

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1329 – 2006
	:	NO. CR – 1335 – 2006
vs.	:	
	:	CRIMINAL DIVISION
JOSEPH ARTLEY,	:	
Defendant	:	Motion to Reconsider Sentence

OPINION AND ORDER

Before the Court is Defendant’s Motion for Reconsideration of Sentence Nunc Pro Tunc, filed May 13, 2009. Argument on the motion, held June 1, 2009, led the Court to reschedule the matter for an evidentiary hearing, which was held July 28, 2009.

By Order dated August 6, 2007, Defendant was sentenced on one count of burglary to 24 months incarceration in a state correctional institution under the State Intermediate Punishment Program. After Defendant was dismissed from the program, he was resentenced by Order dated April 14, 2009, to two and one-half to five years incarceration, and given credit for time served from August 7, 2007, to May 11, 2008, as well as from December 9, 2008 through the date of sentencing. In the instant motion to reconsider sentence, Defendant seeks credit for the period from May 12, 2008, through December 9, 2009, on the basis that during that time, he was housed at Scranton Community Corrections Center on “pre-release” status.¹

After hearing testimony from the Director of the Center, the Court believes Defendant is indeed entitled to the credit he seeks. In McMillian v. Pa. Board of Probation & Parole, 824 A.2d 350 (Pa. Commw. 2003), the Commonwealth Court found that the time spent at a community corrections center provided sufficient restraints on a defendant’s liberty as to constitute custody for purposes of time credit under Section 9760 of the Sentencing Code. The Court noted that the residents are assigned a counselor and required to comply with the facility’s rules and regulations, including mandatory participation in all programs, and permitted leisure time based on the resident’s status and behavior. The same can be said for the

¹ During the hearing on July 28, 2009, Defendant did amend his request to exclude the period from mid-October through December 9, 2009, as during that time he had been released from the center on a furlough.

facility at issue here. Further, and as was noted as an important factor in cases distinguishing McMillian from those cases where a defendant had been released to a facility on parole,² Defendant had been released to the SCCC on “pre-release” status and remained under the jurisdiction of the Department of Corrections, not the Board of Probation and Parole. *See, e.g., Wagner v. Pa. Board of Probation & Parole*, 846 A.2d 187, 190 (Pa. Commw. 2004)(“A different situation is presented where a parolee is in "pre-release" status, rather than on parole.”). Thus, the Court finds McMillian applicable herein, and will allow for the credit requested.

ORDER

AND NOW, this 22nd day of September 2009, for the foregoing reasons, the Petition for Reconsideration of Sentence is hereby GRANTED. This Court’s Order of April 14, 2009, is hereby reinstated but modified to provide for additional credit for time served from May 12, 2008, to the date in mid-October 2008 when Defendant was placed on a furlough.³ Further, Defendant is deemed to be RRRI eligible. The Court computes the RRRI to be 22 and ½ months.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
APO
Pa. BP&P
SCI Graterford
Gary Weber, Esq.
Hon. Dudley Anderson

² In those cases, the Court must determine whether the conditions at the facility are so restrictive as to constitute incarceration such that the parolee is not “at liberty on parole”. *See Wagner v. Pa. Board of Probation & Parole*, 846 A.2d 187 (Pa. Commw. 2004); *Weigle v. Pa. Board of Probation & Parole*, 886 A.2d 1183 (Pa. Commw. 2005).

³ Although the Court attempted to obtain the date from the SCCC through defense counsel, officials at SCCC were either unable or unwilling to provide such and therefore the Court will leave it to the Department of Corrections to obtain the date, with the hope that the Department of Corrections will command more respect than this Court.