

*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2019-295

APRIL TERM, 2020

State of Vermont v. Bryan Houle*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Criminal Division
	}	
	}	DOCKET NOS. 456/457-5-17 Wmcr & 591-6-17 Wmcr

Trial Judge: John R. Treadwell

In the above-entitled cause, the Clerk will enter:

Defendant appeals the criminal division’s order denying his motion to correct his sentence to give him additional credit for time served in Massachusetts prior to being sentenced in Vermont on Vermont charges. We affirm.

The facts are not in dispute. In May 2017, defendant was arraigned and incarcerated on charges of attempted assault and robbery with a deadly weapon, attempted false pretenses, and disorderly conduct. In October 2017, he was released on an unsecured appearance bond. He was permitted to reside in New Hampshire after waiving extradition to Vermont on the pending charges in the event that became necessary. In July 2018, he was incarcerated in New Hampshire on a fugitive-from-justice warrant originating from Massachusetts. When he failed to appear for a July 13, 2018 pretrial conference in the Vermont case, a warrant was issued for his arrest. Meanwhile, defendant was transported from New Hampshire to Massachusetts, where he received an eighteen-month sentence, all suspended except six months to serve. On November 8, 2018, the Massachusetts Parole Board ruled that “on or after November 19, 2018,” defendant would be released to parole supervision if certain conditions were met. One of the conditions was that he be accepted for supervision by New Hampshire, which could occur “ONLY if there is NO extradition to Vermont warrant.”

Because that condition could not be met due to the pending Vermont arrest warrant, defendant remained incarcerated in Massachusetts on the Massachusetts conviction until he completed his sentence on January 14, 2019. On that date, Vermont filed its arrest warrant to serve as a detainer until defendant could be transported to Vermont to face the Vermont charges. Nine days later, on January 23, 2019, defendant was transported to Vermont.

On May 9, 2019, at a status conference, the prosecutor informed the court that the parties were negotiating whether defendant was “entitled to credit on the Vermont dockets for time in Massachusetts that he served having nothing to do with what’s going on here.” The court gave the parties two weeks to either file a plea agreement or prepare for trial. At a May 24, 2019 change-of-plea hearing, the parties presented their plea agreement, which called for defendant to plead guilty to the three charges and serve concurrent sentences totaling “23-24 months to serve, 9 days local lockup credit.” “Credit as allowed by law” was listed separately under the box labeled “Special Probation Conditions.” At the change-of-plea hearing, the court first clarified that the nine days referred to in the agreement were the days defendant remained incarcerated in Massachusetts after Vermont filed the detainer. The parties do not dispute this fact. Twice during the hearing, once at the beginning and once at the end, the court summarized the agreement as calling for an aggregate sentence of “twenty-three to twenty-four months to serve with credit as allowed by law and an additional nine days of out of state credit.” The prosecutor estimated that defendant had about 270 days of credit due, and defense counsel similarly estimated defendant was entitled to somewhere between nine and ten months of credit for time served.

On May 29, 2019, the Department of Corrections notified defendant that he was entitled to 288 days of credit for time served. On June 28, 2019, defendant filed a motion to correct his sentence, arguing that he was entitled to credit for the time he served in Massachusetts. The State opposed the motion. The criminal division denied the motion, ruling that defendant was seeking credit beyond what the parties had negotiated in the plea agreement.

On appeal, defendant argues that the plea agreement entitled him to credit for time served “as allowed by law,” and that the law allowed him credit for time served in Massachusetts between November 8, 2018, when he was conditionally granted release on parole, and January 23, 2019, when he was extradited to Vermont. The State responds that: (1) the plea agreement precluded defendant from seeking credit for out-of-state time served beyond the nine days stated therein; and (2) in any event, § 7031(b)(1) of Title 13 does not allow credit for the period defendant served in Massachusetts before Vermont filed its detainer because the Vermont charges were not the sole basis for defendant serving that time. See Fleming-Pancione v. Menard, 2017 VT 59, ¶ 21, 205 Vt. 125 (concluding that petitioner failed to meet his burden of establishing that Vermont charges were “sole basis” of time served in Massachusetts).

We need not consider whether § 7031(b)(1) entitled defendant to the credit he seeks because we conclude that the parties’ plea agreement limited the credit defendant could receive for the time he served in Massachusetts to the nine days set forth in the agreement. “Plea agreements are contractual in nature and are interpreted according to contract law.” State v. Johnstone, 2013 VT 57, ¶ 11, 194 Vt. 230. “The parties are entitled to rely upon the express terms of the agreement.” *Id.* The plea agreement defendant signed established an aggregate sentence of twenty-three to twenty-four months and indicated that defendant would receive nine days of credit for time served in Massachusetts. The special notation indicating credit “as allowed by law” could have only referred to credit for time served in Vermont, which had not yet been calculated. Otherwise, the explicit reference to nine days of out-of-state credit would have been superfluous. This was confirmed at the change-of-plea hearing in the summation of the plea agreement made by the same judge who later denied defendant’s motion to correct his sentence as contrary to the plea agreement. Defendant’s attempt to obtain credit for time served in Massachusetts beyond the

nine days set forth in the agreement seeks to obtain a reduction of the sentence imposed by the plea agreement, contrary to the written waiver he signed precluding him from doing exactly that.

Affirmed.

BY THE COURT:

---

Paul L. Reiber, Chief Justice

---

Harold E. Eaton, Jr., Associate Justice

---

Karen R. Carroll, Associate Justice