

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-864-2003 (03-10,864)
: CR-937-2003 (03-10,937)
: CR-1151-2003 (03-11,151)
vs. : CRIMINAL DIVISION
:
:
RONALD MORTON, :
Defendant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order entered July 27, 2006 that denied Appellant's Petition for Credit, which the Court treated as a Post Conviction Relief Act (PCRA) petition pursuant to Commonwealth v. Beck, 848 A.2d 987 (Pa.Super. 2004) and Commonwealth v. Davis, 852 A.2d 392 (Pa.Super. 2004).

The relevant facts follow. On April 29, 2005, Appellant pleaded guilty and was sentenced to two to four years incarceration in a state correctional institution on three separate counts of delivery of a controlled substance. These sentences were concurrent to each other, but did not all receive the same credit for time served. In case number 03-10,864, the Court gave Appellant credit for time served from January 25, 2005 to the date of sentencing April 29, 2005. In case number 03-10937, the Court awarded credit for time served from June 10, 2003 to June 12, 2003 and from January 25, 2005 to April 29, 2005. In case number 03-11,151, the Court gave Appellant credit for one day, July 13, 2004.

On December 6, 2005, Appellant filed a petition for credit seeking credit for time served from December 14, 2004 to July 26, 2005 on all his cases. Finding that

Appellant had already been give all the credit to which he was entitled,¹ the Court issued an Order on or about February 17, 2006, giving Appellant and his court-appointed counsel notice of the Court's intent to dismiss the petition. On July 27, 2006, the Court entered a final order denying the petition.

On August 24, 2006, Appellant, through counsel, filed a notice of appeal. On that same date, the Court issued an Order directing Appellant to file a concise statement of matters complained of on appeal within fourteen days. The statement was due on or about September 9, 2006. On September 1, 2006, Appellant's counsel filed a 'praecipe' requesting a 30-day extension to file the statement of matters on appeal.² On September 5, 2006, the court granted counsel's request and extended the filing date for the statement to October 9, 2006. On November 20, 2006, counsel filed a Rule 1925(b) statement of matters on appeal. The statement lists two issues: (1) the trial court erred in applying credit for time served from January 25, 2005 to May 5, 2005 only to the sentence imposed under case number 03-10864 and not to the sentences imposed under the other two above captioned cases; and (2) counsel for Appellant was ineffective for failing to file the Rule 1925(b) statement within the time allotted by the trial court.

Appellant's appeal should be denied for two reasons. First, all issues on appear are waived because Appellant's counsel failed to timely file the statement of matters complained of on appeal. Commonwealth v. Castillo, 888 A.2d 775 (Pa. 2005); Commonwealth v. Woods, 909 A.2d 352 (Pa.Super. 2006); Commonwealth v. Holtzapfel,

¹ Appellant actually was given more credit than he was entitled to receive, because the Court gave him credit for January 25, 2005 to April 29, 2005 on two different case numbers when such credit should have only been given on one case number.

² Although the Court believes the proper procedure is for counsel for file a motion, the praecipe did manage to find its way to the Court and the request was granted prior to the expiration of the original fourteen day time

895 A.2d 1284 (Pa.Comm.w. 2006). Second, Appellant was not entitled to duplicate credit; he was only entitled to credit from January 25, 2005 to April 29, 2005 on one case. Bright v. Pa.Board of Probation and Parole, 831 A.2d 775 (Pa.Comm.w. 2003).³

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: Kenneth Osokow, Esquire (ADA)
Jay Stillman, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

limit.

³ The Court notes that this is not an instance where failure to give duplicative credit would violate Appellant's plea agreement. Appellant entered an open plea. Furthermore, each of the deliveries occurred in a school zone and the Commonwealth requested a mandatory minimum sentence of two years for each offense under 18 Pa.C.S.A. §6317. Therefore, the Court could not impose a minimum sentence of less than two years or a maximum sentence of less than four years. 18 Pa.C.S.A. §6317; 42 Pa.C.S.A. §9756(b).