

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No's. CR-285-2010
:
vs. : CR-1965-2009
:
PHILIP J. HALL, :
Defendant : Motion for Credit

OPINION AND ORDER

Before the Court is Defendant's Motion for Credit. Specifically, Defendant contends that the Court erred in not giving him credit for time served from November 13, 2009 to November 20, 2009.

On February 10, 2011, Defendant was sentenced on Count 1, Burglary, a felony two offense, to two years of intermediate punishment with the first three months to be served at the Lycoming County Prison/Pre-Release Facility. With respect to Count 6, Burglary, also a felony two offense, he received the same sentence to run consecutive to the sentence imposed with respect to Count 1. With respect to Count 10, Criminal Mischief, a felony 3 offense, he was again given the same sentence again to run consecutive to both Counts 1 and 6.

Under Information No. CR-1965-2009, the Defendant was sentenced on Count 1, Receiving Stolen Property, a felony three offense, to a probationary period of two years to run consecutive to the intermediate punishment sentences referenced above.

By an Amended Sentencing Order dated August 29, 2011 and upon stipulation of the parties, the Court amended the February 10, 2011 Sentencing Order noting that Defendant was credited for time served with respect to the sentence imposed under Information No. CR-1965-2009 from November 13, 2009 to November 20, 2009.

Defendant contends, however, that the credit should be applied to his sentence under Information No. CR-285-2010. An argument was held in this matter on October 31, 2011. Defendant argued that all of the charges arose out of the same incident and that accordingly, Defendant should get appropriate credit. Defendant requested that the Court review the original Sentencing Order, the Amended Sentencing Order and Defendant's letter that he forwarded to the Court on or about September 28, 2011.

The Amended Sentencing Order specifically notes that the credit for time served in November is applied to the sentence imposed on the CR-1965-2009. Defendant's letter does not assert that he is entitled to credit; rather requests that the credit be applied to the other case due to Defendant's wish to get released early to spend more time with his father.

Under Information No. 285-2010, following Defendant's arrest, he was released on unsecured bail effective January 27, 2010. Under Information No. 1965-2009, the Defendant was arrested on November 13, 2009 and incarcerated following his preliminary arraignment and failure to make bail. It was not until November 20 of 2009 that Defendant was released on those charges following his waiver of his preliminary hearing and a modification of his bail to unsecured.

The Commonwealth argued at the hearing in this matter, that the Defendant was never incarcerated with respect to the charges at Information No. 285-2010; he was immediately released on unsecured bail following his arrest, and accordingly is not entitled to credit.

The bail status, however is not determinative. Under Information No. 1965-2009, the Defendant was first arrested on November 13, 2009 for criminal conduct that

allegedly occurred on November 8, 2009. Defendant was subsequently charged under Information No. 285-2010 out of alleged criminal acts that occurred on November 4 and November 5, 2009. According to 42 Pa. C.S.A. §9760 (4), the Defendant would be entitled to the credit as he contends.

More specifically, because the Defendant was arrested on one charge and later prosecuted on another charge growing out of an act or acts that occurred prior to his arrest, credit against the maximum term and any minimum term of any sentence resulting from such later prosecution must be given for all time spent in custody under the former charge that has not been credited against another sentence. 42 Pa. C.S.A. § 9760 (4).

Accordingly, Defendant's Motion shall be granted and Defendant shall be given credit for time served with respect to the sentence imposed under Information No. CR-285-2010 from November 13, 2009 to November 20, 2009.

ORDER

AND NOW, this 4th day of November 2011, following a hearing and argument, the Court **GRANTS** the Defendant's Motion for Credit. Defendant is given credit for time served with respect to the sentence imposed under Information No. CR-285-2010 from November 13, 2009 to November 20, 2009. The Court's Amended Sentencing Order dated August 29, 2011 is hereby VACATED.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: DA
Richard Callahan, Esquire
Warden
APO
DA
Victim/Witness Coordinator
Pa. State Police
Gary Weber, Esquire (Lycoming Reporter)
Work File