

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
STEPHAN COLEMAN,		
Appellant		No. 622 WDA 2012

Appeal from the Judgment of Sentence February 13, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0009480-2011

BEFORE: FORD ELLIOTT, P.J.E., BOWES, & DONOHUE, JJ.

MEMORANDUM BY BOWES, J.:

Filed: February 19, 2013

Stephan Coleman appeals from the February 13, 2012 judgment of sentence of two and one-half to five years imprisonment that was imposed after he pled guilty to one count each of carrying an unlicensed firearm and persons not to possess a firearm. We confirm the convictions, but vacate the judgment of sentence and remand for an evidentiary hearing regarding the calculation of Appellant's entitlement to credit for time served.

On February 13, 2012, Appellant entered a negotiated guilty plea to the above charges. In exchange for the guilty plea, the Commonwealth assented to imposition of a thirty-to-sixty-month period of incarceration and a probationary term to be set by the plea court. The facts of the crimes are as follows. On July 14, 2011, four Allegheny County detectives were patrolling Elmore Square in Pittsburgh, a housing project marked by public

narcotics activity. After Appellant observed their marked patrol vehicle, he clutched his right pocket area, started to walk away from police, and threw what appeared to be a silver firearm on the ground. Appellant's wallet fell from his pocket "near the vicinity of the firearm." N.T. Guilty Plea/Sentencing Hearing, 2/13/12, at 8.

Appellant fled into a nearby wooded area but was soon apprehended with sticks and leaves on his clothing. After the detectives gave Appellant his *Miranda* warnings, he told them that "he had been incarcerated and he couldn't get caught with that gun." *Id.* at 8. He also acknowledged that the wallet belonged to him. The weapon, a .44 Magnum revolver, was operational, and Appellant was not permitted to possess it due to a prior robbery conviction; therefore, he did not have a license for it.

After Appellant tendered his plea, the matter proceeded immediately to sentencing. The plea court imposed the agreed-upon sentence but declined to add a probationary term, reasoning that "no probation is necessary in light of his substantial period of incarceration[.]" *Id.* at 10. That same day, the court entered a written sentencing order that gave Appellant credit for time served of ninety-two days. Order of Sentence, 2/13/12, at 1.

On February 22, 2012, proceeding *pro se*, he filed the present appeal. The court appointed new counsel for purposes of litigating this appeal. In his statement of issues raised on appeal, Appellant maintained both that his

guilty plea was induced by ineffective assistance of plea counsel and that he was not given proper credit for time served. In his brief to this Court, he abandoned the former issue and raises this contention:

1. Whether Defendant's February 13, 2012 judgment of sentence is illegal - - as violative of 42 Pa.C.S. § 9760 and/or other law - - as he was not given credit for the period of October 13, 2011 through February 13, 2012 when Defendant remained incarcerated, credit for said period was not applied to another case, and such credit must be applied to first to the instant matter prior to any sentence for a probation/parole violation?

Appellant's brief at 3.

Initially, we note that, "A challenge to the trial court's failure to award credit for time served prior to sentencing involves the legality of a sentence." ***Commonwealth v. Johnson***, 967 A.2d 1001, 1003 (Pa.Super. 2009). "In reviewing an illegal sentence claim, the issue is a question of law and, as such, our scope of review is plenary and our standard of review is *de novo*." ***Commonwealth v. Ousley***, 21 A.3d 1238, 1242 (Pa.Super. 2011).

Under 42 Pa.C.S.A. § 9760(1), credit for time served:

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 conduct on which such a charge is based. Credit shall include credit for the time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

In this case, the sentencing court indicates in its opinion that the ninety-two days credited in the sentencing order accounted for Appellant's imprisonment from July 14, 2011, until October 13, 2011, that Appellant remained incarcerated from October 13, 2011 until sentencing on February 13, 2012, and that no credit was given for that time. Relying upon ***Commonwealth v. Mann***, 957 A.2d 746 (Pa.Super. 2008), the court and Appellant both maintain that Appellant should have been awarded credit against this sentence for the period from October 13, 2011 to February 13, 2012. **See** Trial Court Opinion, 7/18/12, at 4-5.

The Commonwealth concedes that ***Mann*** mandates that a defendant be given credit for all time served in prison. **See *Mann, supra*** at 749 (quoting ***Martin v. Pennsylvania Board of Probation & Parole***, 840 A.2d 299, 309 (Pa. 2003)) ("Where an offender is incarcerated on both a Board of Probation and Parole detainer and new criminal charges, all time spent in confinement must be credited to either the new sentence or the original sentence."). However, it notes that there is no support in the record for Appellant's position that he is entitled to credit for time served against this sentence for the period from October 13, 2011, to February 13, 2012.

The Commonwealth states, "While such information is outside the certified record, the Commonwealth's brief research revealed that Appellant was released from the Allegheny County Jail on October 13, 2011 and transferred to a state correctional institution pursuant to a parole detainer."

Commonwealth's brief at 6; **see** 61 Pa.C.S. § 6138(a)(4) ("The period of time for which the parole violator is required to serve shall be computed from and begin on the date that the parole violator is taken into custody to be returned to the institution as a parole violator.").

While Appellant notes that the sentencing court agreed that he never received any credit for time served from October 13, 2011 to February 13, 2012, the record neither supports nor refutes this position. It is unclear whether Appellant was given credit from October 13, 2011 to February 13, 2012 for his parole back-time if and when he was transferred to state prison. Based on the deficient record, the Commonwealth asks for a remand for an evidentiary hearing so that a proper determination can be made as to whether Appellant is actually entitled to the requested credit against this sentence under the dictates of ***Mann***.

As all parties agree that the sentence must be vacated and that Appellant may be entitled to additional credit against this sentence, we will vacate the sentence and remand for a hearing. The sentencing court is to determine Appellant's entitlement to credit for time served in accordance with the principles outlined in ***Mann*** and the pertinent statutes.

Judgment of sentence vacated. Remanded with instructions.
Jurisdiction relinquished.