

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-284-2006
	:	CR-270-2006
v.	:	
	:	CRIMINAL DIVISION
MILLARD S. BEATTY, III,	:	
Defendant	:	1925(a) Opinion

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

I. Background

Much of the background is provided by the January 3, 2014 Opinion and Order of the Honorable Marc Lovecchio of the Lycoming County Court of Common Pleas:

In case number 270-2006, Defendant was charged with burglary, a felony of the first degree; conspiracy to commit burglary, a felony of the first degree; two counts of forgery, both graded as felonies of the second degree; criminal trespass, a felony of the third degree; access device fraud, a misdemeanor of the first degree; possessing an instrument of crime, a misdemeanor of the first degree; theft by unlawful taking, a misdemeanor of the first degree; and receiving stolen property, a misdemeanor of the first degree. These charges arose out of an incident on January 17, 2006 where Defendant entered an individual's residence, stole checks and a debit card and then used the debit card to make purchases and cashed the checks.

In case number 284-2006, Defendant was charged with receiving stolen property, a felony of the third degree; recklessly endangering another person, a misdemeanor of the second degree; resisting arrest, a misdemeanor of the second degree; possession of drug paraphernalia, an ungraded misdemeanor; fleeing or attempting to elude a police officer, a misdemeanor of the second degree; driving under the influence (DUI), an ungraded misdemeanor, and numerous summary offenses. These offenses arose out of an incident on January 22, 2006, where police discovered Defendant in possession of a stolen vehicle and he led them on a high speed chase before crashing the vehicle and being taken into custody. The police discovered a crack pipe on Defendant's person during a search incident to his arrest.

On June 7, 2006, Defendant pled guilty to burglary, conspiracy and forgery in case 270-2006 and receiving stolen property, recklessly endangering another person, possession of drug paraphernalia, fleeing and eluding, DUI and several summary offenses in case 284-2006. The court sentenced Defendant to twelve months of supervision under the Intermediate Punishment Program for each conviction in case 270-2006, for an aggregate period of 36 months of Intermediate Punishment supervision.

In case 284-2006, the court sentenced Defendant to 6 months on the Intermediate Punishment Program with the first 72 hours at the Lycoming County Pre-Release Center for DUI and 12 months of supervision on the Intermediate Punishment Program on each conviction for receiving stolen property, recklessly endangering another person, and

fleeing or attempting to elude the police. Shortly thereafter, Defendant violated his Intermediate Punishment supervision. On July 19, 2006, those sentences were revoked and Defendant was resentenced. Under case 270-2006, the court imposed two years of probation under the supervision of the Pennsylvania Board of Probation and Parole on each count. These sentences were to be served consecutive to the sentence imposed in case 581-2005.¹ The sentence imposed for Count 2, conspiracy, and Count 3, forgery, were concurrent to each other but consecutive to the sentence imposed for Count 1, burglary.

In case 284-2006, Defendant was re-sentenced to one year of probation on Count 1, receiving stolen property; two years of probation on Count 2, recklessly endangering another person; and 1 year of probation on Count 4, possession of drug paraphernalia. These sentences were to be served concurrently to each other and concurrently to the sentences imposed under Count 1 of case 270-2006, but consecutively to the period of state incarceration imposed in case 581-2005.

Opinion and Order (Lovecchio, J., Jan. 3, 2014).

On June 5, 2013, the Defendant was arrested and charged with multiple crimes including aggravated assault, fleeing or attempting to elude a police officer, recklessly endangering another person, and false identification to law enforcement. The Defendant was incarcerated from the time of his arrest to the time of his final special probation violation hearing on January 13, 2014. After the hearing, the Honorable Dudley Anderson of the Lycoming County Court of Common Pleas determined that the Defendant had violated the conditions of his probation. The Court revoked the Defendant's special probation sentences in cases 270-2006 and 284-2006. On Count 1 of case 270-2006, the Court resentenced the Defendant to one to two years of incarceration to run concurrently with a sentence imposed in case 253-2013 of Columbia County. On Count 2 of case 270-2006, the Court resentenced the Defendant to one to two years of incarceration to run concurrently with the Count 1 sentence and the sentence imposed in case 253-2013 of Columbia County. On Count 3 of case 270-2006, the Court resentenced the Defendant to three to nine months of incarceration to run concurrently to the sentence imposed in case 253-2013 of Columbia County and the sentences imposed in Count 1 and Count 2. On Count 2 of 284-2006,

¹ In case 581-2005, Defendant was re-sentenced to 13 months to 5 years of incarceration in a state correctional institution.

the Court sentenced the Defendant to three to nine months of incarceration to run concurrently with the sentences imposed in case 270-2006. The Defendant received credit for time served from January 9, 2013 to February 21, 2013. He also received credit for time served on March 5, 2013. He also received credit for time served from June 6, 2013 to January 12, 2014.

On March 25, 2014, the Defendant pled guilty to the charges of attempting to elude a police officer and recklessly endangering another person, which arose from his arrest on June 5, 2013. On March 25, 2014, the Honorable Marc Lovecchio imposed a sentence of 18 to 36 months of incarceration to run consecutively to the other sentences being served. The Defendant did not file a post-sentence motion and did not appeal the sentence of March 25, 2014.

On June 25, 2014, the Defendant pro se filed a “Motion to Modify Sentence Nunc Pro Tunc.” In the motion, the Defendant asked the Court “to sever part of the credit for time served.” Specifically, the Defendant wanted the time from June 6, 2013 to January 12, 2014 “severed.” The Court determined that the Defendant wanted the time served from June 6, 2013 to January 12, 2014 applied to his sentence imposed on March 25, 2014. On July 1, 2014, the Court denied the Defendant’s motion. On July 16, 2014, the Defendant filed a notice of appeal. On July 21, 2014 the Superior Court ordered this Court to conduct an on the record inquiry to determine whether the defendant desired counsel on appeal. On July 22, 2014, the Court requested a concise statement of matters complained of on appeal. On August 18, 2014, the Defendant filed his concise statement. On August 19, 2014, the Court conducted an on the record inquiry and determined that the Defendant’s waiver of counsel was knowing, intelligent, and voluntary.

II. Discussion

“[A] sentencing court has only thirty days from the imposition of sentence within which to act to modify the sentence.” Commonwealth v. Bogden, 528 A.2d 168, 169 (Pa. Super. 1987);

42 Pa.C.S. § 5505. The Defendant was sentenced on January 13, 2014. The Defendant filed his motion to modify the sentence on June 25, 2014. Therefore, under 42 Pa.C.S. § 5505, the Court could not modify the sentence.

“[W]here an appellant challenges the trial court’s failure to award credit for time served prior to sentencing, the claim involves the legality of sentence. A claim challenging the legality of sentence is appealable as of right.” Commonwealth v. Hollawell, 604 A.2d 723, 725 (Pa. Super. 1992) (quoting Commonwealth v. Diamond, 546 A.2d 628, 631 n. 3 (Pa. Super. 1988)).

In Commonwealth v. Smith,² the defendant was sentenced to probation. 853 A.2d at 1023. While on probation, the defendant was arrested and charged with offenses unrelated to the offense for which he was on probation. Id. The defendant posted bail but was held in jail because he violated his sentence of probation. Id. The Superior Court of Pennsylvania held that “because [the defendant’s] pretrial incarceration is attributable to both his probation detainer and the new criminal charges, it must be attributed to either his sentence under the new criminal charges or to a sentence imposed for violation of probation.” Id. at 1026. Here, the time from June 6, 2013 to January 12, 2014 is attributable to both the probation violation and the criminal charges arising from June 5, 2013. Therefore, the time must be attributed to either the sentence for the probation violation or the sentence for the charges arising from June 5, 2013. The Court attributed the time to the sentence for the probation violation.

“[A] defendant is not entitled to ‘receiv[e] credit against more than one sentence for the same time served.’” Commonwealth v. Ellsworth, 2014 PA Super 167 (Pa. Super. 2014) (quoting Commonwealth v. Merigris, 681 A.2d 194, 195 (Pa. Super. 1996)). Since the time has been attributed to the sentence for the probation violation, the Defendant is not entitled to receive credit for the time under the sentence for the charges arising from June 5, 2013.

² 853 A.2d 1020 (Pa. Super. 2004).

III. Conclusion

Because the time served from June 6, 2013 to January 12, 2014 has been attributed to the probation violation sentence, the Defendant is not entitled to receive credit for the time under the Court's sentence of March 25, 2014. Therefore, the Court respectfully submits that its Order of July 1, 2014 be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge