

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 v. : No. 1755-2010  
 :  
 TOBY LEE COKER, : CRIMINAL DIVISION  
 Defendant : APPEAL

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

On March 29, 2011, the Defendant pled guilty to Possession with Intent to Deliver, Receiving Stolen Property, and Possession of Drug Paraphernalia. On the same day, the Defendant was sentenced to an aggregate sentence of thirty-nine (39) months to eighty-four (84) months. Within the Sentencing Order the Court stated: “[t]he Defendant may be entitled to credit towards this offense for time located in another institution and, therefore, authorizes that he be given credit for that time provided it is not going towards the sentencing in any other case.”

On May 24, 2012, the Defendant filed a Petition for Credit for Imprisonment while in Custody Prior to Sentence. The Defendant stated that he was arrested in Lycoming County on January 13, 2010 and was incarcerated in SCI Coal Township from January 13, 2010 to May 13, 2010. This Court reviewed the Defendant’s Petition and also requested that the Adult Probation Office of Lycoming County assess the merits. After a review of the record, the Court was unable to determine whether the time was already credited towards a sentence the Defendant imposed by Sullivan County. The Court dismissed the Defendant’s Petition on June 4, 2012.

Subsequently on June 14, 2012, the Defendant filed another Petition for Credit for Imprisonment while in Custody Prior to Sentence. The Defendant stated that he was sentenced in Sullivan County on May 13, 2010. The Defendant is requesting time credit for the dates

directly before he was sentenced in Sullivan County. The Defendant only provided the Court with a hand written motion and no actual proof or documentation that the time was not already credited. With only access to the court files in Lycoming County, this Court dismissed the Defendant's Petition as there was not enough information to indicate that the Defendant was entitled to the time credit. Subsequently, this Court learned that Sullivan County credited the Defendant for forty-nine (49) days and found that there was a state detainer for the remaining.

On July 9, 2012, the Defendant filed a Notice of Appeal. This Court requested a concise statement of matters complained of on appeal on July 24, 2012. On August 2, 2012, the Superior Court of Pennsylvania ordered that this Court appoint the Defendant counsel as this was considered his first PCRA Petition. The Court appointed Julian Allatt, Esquire on August 10, 2012 to represent the Defendant in the matter. After hearing no response from the original request for a concise statement, this Court issued another order on October 18, 2012.

In addition to the Defendant's Petition for Credit supplying no basis for relief, the Petition is untimely when treated as a PCRA Petition. 42 Pa.C.S. 9545(b) requires that a PCRA petition be filed within one (1) year of the date the judgment in a case becomes final, or else meet one of the timeliness exceptions under 42 Pa.C.S. § 9545(b)(1). The exceptions set forth in 42 Pa.C.S. § 9545(b)(1) are as follows:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

Here, the Defendant was sentenced on March 29, 2011. The Defendant did not file any appeals with the Superior Court of Pennsylvania. The Petition that was filed on May 24, 2012 was filed beyond one (1) year of the date the judgment became final. The Petition was filed one (1) year, one (1) month, and twenty-four (24) days after the Defendant was sentenced. In addition, the Court does not find that the Defendant falls within any of the exceptions listed in 42 Pa.C.S. § 9545(b)(1). As the Petition is without basis and is also untimely when treated as a PCRA Petition, the Court finds that the Petition should have been dismissed. However, when reviewed as a Petition for Credit for Time Previously Served, without any official documentation to support the request, it also must be denied.

DATE: \_\_\_\_\_

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Julian Allatt, Esq.