

[J-94-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MICHAEL MCCRAY,	:	No. 148 MAP 2002
	:	
Appellee	:	Appeal from the Order of Commonwealth
	:	Court entered October 1, 2002 at No. 414
	:	MD 2000.
v.	:	
	:	
	:	
PENNSYLVANIA DEPARTMENT OF	:	SUBMITTED: July 21, 2003
CORRECTIONS,	:	
	:	
Appellant	:	

OPINION

MADAME JUSTICE NEWMAN

DECIDED: April 27, 2005

This is a direct appeal by the Pennsylvania Department of Corrections (Department) from an Order of the Commonwealth Court, entered in its original jurisdiction, granting the Application for Summary Relief sounding in mandamus (Mandamus Action) that was filed by correctional institution inmate Michael McCray (McCray). The Mandamus Action sought a review of a decision of the Department and requested that the Commonwealth Court order the Department to rescind its decision of July 24, 2000, denying him credit for time served from May 1, 1996 through January 7, 1998. The Order of the Commonwealth Court directed the Department to credit McCray with one year, eight months and six days time served. We reverse the Order of the Commonwealth Court.

FACTS AND PROCEDURAL HISTORY

McCray was arrested and charged with twenty-seven crimes as the result of an incident that occurred in Philadelphia County on January 31, 1996. He entered into a plea agreement wherein he pled guilty¹ to three charges of aggravated assault,² one charge of firearms not to be carried without a license,³ and one charge of criminal conspiracy.⁴ Pursuant to the plea agreement, the Court of Common Pleas of Philadelphia County (trial court) sentenced McCray to eleven and one-half to twenty-three months in the Philadelphia County Prison and a concurrent probation term of ten years, with credit for time served. McCray filed a petition for reconsideration and the trial court vacated the previous sentence and imposed a new sentence consisting of time served to twenty-three months, credit for time served, the immediate grant of parole,⁵ and ten years of probation to run concurrently.

¹ The details of the incident were not supplied, but the bills of information to which McCray pled guilty were:

1. Bill No. 1: Aggravated Assault, Felony 1, pursuant to 18 Pa.C.S. § 2702.
3. Bill No. 3: Firearms Not To Be Carried Without a License, Felony 3, pursuant to 18 Pa.C.S. § 6106.
9. Bill No. 9: Criminal Conspiracy, Felony 2, pursuant to 18 Pa.C.S. § 903.
10. Bill No. 10: Aggravated Assault, Felony 1, pursuant to 18 Pa.C.S. § 2702.
19. Bill No. 19: Aggravated Assault, Felony 1, pursuant to 18 Pa.C.S. § 2702.

² Bills numbered 1, 10, and 19.

³ Bill number 3.

⁴ Bill number 9.

⁵ McCray was arrested on May 1, 1996, and remained incarcerated until the trial court sentenced him on January 7, 1998. Therefore, he had been in custody for one year, eight months, and six days when the court granted him immediate parole. It is this one year, (continued...)

On September 17, 1999, McCray's probation was revoked following a determination that he had violated that probation.⁶ The trial court sentenced him to a term of two to four years' incarceration for each original count of the aggravated assault⁷ and criminal conspiracy⁸ charges to run concurrently, to be followed by five years of probation on the criminal conspiracy count. McCray requested credit for the time he served pursuant to the "time served to 23 months" segment of his sentence, which the Department denied.

In September of 2000, McCray, acting *pro se*, filed a Petition for Review in the original jurisdiction of the Commonwealth Court alleging that the Department had calculated his new sentence incorrectly by not crediting him for the time he served from May 1, 1996 to January 7, 1998.⁹ He then filed an Application for Summary Relief sounding in mandamus, arguing that he had received two separate sentences of

(...continued)

eight months, and six days of time served that McCray seeks to have credited to his probation revocation sentence.

⁶ There is nothing in the record indicating the reason for which McCray's probation was revoked other than that there was a finding of guilt at the parole revocation hearing. (Reproduced Record (R.R.), page 184.)

⁷ Bills numbered 1, 10, and 19.

⁸ Bill number 9.

⁹ Although this is not set forth clearly in the Reproduced Record, it appears the Department filed Preliminary Objections to this Petition, alleging that McCray failed to exhaust his administrative remedies because he did not utilize the inmate grievance system. It also appears that the Commonwealth Court entered an Order overruling the Preliminary Objections of the Department on October 12, 2000. (R.R. at 49.)

incarceration for the same crime in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

The Commonwealth Court reviewed applicable case law, particularly Commonwealth v. Bowser, 783 A.2d 348 (Pa. Super. 2001), petition for allowance of appeal denied, 798 A.2d 1286 (Pa. 2002),¹⁰ and Commonwealth v. Williams, 662 A.2d 658 (Pa. Super. 1995), petition for allowance of appeal denied, 674 A.2d 1071 (Pa. 1996).¹¹ The court rejected the holdings in both cases, relying on Section 9760 of the Sentencing Code, 42 Pa.C.S. § 9760, which states that a defendant must be given credit for all time spent in custody under a prior sentence if that defendant is later reprobated and resented for the same offense.¹² Accordingly, in a published Opinion, the Commonwealth Court granted McCray's Application for Summary Relief sounding in mandamus. We granted allowance of appeal to the Department of Corrections to examine whether mandamus was appropriate.

¹⁰ Richard Bowser (Bowser) had his probation revoked because of a new criminal conviction and a new sentence of one to three years was imposed for the original receiving stolen property conviction. Bowser filed a Motion for Time Credit with the trial court, which was denied. He then filed a direct appeal with the Superior Court.

¹¹ Following a determination that John Williams (Williams) had violated his probation, he was sentenced to three and one-half to seven years for his original theft by unlawful taking offense, 18 Pa.C.S. § 1103(3). The new sentence did not include the time that Williams had originally served. Williams appealed his sentence directly to the Superior Court.

¹² Although the Superior Court and the Commonwealth Court “each is bound to give due consideration to the decisions and reasoning of the other, neither is bound to follow as controlling precedent the decisions of the other.” Commonwealth v. McDermott, 547 A.2d 1236, 1240 (Pa. Super. 1988).

DISCUSSION

The Department launches a two-pronged attack on the decision of the Commonwealth Court and argues that an action in mandamus is an inappropriate mechanism to seek review of McCray's sentence because, first, McCray had not exhausted his available remedies and, second, he did not have a clear right to the relief he sought.

The Department asserts that the Commonwealth Court erred in granting McCray's petition because an adequate remedy existed outside of a writ of mandamus. The Department complains that McCray should have availed himself of the multi-step, Consolidated Inmate Grievance Review System by which inmates may seek redress of complaints arising during their confinement that are not related to prison misconduct. Second, it avers that an inmate who disagrees with the credit applied to his or her sentence should seek relief from the sentencing court, not the Commonwealth Court, because the Department does not have the authority to correct or clarify a sentence.

Appropriateness of Mandamus Action

Initially, we must address the appropriateness of the Mandamus Action within the context of a Petition for Review. The Commonwealth Court has routinely entertained Petitions for Review in the nature of mandamus seeking orders to compel the Department to apply credit for time served. See, e.g., Alston v. Pennsylvania Bd. of Probation & Parole, 799 A.2d 875 (Pa. Cmwlth. 2002) (treating habeas corpus petition as one in mandamus seeking credit for federal time served); Saunders v. Dept. of Corrections, 749 A.2d 553 (Pa. Cmwlth. 2000) (denial of writ of mandamus to compel Department to modify confinement dates after parole revocation); Doxsey v. Bureau of Corrections, 674 A.2d 1173 (Pa.

Cmwlth. 1996) (denying writ of mandamus to compel Department to credit him with time spent in Maryland prison under a detainer warrant). In fact, only the Commonwealth Court is imbued with the authority to issue writs of mandamus or prohibition to other government units, including administrative agencies.¹³ Bethlehem Mines Corp. v. Commonwealth, 340 A.2d 435 (Pa. 1975); Saunders, *supra*. Where discretionary actions and criteria are not being contested, but rather the actions of the Department in computing an inmate's maximum and minimum dates of confinement are being challenged, an action for mandamus remains viable as a means for examining whether statutory requirements have been met. Accordingly, if mandamus was the appropriate action, the Commonwealth Court was the appropriate forum.

Mandamus - Want of any other Remedy

A proceeding in mandamus is an extraordinary action at common law and is available only to compel the performance of a ministerial act or mandatory duty where there exists no other adequate and appropriate remedy; there is a clear legal right in the plaintiff, and a corresponding duty in the defendant. Jackson v. Vaughn, 777 A.2d 436, 438 (Pa. 2001). The challenge by the Department stems primarily from its assertion that McCray had other adequate and appropriate remedies to render mandamus unavailable to him.

¹³ Section 761(a)(1) of the Judicial Code, 42 Pa.C.S. § 761(a)(1), bestows original jurisdiction on the Commonwealth Court over “all civil actions or proceedings: (1) [a]gainst the Commonwealth government, including any officer thereof . . . except: (i) actions or proceedings in the nature of applications for a writ of habeas corpus or postconviction relief not ancillary to proceedings within the appellate jurisdiction of the court” Pursuant to this statutory grant of authority, it may issue “every lawful writ and process necessary or suitable for the exercise of its jurisdiction.” 42 Pa.C.S. § 562.

We begin by examining the appropriate method by which to seek relief when there is a question as to the correct application of credit for time served. The Department contends that the Commonwealth Court erred in granting the Mandamus Action because McCray had adequate remedies available to him in the form of the internal prison grievance system and, more importantly, he should have sought relief from the sentencing court.

Chapter 93 of Title 37 of the Pennsylvania Code contains regulations pertinent to state correctional institutions. Section 93.9 establishes an inmate grievance system that provides a forum for prison inmates to complain to the Department about problems that arise “during the course of confinement.” 37 Pa. Code § 93.9. That section states:

(a) The Department will maintain an inmate grievance system which will permit any inmate to seek review of problems which the inmate experiences during the course of confinement. The system will provide for review and resolution of inmate grievances at the most decentralized level possible. It will also provide for review of the initial decision making and for possible appeal to the Central Office of the Department. An inmate will not be disciplined for the good faith use of the grievance systems. However, an inmate who submits a grievance for review which is false or malicious may be subject to appropriate disciplinary procedures. Copies of the directive governing grievance procedures will be made available to the inmates.

(b) Inmates may also pursue available remedies in State and Federal court.

Id. This system addresses such problems as the initial decisions regarding cell and work assignments along with the day-to-day living problems associated with incarceration. Problems arising during confinement could include opportunities to make and receive phone calls, availability of legal materials and assistance, visitations, recreation, counseling, and a myriad of other considerations that occur in a system that houses large numbers of persons in confined spaces. The Department is disingenuous in asserting that this is the appropriate mechanism to entertain a legal challenge to an application for credit

for time served. If the Department has no authority to correct or clarify a sentence, as it claims, then it is incongruous to contend that its internal grievance system is an available remedy. Further, the General Assembly has not conferred the authority to consider matters of law on the decision-makers of the internal grievance system. Finally, the regulation promulgated by the Department of Corrections enabling the internal grievance system specifically permits inmates to pursue any remedies available to them in state or federal forums. 37 Pa. Code § 93.9(b).

The Department also contends that McCray should have sought relief in the sentencing court rather than the Commonwealth Court because the Department may not alter a sentence. On September 17, 1999, the court imposed a term of two to four years' incarceration plus five years' probation without referring to a credit for time served. We agree with the Department that McCray should have expressed his concerns about this matter by raising an objection, which would have allowed the trial court to clarify its decision. This would also have preserved the issue for appellate review. Instead, McCray failed to avail himself of the remedy available to him.

Mandamus - Clear Right to Relief

We must next determine whether McCray had a clear right to relief. The Department relies on the Opinion of the Superior Court in Commonwealth v. Williams, 662 A.2d 658 (Pa. Super. 1995), petition for allowance of appeal denied, 674 A.2d 1071 (Pa. 1996). Williams pled guilty and was sentenced to eleven and one-half to twenty-three months incarceration plus a consecutive term of three years probation. His probation was subsequently revoked and a new sentence of three and one-half to seven years incarceration was imposed by the trial court. Williams challenged the sentence and the Superior Court agreed that the time Williams initially spent in prison prior to his probation

revocation had to be credited to his revocation sentence because Williams' total confinement would exceed the legal maximum established for his crime.

The Department also relies on Commonwealth v. Bowser, 783 A.2d 348 (Pa. Super. 2001), petition for allowance of appeal denied, 798 A.2d 1286 (Pa. 2002). In Bowser, the majority of the Superior Court panel held that Section 9760 of the Sentencing Code and Williams only apply when the maximum term of the revocation sentence combined with the time previously served on the original sentence exceed the statutory maximum penalty for the criminal charge. Such concerns are not present in the instant matter. Here, the trial court convicted McCray of three counts of aggravated assault graded as a first-degree felony. First-degree felonies are punishable by up to twenty years in prison. 18 Pa.C.S. § 1103(1). The court also found him guilty of conspiracy, which is a second-degree felony punishable by up to ten years in prison. 18 Pa.C.S. § 1103(2). The trial court's probation revocation sentence of four concurrent terms of two to four years of incarceration for the three aggravated assault convictions and the criminal conspiracy conviction plus a consecutive term of five years of probation for the criminal conspiracy conviction is significantly less than the maximum probation revocation sentence of thirty-five to seventy years of incarceration. Therefore, as in Bowser, the concerns regarding the imposition of an illegal sentence that were present in Williams, are not at issue in this case.

McCray's position echoes that of Judge Olszewski in his dissenting opinion in Bowser in which he expressed his belief that Section 9760(1) of the Sentencing Code mandates that an inmate is entitled to credit on any sentence "for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed" Considering the existence of the Williams and Bowser decisions, and the fact that Section 9760 appears in Subchapter E of the Sentencing Code governing "Imposition of Sentence" and not in

Subchapter F governing “Further Judicial Action,” which includes Section 9771 (Modification or revocation of order of probation), it cannot be said that McCray had a clear right to relief.

Mandamus - Duty of Department

It is beyond cavil that the Department has a duty to credit McCray, as well as all inmates, for all statutorily mandated periods of incarceration. Martin v. Pennsylvania Bd. of Probation & Parole, 840 A.2d 299 (Pa. 2003). However, this does not end the matter. The Department is an executive branch agency that is charged with faithfully implementing sentences imposed by the courts. As part of the executive branch, the Department lacks the power to adjudicate the legality of a sentence or to add or delete sentencing conditions. Reviewing the sentence imposed by the trial court reveals that the Department has computed McCray’s maximum release date in accordance with the sentencing order of the trial court. The sentence imposed by the trial court upon probation revocation, does not indicate that McCray is to receive credit for time served. (R.R. at 15 (Bill 1), 23 (Bill 9), 24 (Bill 10), and 33 (Bill 19)). Accordingly, the Department did not have a duty to credit McCray for the time previously served because the probation revocation judge did not order credit for time served and the Department is without authority to alter sentencing conditions.

CONCLUSION

McCray fails to meet any of the three criteria required for the issuance of a writ of mandamus. An adequate remedy, which he chose to forgo, was available in the trial court and through the direct appeal process. He failed to establish a clear right to relief. In

addition, the Department did not have the duty to allow credit for time served when the trial court did not so provide in its sentencing order.

Accordingly, we reverse the Order of the Commonwealth Court.

Mr. Justice Castille files a concurring opinion.

Mr. Justice Saylor files a concurring opinion.