

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-488-2009; CR-490-2009

vs.

:

:

: Notice of Intent to Dismiss Defendant's

: PCRA Petition and Granting Defense

: Counsel's Motion to Withdraw

SCOTT D. FISHER,
Defendant

:

OPINION AND ORDER

This matter came before the court on Defendant's petition seeking credit for time served, which the court treated as a Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

On or about December 23, 2008, the Pennsylvania State Police filed criminal complaints against Defendant charging him with burglary and related offense in the above-captioned cases. Defendant was arrested on January 15, 2009 and committed to the Lycoming County Prison in lieu of \$75,000 bail. Defendant was transferred to other prisons due to pending charges in other counties.

On or about August 12, 2009, Defendant pled guilty to burglary, a felony of the first degree, and theft by unlawful taking, a misdemeanor of the second degree, in each of the above-captioned cases in exchange for a three to six year sentence of state incarceration concurrent to Defendant's pending burglary and related charges in other counties. As a result, Defendant requested numerous continuances of his sentencing hearing until those charges were resolved.¹

On February 28, 2013, this court sentenced Defendant in accordance with the

¹Eventually, the charges from the other counties were transferred to Cameron County and consolidated with Cameron County charges. Following a non-jury trial, Defendant was convicted of a multitude of burglary and/or conspiracy to commit burglary charges.

plea agreement to an aggregate sentence of three to six years of incarceration in a state correctional institution to be served totally concurrent with any and all sentences Defendant was presently serving.

Defendant filed a petition seeking credit for time served when he was detained at SCI-Camp Hill and SCI-Pine Grove from March 24, 2009 until February 28, 2013, which the court treated as a PCRA petition. The court appointed counsel for Defendant and gave him the opportunity to file an amended 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)(en banc). After corresponding with Defendant, counsel filed a “no merit” letter on the basis that the court had already ordered that the Defendant receive credit for time served in his sentencing order.

After an independent review of the record, the court agrees that Defendant’s petition lacks merit.

Although the court did not specify the dates that Defendant was incarcerated, the sentencing order stated “Defendant is entitled to credit for all time spent incarcerated on this offense.” Therefore, the court has already ordered that Defendant receive credit for time served. If Defendant believes that the Department of Corrections (DOC) is not complying with the court’s sentencing order, his remedy generally would not be with this court, but a mandamus action against the DOC. See Oakman v. Department of Corrections, 903 A.2d 106 (Pa. Commw. 2006).²

² Unfortunately, there likely is not any time that Defendant served “as a result of” this offense. Due to the nature of the plea agreement, this court could not sentence Defendant until after he was sentenced in Cameron County. According to the docket sheets for Defendant’s Cameron County cases, he was sentenced in Cameron County on October 12, 2012 and he received credit for 1,517 days served. See CP-12-CR-08-2009 (docket

Since the court agrees that Defendant's PCRA petition lacks merit, it will give Defendant notice of its intent to dismiss his petition without holding an evidentiary hearing and grant defense counsel's motion to withdraw.

ORDER

AND NOW, this ___ day of February 2014, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that no purpose would be served by conducting any further hearing and the parties are hereby notified of this court's intention to dismiss Defendant's petition for credit which the court has treated as a PCRA petition. In light of this finding, the court grants defense counsel's motion to withdraw.

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.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Donald Martino, Esquire
Scott D. Fisher, KU 1373
SCI-Pine Grove, 191 Fyock Rd, Indiana PA 15701
Gary Weber, Esquire (Lycoming Reporter)
Work file

sheet). Once a defendant is sentenced in another jurisdiction and receives credit for time served, that time spent in custody can no longer be considered "as a result of" any other charges. Commonwealth v. Megris, 681 A.2d 194, 195 (Pa. Super. 1996).