

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-11,849
	:
	:
vs.	: CRIMINAL DIVISION
	: Motion to Modify Sentence
WILLIAM ROBERT WEST,	: Nunc Pro Tunc
Defendant	:

OPINION AND ORDER

Defendant was convicted of possession of a controlled substance, possession of a controlled substance with intent to deliver, and possession of drug paraphernalia and on April 3, 2002 was sentenced to a term of incarceration of from two to four years. In the instant Motion to Modify Sentence Nunc Pro Tunc, filed June 25, 2003, Defendant seeks credit for time spent while on the Lycoming County Intensive Supervised Bail Program. Argument on the motion was heard August 8, 2003, at which time defense counsel requested the opportunity to brief issues raised at argument. A letter brief was received from defense counsel on September 17, 2003.

The Commonwealth argues that the Motion to Modify Sentence Nunc Pro Tunc must be dismissed for lack of this Court's jurisdiction over such a motion. The Court need not reach this issue, as it appears that Defendant's substantive request may not be granted in any event.

Defendant was sentenced under the mandatory sentence provision contained in 18 Pa. C.S. Section 6317, which requires a sentence of "at least two years of total confinement" if the delivery or possession with intent to deliver controlled substance occurs in a "school zone." While credit for time served while under "house arrest" has been granted in various situations, where those programs were "sufficiently restrictive", it appears that "total confinement" is more restrictive than the term "imprisonment" and that such term requires this sentence be served in a correctional institution behind bars. In the instant matter, Defendant would

therefore not be entitled to credit for time spent on house arrest under the supervised bail program.

ORDER

AND NOW, this 24th day of September, 2003, for the foregoing reasons, Defendant's Motion to Modify Sentence Nunc Pro Tunc is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Eric Linhardt, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson