sentence Status Summary reflecting this credit for time served and setting Coleman's controlling maximum date at March 24, 2010.

In August 2009, Coleman filed a federal habeas corpus petition in the United States District Court for the Eastern District of Pennsylvania claiming he was not being credited correctly for time served as ordered by the sentencing judge and that his maximum commitment date should be January 2, 2010, exactly 15 years from his initial arrest and confinement.

When researching the case in order to reply to Coleman's federal habeas corpus petition, counsel for the Department realized the error it made in calculating Coleman's sentence and crediting him with time served. Therefore, the Department issued a letter to Coleman on March 9, 2010, stating that his minimum and maximum dates were being reverted to what they were previously, as per directions from the Chief Counsel's office. The Department attached a new DC16E Sentence Status Summary form setting a new controlling minimum date of August 21, 2002, and a new controlling maximum date of February 21, 2011.

In its reply brief in opposition to Coleman's petition for habeas corpus, which Coleman attached to his petition for review with this Court, the Department provided additional pertinent background information regarding Coleman's sentencing. The Department alleged that on July 24, 1994, Coleman was initially arrested and charged as a juvenile with theft of an automobile. He was then arrested on the robbery and burglary offenses and charged as an adult. The Department claims he was certified to adult court on the first theft charge on March 24, 1995, and was not certified on the robbery and burglary charges until June 8, 1995. Coleman was sentenced on all of these charges on February 21, 1996. The Department claims that Coleman was indeed given pre-sentence credit from March 24, 1995, the date he was first certified on the theft charge, through the date of sentencing, but that this credit was only applied to his sentence on the theft charge. According to the Department, Coleman's time served could not be applied to the robbery and burglary charges because it was already credited to another unrelated sentence.

Coleman then filed a petition for review with this Court in the nature of mandamus, challenging the directive issued by Chief Counsel to the Department which changed his minimum and maximum dates. According to Coleman, the sentencing order specifically stated that he was to be given credit toward his robbery and burglary sentence for time served and the Department was duty bound to follow the sentencing court's order regarding pre-sentence credit. It should be noted that while Coleman attached numerous exhibits to his petition, including the various DC-300B and DC16E forms and the memos from the Philadelphia Prison System, he did not attach his actual sentencing order. He seeks an order of this Court directing the Department to rescind its March 9, 2010 directive, reinstate the DC16E form filed on September 8, 2009, and set his maximum controlling date as March 24, 2010. Coleman also seeks attorney's fees, costs and damages pursuant to 42 Pa.C.S. §8303, including damages for each day he was incarcerated beyond the alleged expiration of his maximum sentence.

The Department filed preliminary objections in the nature of a demurrer, claiming the petition should be dismissed because Coleman failed to establish a clear right to the relief requested. The Department noted that Coleman did not attach the actual sentencing order to his petition, only the memos from the Philadelphia Prison System, and this Court has ruled that the Department cannot rely on such administrative memos. *See Oakman*. According to the Department, Coleman was already given credit for time served toward his theft charge. Because a defendant cannot receive credit against more than one sentence imposed for multiple convictions of separate and unrelated charges, Coleman was not entitled to credit on his robbery and burglary sentence. *See* 42 Pa.C.S. §9760; *Bright v. Pennsylvania*

Board of Probation and Parole, 831 A.2d 775 (Pa. Cmwlth. 2003). The Department also alleged that Coleman had alternative remedies available to him – he had the right to directly appeal his sentence but did not do so, and he had available the Post Conviction Relief Act, 42 Pa.C.S. §9543. Because these alternative remedies were available, the mandamus action should be dismissed.

Coleman filed preliminary objections to the Department’s preliminary objections, claiming the demurrer should be dismissed with prejudice because it was a “speaking demurrer.” The Court sustained Coleman’s preliminary objections to the extent the Department’s demurrer relied upon facts beyond those pled in the petition for review.

Coleman also filed an application for summary relief, alleging there were no material issues of fact in dispute and that he was entitled to be released after having completed his maximum sentence. The Department filed an answer stating summary relief must be denied because Coleman’s right to relief was not clear and there was a material fact in dispute – whether the sentencing court already awarded the presentence credit sought by Coleman to another unrelated sentence. Both the preliminary objections and application for summary relief have been fully briefed and are ripe for review by this Court.

Section 9760 of the Sentencing Code (Code), 42 Pa.C.S. §9760, controls the computation of sentences and credit for time served. It provides, in pertinent part:

[T]he 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. §9760. We have repeatedly noted that Section 9760(4) mandates that credit for time served on a sentence can only be granted when it has not already been credited toward another sentence. *Bright*, 831 A.2d at 778 (citing *Taglienti v. Department of Corrections*, 806 A.2d 988 (Pa. Cmwlth. 2002)). In addition, this Court has made clear that the Department is bound to follow the sentencing court's order, it lacks the power to adjudicate the legality of a sentence or to add or delete sentencing conditions, and that administrative memos do not have the same force and effect as court orders. *Oakman*, 903 A.2d at 108-09 (citing *McCray v. Department of Corrections*, 582 Pa. 440, 872 A.2d 1127 (2005)).

Because time cannot be credited against two sentences, the issue underlying both the preliminary objection² and application for summary relief³ is whether the time Coleman served was credited solely against his theft conviction or whether, under the original sentencing order, the robbery, burglary and firearm charges were to be served concurrently with his previous theft conviction. Coleman repeatedly asserts that his original sentencing order for the robbery and burglary charges specified that he was to be given pre-sentence credit on that particular sentence. However, he did not (nor did the Department) attach a copy of the actual sentencing order itself to his motion for summary relief (nor did the Department in its Answer). Absent a properly authenticated sentencing order, Coleman has not made

² Preliminary objections in the nature of a demurrer admit as true all well-pled facts and all inferences reasonably deducible therefrom. *Norbert v. Commonwealth of Pennsylvania, State Police*, 611 A.2d 1353, 1355 (Pa. Cmwlth. 1992). However, the Court need not accept conclusions of law, expressions of opinion, argumentative allegations, or unwarranted inferences. *Bright v. Pennsylvania Board of Probation and Parole*, 831 A.2d 775, 777 (Pa. Cmwlth. 2003). To sustain such a preliminary objection, it must appear with certainty based upon the facts pled that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain the preliminary objection. *Id.*

³ While mandamus is an extraordinary writ, it can be used to compel the Department to honor particular sentencing orders or to compute a prisoner's sentence properly. *Saunders v. Department of Corrections*, 749 A.2d 553, 555 (Pa. Cmwlth. 2000) (citing *Dorsey v. Pennsylvania Bureau of Corrections*, 674 A.2d 1173 (Pa. Cmwlth. 1996)); *Jones v. Department of Corrections*, 683 A.2d 340 (Pa. Cmwlth. 1996). However, we may only issue a writ of mandamus to compel the performance of a ministerial act or a mandatory duty when the following criteria are met:

- (1) the petitioner has a clear legal right to enforce the performance of the act, (2) the defendant has a corresponding duty to perform the act and (3) the petitioner has no other adequate or appropriate remedy.

Saunders, 749 A.2d at 556.

out that he is entitled to summary relief.⁴ However, it is possible that Coleman could prove he is entitled to the relief requested if the original sentencing order was produced and it specifically stated that credit was to be given toward Coleman's robbery and burglary sentence. Therefore, we must overrule the Department's preliminary objections as premature.

Accordingly, we deny the Department's preliminary objections in the nature of a demurrer and overrule Coleman's application for summary relief.

DAN PELLEGRINI, JUDGE

⁴ Coleman's reliance on various forms completed by the Philadelphia Prison and Department personnel is misplaced. These forms do not have the same force and effect as a sentencing court order and there are various versions of these forms, some of which state that zero credit is to be issued. In any event, all of the forms Coleman relies upon which indicate that he is supposed to receive credit for time served – the DC300B forms and the memos from the Philadelphia Prison System – all contain the caveat that credit is to be given *only* if not already applied to another matter.

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ORDER

AND NOW, this 4th day of January, 2011, it is hereby ordered that the Preliminary Objections filed by the Department of Corrections are overruled, and the Application for Summary Relief filed by Keith Coleman is denied. The Department of Corrections is hereby ordered to file an answer within 30 days of the date of this order.

DAN PELLEGRINI, JUDGE