

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-488-2009;  
 : CP-41-CR-490-2009  
vs. :  
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 : 1925(a) Opinion

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

This opinion is written in support of this court's order entered March 11, 2014.

The relevant facts follow.

On or about December 23, 2008, the Pennsylvania State Police filed criminal complaints against Scott D. Fisher (hereinafter "Fisher") charging him with burglary and related offenses in the above-captioned cases. Fisher was arrested on January 15, 2009 and committed to the Lycoming County Prison in lieu of \$75,000 bail, and he never posted bail. Fisher was transferred to other prisons, though, due to similar charges in other counties.

On or about August 12, 2009, Fisher 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 his pending burglary and related charges in the other counties. As a result, Fisher requested numerous continuances of his sentencing hearing until those charges were resolved.<sup>1</sup>

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<sup>1</sup>Eventually, the charges from the other counties were transferred to Cameron County and consolidated with

On February 28, 2013, this court sentenced Fisher in accordance with the plea agreement to three to six years of incarceration in a state correctional institution to be served concurrent with any and all sentences he was presently serving. Although the court noted that Fisher was incarcerated at SCI Camp Hill serving an approximately 17 year to 36 year sentence for which he had received years of credit for time served (see Sentencing Transcript, p.2), the court stated in the sentencing order that Fisher was entitled to credit for all time spent incarcerated on these offenses.

Fisher filed a petition seeking credit for time served while 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 Post Conviction Relief Act (PCRA) petition in accordance with Commonwealth v. Beck, 848 A.2d 987, 989 (Pa. Super. 2004). The court appointed counsel for Fisher and gave counsel 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 Fisher, counsel filed a motion to withdraw and a “no merit” letter on the basis that the court had already ordered that Fisher receive credit for time served in his sentencing order.

After an independent review of the record, the court also found that Fisher’s petition lacked merit. The court granted counsel’s petition to withdraw and gave Fisher

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Cameron County charges. Following a non-jury trial, Fisher was convicted of a multitude of burglary and/or conspiracy to commit burglary charges.

notice that it intended to dismiss his petition without holding an evidentiary hearing. Fisher did not respond to the notice, and the court dismissed his petition. Fisher filed a timely notice of appeal.

Initially, the court notes that it directed Fisher to file a statement of errors complained of on appeal, but no such statement has been filed. Therefore, any and all issues Fisher wished to assert on appeal are waived. Commonwealth v. Hill, 16 A.3d 484 (Pa. 2011).

Even if his claim for credit is not waived, however, it clearly lacks merit. In this case, credit for time served is governed by 42 Pa.C.S. §9760(1), which states in relevant part: “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 charge is based...”

In the sentencing order, the court specifically stated: “The Defendant is entitled to credit for all time spent incarcerated on this offense.” When the court gave Fisher notice of its intent to dismiss his petition without holding an evidentiary hearing, the court informed Fisher that if the Department of Corrections (DOC) was not complying with the sentencing order, his remedy would be a mandamus action against the DOC. See Oakman v. Department of Corrections, 903 A.2d 106 (Pa. Commw. 2006).

The court did not specify the dates Fisher was incarcerated on these offenses, because he had already received years of credit for time served on his lengthy sentence(s) from Cameron County. A defendant is not entitled to duplicate credit. As the court explained in a footnote, there probably was not any time that would be considered served on these offenses, because once a defendant sentenced in another jurisdiction receives credit for time

served, that time spent in custody can no longer be considered “as a result of” any other charges. Commonwealth v. Merigris, 681 A.2d 194, 195 (Pa. Super. 1996); see also Commonwealth v. Davis, 852 A.2d 392, 400 (Pa. Super. 2004). In other words, Fisher was not entitled to credit for time served in this case if he had already received the same credit towards his lengthy Cameron County sentence(s).

DATE: 06-25-2014

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Scott D. Fisher, KU 1373  
SCI Pine Grove, 191 Fyock Rd, Indiana PA 15701  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)