NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
GREGORY RYAN HALL JR.,	:	
	:	No. 1946 MDA 2012
Appellant	:	

Appeal from the Order Entered October 1, 2012
In the Court of Common Pleas of York County
Criminal Division No(s).: CP-67-CR-0005452-2008

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED DECEMBER 04, 2013**

Appellant, Gregory Ryan Hall, Jr., appeals from the order entered in the York County Court of Common Pleas that granted in part and denied in part his Post Conviction Relief Act[1] (PCRA) petition seeking sentencing credit under 42 Pa.C.S. § 9760(3). Appellant argues that the PCRA court erred in failing to credit all time in custody on convictions set aside by this Court against a subsequent and unrelated sentence. We vacate the order and remand for further proceedings consistent with this memorandum.

The procedural history relevant to this appeal concerns three criminal proceedings. In the first proceeding, docketed at CR-1003-2007, the

* Former Justice specially assigned to the Superior Court.

[1] 42 Pa.C.S. §§ 9541-9546.

Commonwealth, on August 22, 2006, charged Appellant with three counts of delivery of cocaine and two counts of criminal conspiracy to deliver cocaine for three controlled purchases that occurred on February 22, March 22, and March 9, 2006.[2] ***Commonwealth v. Hall***, 136 MDA 2009 (unpublished memorandum at 1) (Pa. Super. Sept. 3, 2010). Appellant was arrested on August 25, 2006, for the charges in CR-1003-2007, but was subsequently released on bail. ***Id.***

Nearly two years later, Pennsylvania State Police investigators obtained information that Appellant would be travelling in a vehicle at a specified time and place after purchasing cocaine. Aff. of Probable Cause, 6/2/08. On May 28, 2008, investigators stopped the vehicle in which Appellant was a passenger and found seventy-five grams of cocaine in the passenger-side door pocket of the vehicle. ***Id.*** The following day, the Commonwealth charged Appellant with one count of possession with intent to deliver in a case docketed at CR-5452-2008. Criminal Compl., 5/29/08. According to the trial court, Appellant was taken into custody on May 30, 2008.

In November of 2008, Appellant proceeded to trial in the first Pennsylvania proceeding in CR-1003-2007. He was acquitted of one count of delivery of cocaine, but found guilty of two counts of delivery and two counts of conspiracy. ***Hall***, 136 MDA 2009 at 1-2. The trial court, on

[2] 18 Pa.C.S. § 903; 35 P.S. § 780-113(a)(30).

December 31, 2008, sentenced him to serve an aggregate five to ten years' imprisonment in that case. PCRA Ct. Op., 10/1/12, at 1. Appellant appealed the judgment of sentence in CR-1003-2007.

Meanwhile, on April 30, 2009, four months after sentencing in CR-1003-2007, Appellant was sentenced, on a federal charge docketed at "1:08-CR-241," to serve ten years' imprisonment. ***Id.*** at 2. Although no record of the federal proceeding was set forth in the present record, the PCRA court determined that the federal sentence was effective as of the date of sentencing and ordered to run concurrently with the first state sentence in CR-1003-2007.[3] ***Id.***

On March 3, 2010, nearly one year after the imposition of the federal sentence, Appellant pleaded *nolo contendere* to the charge of possession with intent to deliver in the second Pennsylvania case docketed at CR-5452-2008. N.T., 5/3/10, at 8. That same day, the trial court imposed a

---

[3] The Pennsylvania Commonwealth Court has noted:

> [A] federal court has no power to direct that a federal sentence shall run concurrently with a state sentence. Rather a federal judge may only recommend to the Attorney General that he designate a state institution as the place of service of a federal sentence in order to make it concurrent with a state sentence being served at that institution.

Griffin v. Pa. Dept. of Corrections, 862 A.2d 152, 156 (Pa. Cmwlth. 2004) (citations and quotation marks omitted).

negotiated sentence of three to six years' imprisonment. ***Id.*** The court stated that its sentence was consecutive to the federal sentence. ***Id.*** However, a sentencing form sent to the Pennsylvania Department of Corrections indicated that the sentence in CR-5452-2008 was consecutive to the federal sentence and concurrent with the first Pennsylvania sentence in CR-1003-2007. Appellant did not appeal from the second Pennsylvania sentence in CR-5452-2008.

On September 3, 2010, this Court reversed in part and vacated in part the judgment of sentence in the first case, CR-1003-2007, and remanded the case for further proceedings. ***Hall***, 136 MDA 2009 at 1. We concluded that the evidence was insufficient to sustain one of the two guilty verdicts for conspiracy. ***Id.*** at 13-16. We also noted that trial "commenced after the mechanical run date," and remanded the case "for a determination of whether or not the failure to bring [A]ppellant to trial within the Rule 600(G) constraints was occasioned by the Commonwealth's lack of due diligence." ***Id.*** at 12-13. Upon remand, the trial court, on November 21, 2011, dismissed the remaining counts in CR-1003-2007. PCRA Ct. Op. at 2.

Thereafter, on February 13, 2012, Appellant filed a *pro se* PCRA petition in the second case, CR-5452-2008, his first petition, seeking credit for time served on the vacated sentence in CR-1003-2007. The PCRA court

appointed counsel and convened a hearing on September 21, 2012.[4] The court, on October 1, 2012, entered the underlying order granting the petition in part. Order, 10/1/12. In its accompanying opinion, the court concluded that Appellant's PCRA petition was timely filed and credited Appellant with a total of 504 days of time originally credited to the sentence in CR-1003-2007 and time served on that sentence until the imposition of the federal sentence on April 30, 2009. PCRA Ct. Op. at 3-4. It, however, rejected Appellant's argument that he was entitled to credit for all time served in CR-1003-2007 after the imposition of the federal sentence. ***Id.*** at 4. This appeal followed.[5]

Appellant claims that "he is entitled to credit for the entire time served under [CR-]1007-2008." Appellant's Brief at 7 (unpaginated). Although Appellant provides no further argument to support this boilerplate allegation, we conclude: (1) the instant PCRA petition requesting credit was timely

[4] The PCRA court appointed the same attorney who represented Appellant during the plea proceedings in CR-5452-2008. In so doing, the court noted that Appellant's sole claim was for sentencing credit and that he did not challenge the validity of the plea proceedings. Counsel did not amend the *pro se* petition, but argued in support of Appellant's claim at the hearing on September 21, 2012.

[5] Appellant, after timely requesting an extension to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal, complied with the PCRA court order to so do. Appellant's statement set forth the following claim: "The court erred and abused its discretion in denying [Appellant's] PCRA petition in part by failing to give [Appellant] credit for time served from April 30, 2009 to November 21, 2011." Appellant's Statement of Matters Complained Of, 12/11/12, at 2.

filed; (2) the present record does not support the determinations of the PCRA court; (3) the order must be vacated; and (4) it is appropriate to remand this case with guidance regarding the application of section 9760(3).

It is well settled that a request for credit *nunc pro tunc* involves the legality of sentence and must be raised in a timely PCRA petition. ***Commonwealth v. Beck***, 848 A.2d 987, 989-90 (Pa. Super. 2004), Because "the timeliness requirements of the PCRA are mandatory and jurisdictional in nature," we must first determine whether Appellant timely filed the underlying petition seeking credit. ***See Commonwealth v. Fowler***, 930 A.2d 586, 590-91 (Pa. Super. 2007) (citations omitted). In so doing, we note that the instant PCRA court determined that Appellant's petition was not filed within the one-year PCRA time bar, but that he exercised due diligence when filing the underlying *pro se* PCRA petition following the dismissal of the charges giving rise to the first case, CR-1003-2007. ***See*** PCRA Ct. Op. at 3.

The timeliness requirements of the PCRA petition are governed by well settled standards:

> Title 42 Pa.C.S.[ ] § 9545(b)(1) provides that "[a]ny petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date judgment becomes final. . . ." Pursuant to Pa.C.S.[ ] § 9545(b)(3), "a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review."

* * *

> Section 9545(b)(1), however, provides the following . . . circumstance[ ] wherein a petition that is filed in an untimely manner may be considered by the court:
>
> * * *
>
> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence . . . .

Beck, 848 A.2d at 990-91 (citations omitted). Section 9545(b)(2) further requires that a petition invoking a timeliness exception must be filed "within 60 days of the date the claim could have been presented." 42 Pa.C.S. § 9545(b)(2).

Instantly, the judgment of sentence in the second Pennsylvania proceeding in CR-5452-2008 was imposed on March 3, 2010, and became final on April 2, 2010, at the expiration of the appeal period to this Court. ***See*** Pa.R.A.P. 903(a) (stating general rule that notice of appeal be filed within thirty days of the entry of the order appealed). Thus, the mechanical one-year PCRA time bar expired on April 4, 2011, and Appellant's underlying PCRA petition seeking sentencing credit in CR-5452-2008, filed February 13, 2012, was untimely on its face. ***See*** 1 Pa.C.S. § 1908 (prescribing rules for computation of time); 42 Pa.C.S. § 9545(b)(1), (3).

Appellant, in his *pro se* PCRA petition, pleaded that: (1) the charges in CR-1003-2007 were dismissed on November 21, 2011, following the remand ordered by this Court; and (2) he received a sentence status sheet on

January 11, 2012, indicating that the time served on CR-1003-2007 was not credited to CR-5452-2008. Appellant's PCRA Pet., 2/13/12, at ¶¶ 4-6. Therefore, he established a previously unknown fact giving rise to his claim that he was entitled to credit from CR-1003-2007 against CR-5452-2008, and we discern no basis to disturb the decision of the PCRA court that he exercised due diligence by filing the underlying petition within sixty days of discovering that credit was not allocated. ***See*** 42 Pa.C.S. § 9545(b)(1)(ii), (2). Thus, the instant PCRA proceeding was commenced in a timely fashion, and the PCRA court properly concluded that it had jurisdiction to consider Appellant's request for credit.[6]

On appeal from the grant or denial of PCRA relief, "[o]ur standard of review . . . is limited to determining whether the order is supported by the record evidence and is free of legal error[, and o]ur scope of review is limited to the PCRA court's factual findings and the evidence of record." ***Fowler***, 930 A.2d at 590 (citations omitted). This Court may address questions regarding the legality of sentence *sua sponte*, and our review of

[6] We further note that because the first Pennsylvania sentence in CR-1003-2007 was vacated and the charges dismissed, the remaining sentences in this appeal are the federal sentence and the second Pennsylvania sentence in CR-5452-2008 that was imposed consecutively to the federal sentence. Therefore, although Appellant is not currently serving a Pennsylvania sentence, he is eligible to seek PCRA relief on CR-5452-2008 for credit due. ***See*** 42 Pa.C.S. § 9543(a)(1)(iii) (stating that petitioner is eligible for PCRA relief when, *inter alia*, he is "serving a sentence which must expire before the person may commence serving the disputed sentence").

such questions is *de novo* and plenary. ***Commonwealth v. Infante***, 63 A.3d 358, 363, 365 (Pa. Super. 2013).

At the outset, we are compelled to comment on the record in this appeal. Currently, the record is captioned under the second Pennsylvania proceeding in CR-5452-2008 and lacks any specific documentation to substantiate the PCRA court's findings with respect to the first Pennsylvania proceedings in CR-1003-2007 and the federal prosecution. Aside from passing references by the parties at the PCRA hearing, there is no basis to confirm the findings of the court regarding the dates, length, or causes of Appellant's time in custody with respect to CR-1003-2007 or the federal proceeding.

Appellant, as the petitioner in the PCRA court, bore a burden of production. ***See Commonwealth v. Shaw***, 550 A.2d 555, 560 (Pa. Super. 1988) (affirming Post Conviction Hearing Act court's finding that petitioner failed to adduce evidence to prove request for credit). Moreover, as the appealing party before this Court, Appellant is responsible to ensure that there is a complete record to substantiate his claim of error. ***See Commonwealth v. Preston***, 904 A.2d 1, 6-7 (Pa. Super. 2006) (*en banc*) (noting, "In the absence of an adequate certified record, there is no support for an appellant's arguments and, thus, there is no basis on which relief could be granted"). The failure to do so, coupled with the complete absence of argument in an appellate brief, warrants dismissal of an appeal. ***See***

Preston, 904 A.2d at 6-7; ***Commonwealth v. Hakala***, 900 A.2d 404, 406-07 (Pa. Super. 2006) (discussing Pa.R.A.P. 2119(a)).

However, we decline to find waiver in this case. Instantly, the Commonwealth, at the PCRA hearing, did not object to the Appellant's recitation of the procedural histories relevant to this appeal and acceded to the request for credit. Nevertheless, the Commonwealth, for the first time on appeal, suggests that the PCRA court's rulings "run afoul of" the decisional law and general principles of sentencing credit. Commonwealth's Brief at 12. Moreover, since this appeal raises question regarding the legality of sentence, which may be considered *sua sponte*, it is appropriate under the unique circumstances of this appeal, to vacate the court's order, remand for further development of a record, but address the sentencing credit issues that are capable of repetition on remand.

The Pennsylvania Supreme Court has summarized the general principles underlying sentencing credit as follows:

> [T]here is no constitutional right to pre-sentence confinement credit and that credit statutes stem principally from the recognition that pre-sentence detention is often the result of indignecy. Underpinning credit statutes is the principle that an indigent offender, unable to furnish bail, should serve no more and no less time in confinement than an otherwise identically situated offender who succeeds in furnishing bail.

Martin v. Pa. Bd. of Probation & Parole, 840 A.2d 299, 304 (Pa. 2003) (citations omitted).

The Court has also recognized that "the Constitution neither permits nor requires the establishment of 'penal checking accounts'" on which a defendant may "bank" time served on one offense for use against a sentence in a subsequent, unrelated offense. ***Id.*** at 308-09 (citation omitted). The presumption that credit accrued in one prosecution cannot be applied against a sentence for a subsequent act applies even if the prosecution for the subsequent act is unsuccessful. ***Commonwealth v. Miller***, 655 A.2d 1000, 1003-04 (Pa. Super. 1995).[7] Similarly, this Court has stated that a

[7] In ***Miller***, this Court concluded that the time spent in custody on charges for which the defendant was acquitted were not creditable against a sentence for a prior, unrelated offense. In that case, the defendant was initially arrested for delivery of a controlled substance and was released on bail. ***Miller***, 655 A.2d 1001. However, he was subsequently charged for aggravated assault and robbery and remained in custody on those charges. ***Id.*** He then pleaded guilty to the initial drug offense, but, two months later, a jury acquitted him of the aggravated assault and robbery charges. ***Id.*** The trial court sentenced the defendant to thirty-three months' to seven years' imprisonment for the drug offense. ***Id.***

The defendant requested that the trial court credit all time served prior to sentencing on the drug offense. ***Id.*** at 1001-02. The trial court granted credit from the time he was arrested on the drug offense until the time he posted bail on that charge, but denied his request for credit based on the time in custody following his arrest for aggravated assault and robbery. ***Id.*** at 1002. The defendant appealed to this Court, arguing that the trial court erred in refusing to credit the time spent in custody on the aggravated assault and robbery charge while awaiting disposition of the drug offense.

The ***Miller*** Court affirmed the trial court's allocation of credit, noting:

> The decided cases have held generally that a defendant shall be given credit for any days spent in custody prior to the imposition of sentence, but only if such commitment is on the offense for which sentence is imposed. Credit is not

defendant cannot, by virtue of double counting credit for time in custody, "receive a windfall" on sentencing for an unrelated offenses. ***Commonwealth v. Merigris***, 681 A.2d 194, 195 (Pa. Super. 1996); ***accord Commonwealth v. Hollawell***, 604 A.2d 723, 726 (Pa. Super. 1992).

Nevertheless, the General Assembly may create statutory exceptions to these general principles regarding the allocation of credit. ***Commonwealth v. Clark***, 885 A.2d 1030, 1034 (Pa. Super. 2005) (discussing 42 Pa.C.S. § 9760(4)). Moreover, our courts may fashion equitable exceptions where no express statutory authority governs. ***Id.*** at 1032-33 (discussing ***Martin***, 840 A.2d at 309).

Prior to the enactment of the Pennsylvania credit statute, the Pennsylvania Supreme Court, in ***Commonwealth ex rel. Ulmer v. Rundle***, 218 A.2d 233 (Pa. 1966), for example, recognized that a decision to vacate

---

> given, however, for a commitment by reason of a separate and distinct offense.

Id. at 1002 (citations and quotation marks omitted). The Court discussed section 9760(4), noting, "Pursuant to 42 Pa.C.S. § 9760(4), credit is to be awarded if, on the date of the defendant's arrest on charges for which he is being sentenced, he was already incarcerated for unrelated charges for which he was not given credit on any other sentence." ***Id.*** at 1003. We concluded, however, that the defendant was held in custody for the unrelated charges of aggravated assault and robbery, not the initial drug offense on which he was eventually sentenced. ***Id.*** We thus held, "[The defendant] was not entitled to credit on account of the drug charge" due to the time in custody on the subsequent charges, and unsuccessful prosecution, of aggravated assault and robbery. ***Id.*** at 1003-04.

a sentence may affect the remaining sentences being served by a defendant. ***Id.*** at 234. In that case, the defendant was convicted in three distinct proceedings in 1959, June of 1961, and September of 1961, resulting in the following sentences: (1) recommitment on a prison sentence of one and a half to three years for the 1959 conviction; (2) a prison sentence of three to six years for the June 1961 conviction; and (3) a prison sentence of one and a half to three years for the September 1961 conviction. ***Id.*** at 233-34.

The defendant then filed a petition for writ of habeas corpus, which the trial court denied. ***Id.*** at 233. This Court affirmed, and the Pennsylvania Supreme Court granted allowance of appeal. ***Id.*** The Pennsylvania Supreme Court vacated the 1959 conviction and ordered a new trial. ***Id.*** at 234. The Court recognized that its decision to vacate the 1959 conviction gave rise to a claim for relief "from imprisonment beyond the correct expiration date of the lawful sentences imposed." ***Id.*** As a remedy, the Court adjusted the remaining sentences and directed that the June 1961 conviction "begin from the date of commitment on the charge there involved," rather than the expiration of the vacated sentence. ***Id.*** at 235.

Subsequently, this Court, in ***Commonwealth v. Bailey***, 392 A.2d 836 (Pa. Super. 1978), applied ***Ulmer*** to reverse the denial of a defendant's request for credit. ***Id.*** at 836-37. In ***Bailey***, the defendant was arrested and charged with robbery in July of 1968, but was released on bail. ***Id.*** at 836. He was rearrested on February 20, 1970. ***Id.*** The Commonwealth

then charged him with homicide, which arose from a January 16, 1970 incident, and he remained in custody thereafter. ***Id.***; ***see also Commonwealth v. Bailey***, 333 A.2d 883, 884 (Pa. 1975). On July 16, 1970, he was charged with three counts of prison riot "stemming from an incident which occurred on July 4, 1970." ***Bailey***, 392 A.2d at 836. On December 15, 1970, he was found guilty and sentenced to five to ten years' imprisonment for the original robbery charge. ***Id.*** He was later convicted on the charges of homicide and prison riot. ***Id.*** However, the homicide conviction was vacated by the Pennsylvania Supreme Court and "nol prossed" on remand, after which the defendant was paroled on the robbery charge and began serving the sentences for prison riot. ***Bailey***, 333 A.2d at 807; ***Bailey***, 392 A.2d at 836.

The defendant then requested a modification of the prison riot sentences to provide credit for time served between July 16, 1970, when he was charged with the offenses of prison riot, and December 15, 1970—when he was sentenced for robbery. ***Bailey***, 392 A.2d at 836. The trial court denied the request and the defendant appealed to this Court. ***Id.***

The ***Bailey*** Court reversed the denial of request for credit. ***Id.*** at 836-37. This Court concluded that the Pennsylvania Supreme Court, in ***Ulmer***, effectively "granted credit for the period served for the parole violation on the unconstitutional sentence" and that credit was due. ***Id.*** at 837. The Court, in a footnote, referred to a predecessor statute to section 9760(3),

but declined to address the statute "because the same result is achieved under prior law." ***Id.*** at 837 n.1. Thus, we remanded for the trial court to apply credit the credit requested by the defendant. ***Id.*** at 837.

In light of the these general principles underlying sentencing credit and our decisional law regarding credit for time served on sentences set aside on appeal, we now consider Pennsylvania's credit statute. In so doing, we are mindful of the principles governing statutory interpretation:

> The objective of statutory interpretation and construction is to ascertain and effectuate the intention of the legislature. "[W]here the intent of the legislature is clear from the plain meaning of the statute, there is no need to pursue statutory construction." "Only when the language of the statute is ambiguous does statutory construction become necessary." When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S.[ ] § 1921(a).

Commonwealth v. Menezes, 871 A.2d 204, 209 (Pa. Super. 2005) (citation omitted).

Section 9760 states:

> After reviewing the information submitted under section 9737 (relating to report of outstanding charges and sentences) the court shall give credit as follows:
>
> (1) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

> (2) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody under a prior sentence if he is later reprosecuted and resentenced for the same offense or for another offense based on the same act or acts. This shall include credit in accordance with paragraph (1) of this section for all time spent in custody as a result of both the original charge and any subsequent charge for the same offense or for another offense based on the same act or acts.
>
> (3) If the defendant is serving multiple sentences, and if one of the sentences is set aside as the result of direct or collateral attack, credit against the maximum and any minimum term of the remaining sentences shall be given for all time served in relation to the sentence set aside since the commission of the offenses on which the sentences were based.
>
> (4) If the defendant is arrested on one charge and later prosecuted on another charge growing out of an act or acts that occurred prior to his arrest, credit against the maximum term and any minimum term of any sentence resulting from such prosecution shall be given for all time spent in custody under the former charge that has not been credited against another sentence.

42 Pa.C.S. § 9760.

Following a review of the statutory provisions, and for the reasons that follow, we conclude that paragraph (3) of section 9760: (1) creates an exception to the general principle that credit should not be applied to an unrelated offenses; (2) provides credit for time served on a sentencing order that has been set aside; (3) does **not** provide credit against a remaining sentence for time in pretrial custody on the sentence that is set aside; and (4) does **not** provide credit for time served on a sentence that is set aside if that time ran concurrently with a remaining sentence.

First, the conditional clauses of paragraph (3) establish the circumstances under which it applies. A defendant must be serving multiple sentences, and one of the sentences must be set aside. ***See*** 42 Pa.C.S. § 9760(3). The operative portion of the paragraph dictates that credit for the sentence that is set aside "shall be given" against the "remaining sentences." ***See*** 42 Pa.C.S. § 9760(3). Furthermore, unlike its companion provisions, paragraph (3) makes no mention that credit applies "as a result of" a single charge, ***see*** 42 Pa.C.S. § 9760(1), that it applies based on offenses "based on the same act or acts," ***see*** 42 Pa.C.S. § 9760(2), or that it is limited to instances where the defendant is arrested and is "later prosecuted on another charge growing out of an act or acts that occurred prior to his arrest," ***see*** 42 Pa.C.S. § 9760(4). Therefore, paragraph (3) authorizes the application of credit for a sentence that is set aside on direct appeal or a collateral challenge against remaining sentences for separate prosecutions that arise out of unrelated offenses. This is consistent with our prior law. ***See Ulmer***, 218 A.2d at 235; ***Bailey***, 392 A.2d at 837.

Second, the operative clause of paragraph (3) requires that credit for "time served in relation to the sentence set aside since the commission of the offenses on which the sentences were based." The phrase "time served in relation to the sentence set aside" is unique to paragraph (3), while paragraphs (1), (2), and (4) of section 9760 each refer to "time spent in custody." ***Compare*** 42 Pa.C.S. § 9760(3), ***with*** 42 Pa.C.S. § 9760(1), (2),

(4). Specifically, paragraph (1) refers to "time **spent in custody** as a result of a criminal charge," and expressly includes pre-trial time as time spent in custody. 42 Pa.C.S. § 9760(1) (emphasis added). Similarly, Paragraph (4) refers to "time **spent in custody** under the former charge." 42 Pa.C.S. § 9760(4) (emphasis added). Paragraph (2), when allocating credit for subsequent prosecution and resentencing, expressly refers to "time **spent in custody under a prior sentence**." 42 Pa.C.S. § 9760(2) (emphasis added).

The plain meaning of the phase "time served in relation to the sentence" connotes the time in which a defendant is incarcerated under a formal sentencing order. Moreover, the General Assembly elected to use "time served in relation to the sentence" in paragraph (3), while using "time spent in custody" to refer to presentence detentions in paragraphs (1), (2), and (4). Therefore, we conclude that paragraph (3) requires that credit be awarded for all time incarcerated in relation to a sentencing order "since the commission of the offenses on which the sentences were based." ***See*** 42 Pa.C.S. § 9760(3). That paragraph (3) credits time incarcerated after the imposition of sentence that is vacated, rather than presentence custody is consistent with our case law. ***See Ulmer***, 218 A.2d at 235; ***Bailey***, 392 A.2d at 837; ***see also Miller***, 655 A.2d at 1003-04 (holding that presentence confinement for charges on which defendant was acquitted not creditable against sentence for prior acts).

Third, for the reasons stated above, time spent in presentencing custody on a judgment of sentence that is set aside is not creditable against the remaining sentences. This is consistent with our decisional law. ***See Miller***, 655 A.2d at 1003-04; ***see also Ulmer***, 218 A.2d at 235 (adjusting remaining sentence to account for time incarcerated on vacated sentence); ***Bailey***, 392 A.2d at 837 (same).

Fourth, although paragraph (3) does not expressly distinguish between the consecutive or concurrent nature of the remaining sentences in relation to the sentence that is set aside, the operative portion refers to credit against a singular minimum and maximum term of imprisonment on the remaining sentences. Such aggregation is only required when the trial court imposes consecutive sentences. ***See*** 42 Pa.C.S. § 9757. Moreover, because a concurrent sentence runs simultaneously with another sentence, an award of credit for the time in which a concurrent sentence and the set-aside sentence run results in a double credit and windfall to the defendant. ***See Merigris***, 681 A.2d at 195; ***Hollawell***, 604 A.2d at 726. Therefore, we conclude that paragraph (3) does not provide credit for time served concurrently with a remaining lawful sentence.

Applying the foregoing principles to the instant appeal, we review the PCRA court's determination that Appellant was entitled to partial relief on his request for credit for all time in custody on the vacated sentence. We focus on the following findings and conclusions of the court:

> (1) Appellant's pretrial confinement from October 3, 2007, to March 18, 2008, which was originally credited to the vacated sentence in CR-1003-2007, was creditable against the remaining sentence in CR-5452-2008.
>
> (2) Appellant's pretrial confinement from May 30, 2008, to December 31, 2008, which was originally credited to the sentence in CR-1003-2007, was creditable against CR-5452-2008.
>
> (3) Appellant's confinement following the imposition of the sentence in CR-1003-2007, from January 1, 2009, to April 30, 2009, was creditable against CR-5452-2008.
>
> (4) Appellant's confinement after April 30, 2009, when Appellant was sentenced on the federal conviction, was not creditable against CR-5452-2008.

See PCRA Ct. Op. at 4.

The present record suggests that the trial court, when sentencing Appellant in the first case, CR-1003-2007, credited the time Appellant served from October 3, 2007, to March 18, 2008, as time in custody "as a result of the charges in that case." ***See*** 42 Pa.C.S. § 9760(1). However, this period preceded both the December 13, 2008 imposition of sentence in the first case, CR-1003-2007, as well as the May 28, 2008 offense that gave rise to the second case, CR-5452-2008. Therefore, section 9760(3) did not authorize the time from October 3, 2007, to March 18, 2008, be allocated to the remaining sentence in CR-5452-2008.

The present record also suggests that the time from May 30, 2008, to December 31, 2008, was originally credited to the vacated sentence in the first case, CR-1003-2007. However, because section 9760(3) only

contemplates that time served in relation to a sentence that is set aside be credited against the remaining sentence, this credit was not required under paragraph (3). Nevertheless, further development of the record is necessary to determine whether this time in presentence custody occurred as a result of the criminal charge in CR-5452-2008, and whether Appellant is entitled to credit under section 9760(1).

As to the PCRA court's rulings that Appellant was entitled to credit for time served on the vacated sentence in the first case, CR-1003-2007, but not for the time spent concurrently with the federal sentence, we decline to affirm this ruling until the record is further developed. Specifically, the present record contains no information regarding the nature of the federal sentence and if the federal sentence was effective on the date of sentencing in that case.

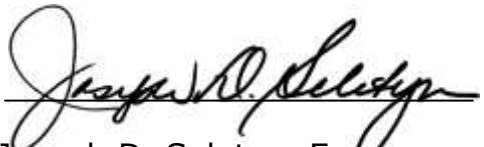
Lastly, we address the Commonwealth's argument that no time should be credited to Appellant because the trial court in CR-5452-2008 ordered that its sentence run concurrently to the sentence in CR-1003-2007, but consecutive to the federal sentence. Instantly, the sentences in CR-1003-2007 and CR-5452-2008 did not overlap, and there was no indication that Appellant's sentence in CR-5452-2008 reflected any of the time concurrently served on CR-1003-2007. Thus, we find no basis in the current record to conclude that Appellant would receive a windfall under the PCRA court's ruling that he was entitled to credit from December 31, 2007, the date of

sentencing in CR-1003-2008, to April 30, 2008, the purported date of the federal sentence. Accordingly, the present record does not support the Commonwealth's argument that paragraph (3) did not require credit based on the concurrent nature of the sentences in CR-1003-2007 and CR-5452-2008.

Thus, we remand for further development of the record in light of the foregoing principles, without prejudice to the parties' ability to develop the existing record, introduce new evidence, or assert new claims or objections.

Order vacated. Case remanded for further proceedings. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013