

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-364-2011  
:   
vs. :   
JAMES A. MILLER, :   
Defendant : Motion for Time Credit/PCRA

**OPINION AND ORDER**

Defendant filed a Motion for Time Credit on March 12, 2012. Specifically, Defendant alleges that the Court erred by not giving him credit for time served from April 6, 2011 to November 1, 2011. A challenge to the trial court’s failure to award credit for time served involves the legality of sentence. Commonwealth v. Beck, 848 A.2d 987, 989 (Pa. Super. Ct. 2004). Issues concerning the legality of a sentence are cognizable under the Post Conviction Relief Act (PCRA) and must be reviewed and evaluated pursuant to that statute. Id. As a result, Petitioner’s Motion for Time Credit was treated as a PCRA petition.

On March 1, 2011, Defendant was charged with two counts of D.U.I. in addition to other charges. After posting bail, Defendant was arrested and detained in the Allegheny County Jail for probation violations resulting from the D.U.I. charges. Defendant alleges that he was incarcerated in the Allegheny County Jail from April 6, 2011 to November 1, 2011 on probation violation detainers stemming from his alleged criminal activity on March 1, 2011. Both parties have stipulated that Defendant was incarcerated in the Allegheny County Jail from April 6, 2011 until November 1, 2011 when he was released. On November 2, 2011, Defendant was sentenced to nine to twenty four months incarceration for D.U.I.

The issue in this case is whether time served should be credited to the

Defendant's sentence when the incarceration was the result of probation violation detainers due to new charges being filed against Defendant.

Sentencing credit for time spent in custody is afforded through 42 Pa. C.S.A. § 9760:

(1) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

(4) If the defendant is 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 prosecution shall 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 (1) and (4).

The Superior Court of Pennsylvania has interpreted 42 Pa. C.S.A. § 9760 to mean that a defendant is entitled to have time served for a probation detainer credited toward his sentence if the pre-trial incarceration resulted in part from the charges for which he is serving a sentence. Commonwealth v. Smith, 853 A.2d 1020, 1025 (Pa. Super. Ct. 2004). In Smith, the defendant was arrested on March 30, 2001. Id. at 1022. He was released from jail after posting bail. Id. at 1023. Before trial, Smith was arrested again on April 16, 2001 for failing to pay child support. Id. He paid the child support that was owed, which entitled him to release. Id. There was a warrant issued for Smith's arrest on April 9, 2001, however, because his alleged criminal activity in March violated Smith's probation. Id. Smith remained in custody under detainer through his March 2002 trial on the charges stemming from March 30, 2001. Id. Smith appealed alleging that his time served while detained on a

probation violation should be credited to his sentence. Id. The court ruled that Smith's time in custody should be credited to his sentence because the pre-trial time served was at least partially the result of his March 30, 2001 arrest. Id. at 1025.

Similar to Smith, Defendant served time on probation violation detainers beginning on April 6, 2011. The detainers grew out of Defendant's alleged criminal activity on March 1, 2011. Because the pre-trial probation detainers resulted in part from the charges for which Defendant is serving a sentence, he is entitled to credit for time served. In accordance with Smith, Defendant shall be credited for time served in the Allegheny County Jail from April 6, 2011 to November 1, 2011.

**ORDER**

**AND NOW**, this 21<sup>st</sup> day of May 2012, after consideration of Defendant's Motion for Credit, considered as a PCRA petition, the Court **GRANTS** the Defendant's Motion for Credit. Defendant is given credit for time served from April 6, 2011 to November 1, 2011 with respect to the sentence imposed.

By the Court

---

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Donald Marino, Esquire  
James A. Miller, #KG 4075  
165 SCI-Lane, Greensburg PA 15601  
Gary Weber, Esquire (Lycoming Reporter)  
Judge Lovecchio (Angeline Allen, Intern)