

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Leonhauser, :
Petitioner :
 :
v. : No. 499 M.D. 2007
 : Submitted: February 29, 2008
 :
Pennsylvania Department of Corrections, :
Central Office Camp Hill, Pennsylvania, :
And Lisa Moffa, Records Supervisor, :
SCI-Smithfield, Huntingdon, :
Pennsylvania and John A. Palakovich, :
Superintendent, SCI-Smithfield, :
Huntingdon, Pennsylvania, :
Respondents :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: April 4, 2008

Before this Court is a preliminary objection in the nature of a demurrer filed by the Department of Corrections, Lisa Moffa and John A. Palakovich (hereafter collectively referred to as the Department) in response to a *pro se* petition for review in the nature of mandamus filed by William Leonhauser (Petitioner) seeking credit for time served against his sentence.¹ We sustain the preliminary objection in the nature of a demurrer and dismiss Petitioner's petition for review.

¹ By order dated November 2, 2007, this Court directed that Petitioner's petition for review be treated as a petition for review addressed to our original jurisdiction.

On October 22, 2007, Petitioner, who is incarcerated at State Correctional Institution at Smithfield, filed a petition for review in the nature of mandamus alleging that he was entitled to credit for time served, a total of two years, nine months and seventeen days. Petitioner alleged that on May 25, 2000, he was arrested in Baltimore, Maryland and, on May 27, 2000, a detainer was lodged against him by authorities in Philadelphia, Pennsylvania. Petitioner claimed that on June 8, 2000, the Maryland charges were dismissed and he waived extradition to Pennsylvania. He remained in jail, in Pennsylvania, as he was unable to post bail, which was assessed at \$2,000,000.00. He was later convicted on the charge of kidnapping and sentenced on March 11, 2003, to twenty-five to fifty years in prison, with credit for time served.²

Petitioner alleged that in 2007, he questioned the Department as to why it did not credit him with time served when it calculated the minimum and maximum dates of his sentence. Petitioner alleged that his effective date of sentence should be calculated as May 25, 2000. Petitioner claims that the Department has wrongly refused to re-calculate his sentence to include said credit. Petitioner requested that this Court order the Department to re-calculate his sentence to include the appropriate award of credit.

The Department responded by filing a preliminary objection in the nature of a demurrer. The Department agrees that the Court of Common Pleas of Philadelphia County (trial court) sentenced Petitioner to “[n]ot less than (25) years nor more than (50) years State Correctional Institute – Credit time served. Sentence to run Con-

² Petitioner also stated that he pleaded guilty to the charge of forgery on March 11, 2002, and received a sentence of eighteen-months to four years.

Currently with Federal Sentence.”³ (Department’s brief, Exhibit C). However, the Department notes that the trial court did not set forth the amount of time to be credited. Also, Petitioner’s commitment sheet does not address the issue of credit for time served. (Department’s brief, Exhibit A).

The Department alleges that it has no authority to determine the amount of credit due to Petitioner; it merely assigns the credit as directed by the trial court or the clerk of courts office. The Department further alleges that it does not have the independent knowledge necessary to make a determination as to the effective date of sentence and, unless the trial court supplies it with the information, it cannot apply a credit.⁴

“A proceeding in mandamus is an extraordinary action at common law, designed to compel the performance of a ministerial act or mandatory duty.” Aviles v. Department of Corrections, 875 A.2d 1209, 1211 (Pa. Cmwlth. 2005). A writ of mandamus may only be issued where no other remedy exists and a clear legal right in the plaintiff and a corresponding duty in the defendant has been established. Id. Preliminary objections to a proceeding in mandamus will be sustained where the face of the pleading fails to establish facts permitting recovery. Barndt, 902 A.2d at 592.

We agree with Petitioner that, pursuant to 42 Pa. C.S. §9760(1) he is entitled to credit for the time spent in custody on a criminal charge prior to sentencing

³ It is unclear whether the federal sentence referred to by the trial court is the above mentioned sentence for forgery.

⁴ The Department states that it did send a letter to the trial court on November 15, 2007, seeking clarification of the order. (Department’s brief, Exhibit 5). However, the trial court did not respond. The Department has developed the practice of contacting the trial court via letter, because it is not a party to the criminal proceedings and, as such, is without authority to petition the trial court for clarification of an order. Barndt v. Department of Corrections, 902 A.2d 589 (Pa. Cmwlth. 2006).

on that charge. We also agree with Petitioner that a writ of mandamus may be brought to compel the Department to apply credit for time served. Barndt, 902 A.2d at 592. However, we disagree with Petitioner that he has pled facts which establish that he has a clear legal right to the credit and that no other remedy exists.

In McCray v. Department of Corrections, 582 Pa. 440, 450, 872 A.2d 1127, 1133 (2005), the Pennsylvania Supreme Court explained that “[a]s part of the executive branch, the Department lacks the power to adjudicate the legality of a sentence or to add or delete sentencing conditions.” Here, the trial court awarded credit for time served, but failed to specify the amount of credit it was awarding. The Department cannot speculate as to the time to be credited based on its own review of the record or calculate the award of credit based on the claims of Petitioner. Therefore, the Department properly refused to award any credit.

A petitioner is not automatically credited for every day spent in prison prior to sentencing. Pursuant to Section 9760, a petitioner is not awarded “credit for time served on unrelated offenses or when credit has been already credited against another sentence.” Barndt, 902 A.2d at 595 (emphasis omitted). Petitioner, by his own admission, was jailed in Maryland on other charges and was later sentenced in Pennsylvania for forgery, prior to being sentenced for kidnapping. Therefore, a question exists as to whether the time he spent in prison from May 25, 2000, onward, should be credited solely toward the kidnapping charge. As such, Petitioner does not have a clear right to the credit he is seeking. Thus, mandamus is not appropriate.

Further, mandamus is only available where no other remedy exists. We have previously determined that when a petitioner seeks clarification/modification of his sentence thirty days after the entry to the sentencing order, the appropriate course of action is “to file a motion for modification of sentence *nunc pro tunc* in the court of

common pleas, asserting that the sentence as recorded did not reflect the bargain or the intent of the court, a fact which did not become apparent until beyond the thirty day appeal period.” Barndt, 902 A.2d at 598. As Petitioner has failed to petition to the trial court, he has failed to establish that no other remedy exists. Therefore, mandamus is not appropriate.

Accordingly, we sustain the Department’s preliminary objection in the nature of a demurrer, and we dismiss Petitioner’s petition for review in the nature of mandamus.

JOSEPH F. McCLOSKEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Leonhauser,	:	
Petitioner	:	
	:	
v.	:	No. 499 M.D. 2007
	:	
Pennsylvania Department of Corrections,	:	
Central Office Camp Hill, Pennsylvania,	:	
And Lisa Moffa, Records Supervisor,	:	
SCI-Smithfield, Huntingdon,	:	
Pennsylvania and John A. Palakovich,	:	
Superintendent, SCI-Smithfield,	:	
Huntingdon, Pennsylvania,	:	
Respondents	:	

ORDER

AND NOW, this 4th day of April, 2008, the preliminary objection in the nature of a demurrer filed by the Pennsylvania Department of Corrections, Lisa Moffa and John A. Palakovich is sustained and the petition for review in the nature of mandamus filed by William Leonhauser is dismissed.

JOSEPH F. McCLOSKEY, Senior Judge