

**SUPERIOR COURT
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669

Submitted: October 11, 2005
Decided: December 15, 2005

INMATE MAIL

Antonio Carter
Howard R. Young Correctional Facility
1301 W. 12th Street
Wilmington, DE 19809

Re: *State v. Antonio Carter, ID# 0405017826*
Upon Defendant's Motion for Credit Time - - GRANTED

Dear Mr. Carter:

On March 8, 2005, you filed a "Motion for Modification" of the sentence imposed on December 9, 2004. Your Motion was denied on March 18, 2005. On April 8, 2005, you submitted a letter "in reference to two sentences that I am presently serving." Basically, you asked for an order compelling Department of Correction "to [credit] all of the time that I have served at Level V towards the sentence imposed in Case Id. 0405017826 [Possession with Intent to Deliver Cocaine], which according to the law, began at the date of my incarceration." In other words, you want good time credit for time served on a mandatory minimum sentence.

Your April 8, 2005 letter precipitated a series of orders, responses and counter-responses from the court, the State and you. The last pleading appears to be

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the State's October 11, 2005 letter.

The court has re-reviewed the correspondence and its detailed notes concerning the guilty plea colloquy on December 9, 2004, in courtroom 4B, beginning at 10:30 a.m. This letter/order reconsiders all matters previously decided and decides all matters not previously considered.

As discussed below and as a matter of law, you are entitled to earn "good time" or early release credit on both sentences you are serving. As to the former, the State concedes the point. As to the latter, Defendant violated 16 *Del. C.* § 4751, Possession With Intent to Deliver a Narcotic Schedule II Controlled Substance, Cocaine. Due to prior convictions, you received an enhanced sentence, three years mandatory minimum imprisonment, under 16 *Del. C.* § 4763(a)(2)(a).

Unlike other sentencing statutes that specifically deny good time credit toward some sentences, see e.g. 16 *Del. C.* § 4753A, for Trafficking; see also 11 *Del. C.* § 1447A, precluding good time credit toward sentences imposed for Possession of a Firearm During the Commission of a Felony, 16 *Del. C.* § 4763(a)(2)(a), does not, *inter alia*, address, much less restrict, good time credit's availability.

Meanwhile, 11 *Del. C.* § 4381(a) generally provides:

All sentences imposed for any offenses other than a life sentence imposed pursuant to any provision of this Code may be reduced by earned good time under the provisions of this section and rules and regulations adopted by the Commissioner of Corrections.

Defendant, of course, is not serving a life sentence and the section of the Delaware Code under which he was sentenced does not restrict his eligibility for good time credit. Accordingly, there appears to be no statutory basis to automatically deny good time credit to Defendant.¹

¹ Compare *State v. Conner*, Del. Super., Def. ID# 9902016257, Silverman, J. (March 23, 2001) (holding that 11 *Del. C.* § 1447A, possession of a firearm during the commission of a felony, required a three year minimum sentence, but good time credits should be applied to that offense. The legislature subsequently amended 11 *Del. C.* § 1447A to preclude good time credit availability for convictions under that statute.), with *State v. Rust*, Del.

In closing, the court observes, for your benefit, that one of the Delaware statutes expressly prohibiting “earned good time or any other reduction,” is 11 *Del. C.* § 4214(b). That law requires a sentence of life in prison without any sentence reduction for offenders with criminal histories like yours. In other words, if you commit another crime like the one for which you are now serving a three year mandatory minimum sentence, you are eligible to be sentenced to prison where you will stay until the day you die. As to 11 *Del. C.* § 4214(b), the law could not be any clearer.

For the foregoing reasons, Defendant is entitled to earned good time credit toward the violation of probation sentence and the possession with intent to deliver cocaine sentences that he is now serving. In light of the holding that Defendant **SHALL RECEIVE** earned good time credit as a matter of law, the court will not address Defendant’s other claims.

Because this decision takes a different tack from the State’s memoranda, the court will extend the reargument time through the holidays, until January 13, 2006. The delay will cause no prejudice to Defendant because he is not close to finishing the Level V portion of his sentences, regardless of whether he is entitled to good time credit.

IT IS SO ORDERED.

Very truly yours,

FSS/lah

oc: Prothonotary (Criminal Division)

pc: Renee Hrivnak, Deputy Attorney General

Aaron Goldstein, Deputy Attorney General

Dean DelCollo, Esquire