

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0785

RONALD JACOBS

VERSUS

SECRETARY JAMES LEBLANC, DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS

Judgment Rendered: DEC 23 2015

* * * * *

On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C624014

The Honorable William A. Morvant, Judge Presiding

* * * * *

Ronald Jacobs
Rayborn Correctional Institute
Angie, LA

Petitioner/Appellant
Self-Represented Litigant

Debra Rutledge
Baton Rouge, LA

Attorney for Defendant/Appellee
Louisiana Dept. of Public Safety
And Corrections

* * * * *

BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

Guidry, J. concurs.

HOLDRIDGE, J.

Ronald Jacobs, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), appeals a district court judgment dismissing his petition for judicial review, wherein he challenged the Department's calculation of his sentence based on the amount of presentence jail credits awarded. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On January 12, 2001, Jacobs was arrested in Jefferson Parish and charged with attempted armed robbery in docket number 01-825. While still in custody on that charge, Jacobs was arrested on June 18, 2001 and charged with three counts of aggravated arson and one count of aggravated battery in docket number 01-4437.

On November 13, 2001, Jacobs pled guilty to all of the foregoing charges. In docket number 01-825, he was sentenced to eighteen years with credit for time served.¹ In docket number 01-4437, Jacobs was sentenced to eighteen years on each of the three counts of aggravated arson and ten years on the count of aggravated battery, with credit for time served. All of the sentences in docket number 01-4437 were to be served concurrently with one another and with the sentence in docket number 01-825.

The State then filed a habitual offender bill on the first count of aggravated arson in docket number 01-4437. Jacobs admitted his habitual offender status. Therefore, the trial court vacated the original sentence on count one of aggravated arson and re-sentenced Jacobs to eighteen years on that count under La. R.S. 15:529.1. The court also ordered that this sentence was to run concurrent with the

¹ A 1997 amendment to La. C.Cr.P. art. 880 makes credit for prior custody self-operating even on a silent record. State v. Johnson, 98-1407 (La.App. 1 Cir. 4/1/99), 734 So.2d 800, 809, writ denied, 99-1386 (La. 10/1/99), 748 So.2d 439; State v. Herrington, 49,323 (La.App. 2 Cir. 11/19/14), 152 So.3d 202, 205. Thus, credit for prior custody occurs automatically by operation of law.

other sentences in docket number 01-4437 as well as the sentence in docket number 01-825.

Jacobs' master record reflects a jail credit of 305 days for time served on his sentence for attempted armed robbery in docket number 01-825, 305 days being the number of days from his January 12, 2001 arrest on that charge until his sentencing on November 13, 2001. With respect to his sentences in docket number 01-4437, it shows a jail credit for 148 days for time served, 148 days being the number of days from his June 18, 2001 arrest on those charges until his sentencing on November 13, 2001. Accordingly, the record shows a full time release date of January 12, 2019, on docket number 01-825 and a full time release date of June 17, 2019, on the sentences in docket number 01-4437.²

Believing that the release date on his sentences in docket number 01-4437 was incorrect due to the Department's failure to apply the appropriate amount of presentence jail credits, Jacobs sought administrative relief. After being denied relief at both the first and second steps of the administrative remedy procedure, Jacobs filed a petition for judicial review.

The crux of Jacobs' complaint is that since he was still in jail on the charge in docket number 01-825 when he was arrested approximately six months later for the charges in docket number 01-4437 and his sentences for 01-825 and 01-4437 were ordered to run "concurrent[ly] with credit for time served," he should be given a presentence credit of 305 days on docket number 01-4437 as well. In other

² On December 16, 2003, Jacobs was convicted of obscenity in docket number 03 CR 543 and was sentenced to five years as an habitual offender. Following an appeal of that sentence, he was re-sentenced on February 22, 2005, to serve two years as a habitual offender to run consecutively to any other sentences. This changed Jacobs' full time release date to June 16, 2020.

Then, on November 25, 2008, Jacobs was sentenced to one year for battery of a correction facility employee, also to be served consecutively with any other sentences but subject to good time under Act 572. Consequently, Jacobs's master record now reflects a good time release date of December 1, 2021 and a full time release date of June 15, 2022.

In his ARP, Jacobs contended that, considering these subsequent sentences, he is entitled to a good time release date of June 12, 2021 and a full time release date of Jan. 12, 2022. However, in his petition for judicial review, Jacobs inexplicably asserts that his good time release date should now be June 25, 2021 and his full time release date should be January 22, 2022.

words, he maintains that he is entitled to jail credit on his 01-4437 sentences for the approximately six months of presentence time (January 12, 2001-June 18, 2001) he served solely on 01-825 before he was ever arrested on 01-4437. Thus, he contends that his sentences in 01-825 and 01-4437 should both end on January 12, 2019.

On judicial review, the commissioner assigned to review the matter issued a report to the district court recommending that it deny Jacobs' request for relief and affirm the Department's decision pursuant to La. R.S. 15:1177A(5) and (9).³ Based on the record, the commissioner concluded that the Department was neither arbitrary, capricious, nor manifestly erroneous in crediting Jacobs for 305 days for time served in docket number 01-825 and 148 days for time served in docket number 01-4437. The commissioner's report provided, in pertinent part:

Clearly, the Petitioner has received the jail credits in docket numbers 01-825 and 01-4437 he claims he is being denied. The Petitioner [errs] in claiming that he is entitled to jail credits in docket number 01-4437 pre-dating his arrest date on June 18, 2001 simply because he was never released from custody on docket number 01-825 when arrested on January 12, 2001.

.....

Overlapping jail credits on concurrent sentences does not ensure that an offender will receive equal jail credits on concurrent sentences regardless of the dates of arrest on those sentences. It simply means that overlapping jail credits will be applied on concurrent sentences based upon each sentence's date of arrest. The Petitioner cannot

³

Louisiana Revised Statute 15:1177A provides, in part:

(5) The review shall be conducted by the court without a jury and shall be confined to the record. The review shall be limited to the issues presented in the petition for review and the administrative remedy request filed at the agency level. In cases of alleged irregularities in procedure before the agency, proof thereon may be taken in the court.

.....

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions.
- (b) In excess of the statutory authority of the agency.
- (c) Made upon unlawful procedure.
- (d) Affected by other error of law.
- (e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues

receive jail credits for time spent in jail on another offense and prior to his arrest date on the sentence in question, unless specifically ordered by the sentencing court; therefore, the Petitioner's argument that he should receive credits on docket number 01-4437 from January 12, 2001 is erroneous. Had the sentencing judge specifically ordered that the Petitioner be given credit for time served from January 12, 2001 on docket number 01-4437 his argument would be correct and he would have received 305 days jail credit on docket number 01-4437. However, the [j]udge's silence limits his jail credits to 148 days on docket number 01-4437.

.....

Without an order from the sentencing [j]udge indicating the [award] of additional jail credits, the Department is bound to calculate the sentence [in docket number 01-4437] based upon the sentencing minutes and jail credit letters. The Petitioner has not shown that the Department did anything [wrong.]

Jacobs filed a traversal of the commissioner's report. Following a de novo review of the record, the district court, adopting the commissioner's report as its reasons, affirmed the Department's decision and dismissed Jacobs' appeal with prejudice, at his cost. Thereafter, Jacobs filed the instant appeal reiterating his belief that he is entitled to additional jail credit on his sentences in 01-4437 due to his continued custody following his January 12, 2001 arrest in docket number 01-825. After conducting our own independent review of the record in this matter, we find Jacobs' contention to be without merit.

DISCUSSION

At the time Jacobs committed the offenses in docket number 01-4437, La. C.Cr.P. art. 880⁴ provided:

⁴ In 2006, La. C.Cr.P. art. 880 was amended by 2006 La. Acts 174, § 2, effective August 15, 2006, to provide:

A defendant shall receive credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence. Under the provisions of this Section, no defendant shall receive more than thirty days of jail credit for any calendar month while serving a term for consecutive sentences.

It was again amended by 2011 La. Acts 186, § 1, effective August 15, 2011, to provide as follows:

A defendant shall receive credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence.

B. A defendant shall receive credit only for time in actual custody and only once during any calendar month when consecutive sentences are imposed.

C. No defendant shall receive credit for any time served prior to the commission of the crime.

D. A defendant shall not receive credit for time served under home incarceration.

E. A defendant shall not receive overlapping jail credit, except in the instance of concurrent sentences and then only for time spent in jail on the instant felony.

A defendant shall receive credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence.

Under this article, an inmate is only entitled to a credit on his sentence for time spent in custody prior to sentencing which is attributable, in whole or in part, to the charge. See State ex rel. Hudgens v. State, 28th Judicial Dist. Court, Par. of Lasalle, 368 So.2d 135 (La. 1979). Thus, La. C.Cr.P. art. 880 requires that an inmate be awarded credit for time served prior to sentencing on each charge “from the date of arrest on that charge until sentencing[,] if the sentencing court does not order additional credits from an earlier date, pursuant to [La. C.Cr.P. art.] 883.” Thomas v. Morris, 12-1148 (La.App. 1 Cir. 2/15/13) 2013 WL 595904, *3 (unpublished opinion), writ denied, 13-0560 (La. 7/31/13), 119 So.3d 598.

Therefore, unless otherwise specified by the sentencing court, Jacobs is only entitled to a jail credit on his sentences in docket number 01-4437 for presentence time served which is attributable to the charges in 01-4437, commencing with the date of his arrest on those charges. As noted in the commissioner’s report, the record does not reflect that the sentencing court specifically awarded Jacobs additional jail credits on his sentences in docket number 01-4437 for the approximately six months he served on docket number 01-825 prior to his arrest in 01-4437.⁵

Moreover, despite Jacobs’ assertion to the contrary, the fact that his sentences in docket numbers 01-825 and 01-4437 were ordered to run concurrently does not mean that he is entitled to concurrent jail credits. “Concurrent sentences do not necessarily include concurrent jail credits **unless the dates of arrest and**

⁵ As previously noted, La. C.Cr.P. art. 880 was amended in 2011. As a result of that amendment, La. C.Cr.P. art. 880(C) now expressly provides that “[n]o defendant shall receive credit for any time served prior to the commission of the crime.” Thus, pursuant to Article 880, the trial court’s discretion is limited to the extent that it cannot order that a defendant be given jail credit for an offense for time served prior to the commission of that offense.

presentence incarceration of each are the same.” Thomas, 12-1148 at p.3, 2013 WL 595904 at *3 (Emphasis added.) That is certainly not the case here.

CONCLUSION

Therefore, for all of the foregoing reasons, we affirm the judgment of the district court dismissing Jacobs’ petition for judicial review with prejudice. See La. R.S. 15:1177. Ronald Jacobs is cast with all costs of this appeal.

AFFIRMED.