

**NOT FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2012 CA 0829**

**HOPE WEATHERSBY**

**VERSUS**

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS, JAMES  
LeBLANC, SECRETARY & HENRY GOINS, LRDC; JAMES ROGERS,  
WARDEN & CHERYL SCHEXNAYDER, RECORDS ANALYST LOUISIANA  
CORRECTIONAL INSTITUTE FOR WOMEN**

**Judgment Rendered: DEC 21 2012**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. 592,257

Honorable Todd Hernandez, Judge Presiding

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Hope Weathersby  
Louisiana Correctional Institute  
For Women  
St. Gabriel, Louisiana

Plaintiff/Appellant  
In proper person

Debra A. Rutledge  
Baton Rouge, Louisiana

Counsel for Defendant/Appellee  
James M. LeBlanc

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**BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.**

*Higginbotham, J. concurs.*

**McCLENDON, J.**

Hope Weathersby, an inmate in the custody of the Department of Public Safety and Corrections (DPSC), seeks review of a judgment of the Nineteenth Judicial District Court (19th JDC) that dismissed her petition for judicial review and affirmed the final agency decision in this matter. For the reasons that follow, we reverse.

**FACTS AND PROCEDURAL HISTORY**

In 2003, Weathersby was convicted of issuing worthless checks (Jefferson Parish docket number 026165) and for bank fraud (Jefferson Parish docket number 026970), and was placed on probation for five years. In 2006, she was arrested on two new felonies (Jefferson Parish docket numbers 030677 and 034929), and a probation hold was placed on her on August 7, 2006. She was also later arrested on a third felony charge (Jefferson Parish docket number 066004).

Weathersby was sentenced to eight years at hard labor on each of the three felony charges in docket numbers 030677, 034929, and 066004, with the three sentences to run concurrently.<sup>1</sup>

At a subsequent parole revocation hearing in docket numbers 026165 and 026970, she was sentenced to five years with those sentences to run concurrently with each other, but to run consecutively with the sentence on the other three felonies. With regard to these two docket numbers (026165 and 026970), the court ordered that credit be awarded for time served.<sup>2</sup>

DPSC ultimately awarded Weathersby jail credit for time served under Jefferson Parish Docket No. 026970, but did not calculate the time as jail credit in docket number 026165, instead crediting the time as awarded credits.

Weathersby, asserting, among other things, that DPSC failed to properly calculate her pre-sentence jail credits in docket numbers 026165 and 026970,

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<sup>1</sup> These three docket numbers included charges of bank fraud, issuing worthless checks, and theft.

<sup>2</sup> The record indicates that the credit to be awarded was 684 days.

filed a request for administrative remedy in accordance with the Corrections Administrative Remedy Procedure (CARP) established by LSA-R.S. 15:1171, *et seq.* Weathersby's request for an administrative remedy was denied at the first and second step.

Weathersby subsequently filed a petition for judicial review in the 19th JDC pursuant to LSA-R.S. 15:1177(A). In accordance with the screening provisions of LSA-R.S. 15:1178, Weathersby's petition was assigned to a commissioner at the 19<sup>th</sup> JDC to be reviewed. The commissioner's screening report, which was signed on November 21, 2011, indicated that there was no error in the DPSC's credit calculations. In his report, the commissioner, in finding no error in the DPSC's calculation, indicated:

The December 30, 2010 time computation and jail credit sheet indicates the [DPSC] declined to award [684] days of credit for time served prior to revocation as credit for time served under Jefferson Parish Docket No. 026165, but did credit the time at issue as awarded time credits. The [DPSC] correctly notes that offenders are not entitled to overlapping jail credits on consecutive sentences. However, where a sentencing court specifies that an offender is to receive credit for time served on a consecutive sentence, the time is credited as awarded credits, to denote the time was awarded by the sentencing Court. In this matter, the [DPSC] has properly calculated the petitioner's time served prior to revocation as awarded credit on Jefferson Parish Docket No. 026165. As for the petitioner's other revocation term under the Jefferson Parish Docket No. 026970, the Department has not run that term consecutive to the sentences imposed on May 9, 2008. Furthermore, the Department has given the petitioner [684] days of awarded credit under Jefferson Parish Docket No. 026970.

The commissioner recommended that the administrative decision be affirmed and that the request for judicial review be dismissed with prejudice.<sup>3</sup> Based on the commissioner's recommendation, the 19<sup>th</sup> JDC judge signed a judgment affirming the administrative decision and dismissing Weathersby's petition for judicial review with prejudice.

Weathersby has appealed, seeking review of the district court's judgment.

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<sup>3</sup> We note that the commissioner refers to consecutive sentences, and it is unclear what sentences the commissioner is referring to, but the sentences in 026165 and 026970 were ordered to run concurrently.

## DISCUSSION

Weathersby contends that she is entitled to jail credit under both Jefferson Parish Docket Nos. 026165 and 026970 for time served after the probation hold was placed on her on August 7, 2006. Weathersby asserts that the sentencing court intended that she receive credit for time served under both Jefferson Parish docket numbers as jail credits. Specifically, she references the following exchange between counsel and the court when it sentenced her in connection with docket numbers 026165 and 026970:

[Counsel]:

...But I would also ask the Court to recognize that over the past, I believe, two years she has served in the State's correctional system, and she served that time because of the probation hold that has been on her in this division.

THE COURT:

And I will certainly order that she get credit for that time against the five years that I had originally given her.

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THE COURT:

I'm going to order as the last sentencing judge, that it run consecutive to the sentence she received in the other division which is my understanding was eight years. I'm going to give her credit for time served on this charge, on these five years I'm going to give her credit for time served against that understanding that she's been held on a probation hold. **So it will reduce the five years that I gave her by the amount of time she's been incarcerated, and I so order, okay.** Thank you.

She gets five years of total incarceration. If it is two counts they run concurrent with each other, but it runs consecutive to the eight years that she received in Judge McCabe's court. [Emphasis supplied.]

Weathersby concludes that she is entitled to jail credits in both docket numbers 026165 and 026970 in accordance with the sentencing court's ruling.

It is well settled that the determination of the sentence a defendant is to serve, and what, if any, conditions are to be imposed on that sentence are made by the trial judge, not the defendant's custodian. The custodian's obligation is to see that the sentence imposed is the sentence served. **Pierre v. Maggio**, 445

So.2d 425, 426 (La. 1984). Thus, the DPSC is charged with the responsibility of complying with any conditions placed on a sentence by the trial judge.

In **Williams v. Cooper**, 05-2360 (La.App. 1 Cir. 10/6/06), 945 So.2d 48, the trial court sentenced a defendant to serve consecutive sentences for armed robbery and attempted armed robbery. Specifically, the trial court indicated that "Said sentences to run consecutive to each other less credit for time served," and a minute entry indicated that the court imposed both sentences with credit for time served. **Williams**, 945 So.2d at 51. Williams filed for a remedy under CARP, asserting that the DPSC had not given him credit for time served on both of his convictions. Following his denial in the first and second step, he filed a petition for review with the 19<sup>th</sup> JDC, which denied relief. On appeal, this court indicated that the trial court "intended that Williams receive credit for time served on both sentences." **Id.** Accordingly, this court reversed the district court's judgment and remanded the matter to the trial court to compute Williams' armed robbery and attempted armed robbery sentence with credit for time served. **Id.** While we note that **Williams** is distinguishable insofar as it involved consecutive sentences, it is nevertheless instructive.

Further, in this case, the sentencing court, although it ordered the sentences in docket numbers 026165 and 026970 be served consecutively with the other three felony convictions, clearly indicated that Weathersby be given a day-for-day jail credit for time served for the concurrent sentences in docket numbers 026165 and 026970.<sup>4</sup> Accordingly, the ruling of the district court is reversed and the DPSC is ordered to compute Weathersby's sentence in Jefferson Parish docket numbers 026165 and 026970 with credit for time served as jail credit. Cost of this appeal in the amount of \$1,347.00 are assessed to DPSC.

**REVERSED.**

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<sup>4</sup> To apply the jail credit to only one of the five year concurrent sentences, without an equal application to the other five year sentence, would essentially negate the effect of the credit awarded by the sentencing court.