

<b>Matter of Alsaifullah v St. Denis</b>
2015 NY Slip Op 31817(U)
August 11, 2015
Supreme Court, Franklin County
Docket Number: 2015-369
Judge: S. Peter Feldstein
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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF FRANKLIN  
X**

In the Matter of the Application of  
**TALIB ALSAIFULLAH, #11-A-1323,**  
Petitioner,

for Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

**DECISION AND JUDGMENT  
RJI #16-1-2015-0187.33  
INDEX # 2015-369  
ORI #NY016015J**

-against-

**CAROLYN ST. DENIS**, Inmate Records  
Coordinator II, Franklin Correctional  
Facility,

Respondent.

**X**

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Talib Alsaifullah, sworn to on April 19, 2015 and filed in the Franklin County Clerk's office on April 23, 2015. Petitioner, who is an inmate at the Franklin Correctional Facility, is challenging the respondent's failure to credit him with 525 days of jail time pursuant to Penal Law §70.30(3). The Court issued an Order to Show Cause on April 28, 2015 and had received and reviewed respondent's Answer and Return, verified on July 1, 2015 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated July 1, 2015, as well as by the Letter Memorandum of Richard deSimone, Esq., Deputy Counsel in Charge, DOCCS Office of Sentencing Review, dated June 25, 2015. Mr. deSimone's Letter Memorandum is annexed to respondent's Answer and Return as Exhibit I. The Court has also received and reviewed petitioner's July 4, 2015 Answer/Reply, received directly in Chambers on July 8, 2015.

On March 17, 2011 petitioner was sentenced in Albany County Court, as a second felony offender, to a controlling indeterminate sentence of 3½ years to 7 years upon his convictions of the crimes of Burglary 3<sup>o</sup> and Petit Larceny. He was received into DOCCS custody on March 25, 2011 certified by the Albany County Sheriff as entitled to 328 days of jail time credit. At that time the original maximum expiration date of petitioner's 2011 sentence was calculated as April 26, 2017.

On September 17, 2013, while serving his 2011 sentence in DOCCS custody, petitioner was produced in Cayuga County Court for arraignment in connection with new criminal charges. The criminal acts underlying the new criminal charges were committed on February 7, 2013 while petitioner was in DOCCS custody. The record is unclear as to precisely how long petitioner remained in local custody in Cayuga County following his September 17, 2013 arraignment. In any event, on February 24, 2015 he was sentenced in Cayuga County Court (following a plea), as a second felony offender, to an indeterminate sentence of 2 years to 4 years upon his conviction of the crime of Promoting Prison Contraband 1<sup>o</sup>. The 2015 sentencing court directed its sentence to run consecutively with respect to the undischarged term of petitioner's 2011 sentence.

Petitioner argues, in effect, that he is entitled to jail time credit (Penal Law §70.30(3)) against his 2015 sentence for the 525-day time period from September 17, 2013 (arraignment date) to February 24, 2015 (sentencing date). Penal Law §70.30(3) provides, in relevant part, as follows: “. . . [T]he maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court . . . the credit shall also be applied against the minimum period. The credit herein provided shall be

calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the . . . maximum term of any previously imposed sentence . . . to which the person is subject.” (Emphasis added).

Where, as here, a criminal defendant is confined in local custody outside the City of New York, jail time credit is calculated by the County Sheriff and certified to the New York State Department of Corrections and Community Supervision upon transfer of the inmate from local to state custody. *See* Correction Law §600-a. DOCCS officials are bound by the jail time credit calculations certified to the department by the county sheriff and can neither add nor subtract therefrom. *See Neal v. Goord*, 34 AD3d 1142, *Torres v. Bennett*, 271 AD2d 830 and *Jarrett v. Coughlin*, 136 Misc 2d 981. Therefore, to the extent petitioner claims an entitlement to jail time credit in excess of that certified to DOCCS by the Cayuga County Sheriff, such claim must fail since the petitioner did not name the sheriff as a respondent in this proceeding. *See Neal v. Goord*, 34 AD3d 1142. Notwithstanding the foregoing, if the Court perceived that petitioner had set forth a potentially meritorious claim of entitlement to additional jail time credit but was thwarted merely by his failure to name the Cayuga County Sheriff as an additional respondent herein, immediate dismissal would not be warranted since the *pro se* inmate petitioner could be afforded an opportunity to join the County Sheriff as an additional respondent even at this late juncture. For the reasons set forth below, however, the Court finds that petitioner’s claim of entitlement to jail time credit against his 2015 sentence for the time period from September 17, 2013 to February 24, 2015 is patently without merit.

Petitioner’s 2011 sentenced commenced running when he was received into DOCCS custody on March 25, 2011 (*see* Penal Law §70.30(1)) and has continuously run since that date without interruption. *See* Criminal Procedure Law §430.10. Regardless of the

nomenclature employed by the Cayuga County Court, petitioner's presence in local custody in Cayuga County as of September 17, 2013 simply represented an accommodation whereby a DOCCS inmate serving a previously imposed sentence is transferred to local custody to facilitate the disposition of additional charges pending in the local jurisdiction. In such circumstances, the New York State Court of Appeals has long held that jail time credit is not available against the sentence ultimately imposed in connection with the additional charges. *See Kalamis v. Smith*, 42 NY2d 191 at 195-200, *affg* 51 AD2d 859, and *Canada v. McGinnis*, 29 NY2d 853, *affg* 36 AD2d 830.

Since jail time credit is unavailable with respect to any time that is credited against the maximum term of a previously imposed indeterminate sentence (*see* Penal Law §70.30(3)), and since petitioner's 2011 sentence was running during the entire time period from September 17, 2013 to February 24, 2015, petitioner is simply not entitled to jail time credit against his 2015 sentence for that time period. In this regard the Court finds petitioner's reliance on *People ex rel Middleton v. Zelker*, 36 NY2d 691, to be misplaced. The *Middleton* petitioner faced criminal charges in two local jurisdictions and was held in local custody, at various times, in both local jurisdictions before sentences were imposed in both jurisdictions and petitioner was first transferred to state DOCCS custody. Since neither of the *Middleton* petitioner's sentences commenced running until he was received into DOCCS custody (*see* Penal Law §70.30(1)) jail time credit against his controlling sentence was potentially available for time spent in local custody in the non-controlling jurisdiction. In the case at bar, however, petitioner seeks jail time credit for a period of time (September 17, 2013 to February 24, 2015) after his 2011 sentence had commenced running and during which such sentence continued to run. Jail time credit is therefore not available.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

**ADJUDGED**, that the petition is dismissed.

**Dated:** August 11, 2015 at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice