

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,286
:
vs. : CRIMINAL DIVISION
:
JAIMERE R. PASTERS, :
Defendant : Motion for Reconsideration

OPINION AND ORDER

Defendant seeks reconsideration of this Court's Order of May 3, 2004, which vacated a March 1, 2004, Order. The March 1, 2004, Order was entered after a hearing on Defendant's Petition for Writ of Habeas Corpus and granted Defendant 316 days credit for time served. The May 3, 2004 Order was entered in response to information from the Department of Corrections indicating credit was inappropriate as Defendant had been credited with that time in connection with another sentence. Defendant's request for reconsideration objects to the lack of notice preceding the May 3, 2004, Order, as well as the action taken by that Order.

With respect to the lack of notice, this Court granted reconsideration in its scheduling Order of May 20, 2004, and Defendant was given an opportunity to respond to the Department of Corrections information at a hearing held July 12, 2004.

With respect to the credit itself, which was based on incarceration from July 9, 2002 through May 20, 2003, at the time of sentencing on May 20, 2003, Defendant was still serving a sentence imposed by Clinton County on October 28, 2002, incarceration for 18 – 36 months, for which he had been given credit back to May 21, 2002.¹ Thus, the period for which Defendant now seeks credit in Lycoming County was already credited to another sentence, and to again give credit would constitute an illegal sentence. See Commonwealth v. Brown, 683 A.2d 340 (Pa. Commw. 1996). Accordingly, vacation of the March 1, 2004, Order was indeed appropriate.²

¹ This information was not provided to the Court at the time of the hearing on the Petition for Writ of Habeas Corpus, although the hearing was attended by an assistant district attorney.

² The Court notes both sides contend that this Court cannot modify an Order more than thirty (30) days after its entry, the district attorney arguing against modification of the May 3, 2004, Order and Defendant arguing against modification of the March 1, 2004, Order. Since the matter involves the legality of Defendant's sentence,

ORDER

AND NOW, this 13th day of July 2004, for the foregoing reasons, the Order of May 3, 2004, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
APO
PD
Cost Clerk
Jaimere Pasters, FD 6350, SCI Albion, 10745 Rt. 18, Albion, PA 16475
William Wolfe, Superintendent, SCI Albion, 10745 Rt. 18, Albion, PA 16475
PBPP (2)
Hon. Dudley Anderson

however, such is subject to review under the Post Conviction Relief Act as long as the matter is raised with the time limits of that Act. See Commonwealth v. Beck, 848 A.2d 947 (Pa. Super. 2004). Both the Petition for Writ of Habeas Corpus and the Order of May 3, 2004, were filed within the one-year period after Defendant's conviction became final, satisfying the time requirement of the PCRA. Reconsideration of the May 3, 2004, Order was sought and granted within thirty (30) days, satisfying the time requirement of Section 5505. 42 Pa.C.S. Section 5505.