

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1260-2009
 :
 DAMONTRAY TAYLOR, :
 Defendant :
 OPINION AND ORDER

This matter came before the court on the Defendant's Petition for Time Credit, which the Court treated as a Post Conviction Relief Act (PCRA) petition pursuant to Commonwealth v. Beck, 848 A.2d 987, 989 (Pa. Super. 2004). The relevant facts follow.

On July 24, 2009, Defendant was arrested and charged with possession with intent to deliver a controlled substance, possession of a controlled substance, possession of drug paraphernalia, criminal use of a communication facility, and delivery of a controlled substance. Following a jury trial on March 11, 2010, Defendant was convicted of all of the charges except criminal use of a communication facility.

On June 29, 2010, the court imposed an aggregate sentence of sixteen (16) months to three (3) years of incarceration in a state correctional institution to be served consecutively to any sentence Defendant was presently serving. The court noted Defendant had been incarcerated on this offense since July 24, 2009 and directed that he receive all credit for this offense as provided by law.

Defendant appealed his conviction and sentence, but the Superior Court affirmed his judgment of sentence in a memorandum decision filed on July 7, 2011 and the Pennsylvania Supreme Court denied his petition for allowance on appeal on December 15, 2011.

On October 17, 2012, Defendant filed a petition for time credit, as well as another appeal. After the appeal was quashed, the court treated Defendant's petition as a PCRA petition, appointed counsel to represent Defendant and gave counsel an opportunity to file an amended PCRA petition or a no-merit letter pursuant to Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988) and Commonwealth v. Finley, 379 Pa. Super. 390, 550 A.2d 213 (1988).

After corresponding with Defendant and reviewing Defendant's Department of Corrections status sheet concerning his sentence in this case and his parole violation sentence in CR-2010-2005, appointed counsel filed a motion to withdraw as counsel that contained a no-merit letter pursuant to Turner and Finley.

Upon review of the record in this case, the court also concludes that Defendant's petition lacks merit. The court gave Defendant credit for time served when it imposed his sentence on June 29, 2010. Defense counsel reviewed Defendant's status sheet from the Department of Corrections and confirmed that Defendant received the credit as ordered. From counsel's no-merit letter, it appears that Defendant also wanted to receive this credit on his parole violation sentence in CR-2010-2005. As defense counsel explained in his no merit letter, Defendant cannot receive credit in CR-2010-2005 because: (1) his PCRA petition was not filed to that case number; (2) he received his parole violation on September 3, 2010, so that any PCRA filed to CR-2010-2005 would be untimely, see 42 Pa.C.S. §9545(b); and he is not entitled to duplicate credit, Commonwealth v. Merigris, 453 Pa. Super. 78, 681 A.2d 194 (Pa. Super. 1996).

Accordingly, the Court will grant defense counsel's motion to withdraw and give Defendant notice of its intent to dismiss his petition without holding an evidentiary hearing.

ORDER

AND NOW, this ___ day of September 2013, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court is satisfied that there are no genuine issues of material fact, Defendant is not entitled to relief as a matter of law and no purpose would be served by any further proceedings. Therefore, the court gives Defendant notice of its intent to dismiss his petition without holding an evidentiary hearing. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the petition.

The Court also grants defense counsel's motion to withdraw. Defendant is notified that he may represent himself or he may hire private counsel but unless he files a response within twenty (20) days that would show that an evidentiary hearing is needed in this case he is no longer entitled to court-appointed counsel.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Donald F. Martino, Esquire
Damontray Taylor, KS1634
SCI Houtzdale, PO Box 1000, Houtzdale PA 16698-1000
Work file