

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 270 – 2006
	:	CR – 284 – 2006
	:	CR – 1548 – 2013
vs.	:	
	:	CRIMINAL DIVISION
MILLARD SHUBERT BEATTY, III,	:	
Defendant	:	PCRA

OPINION AND ORDER

Before the Court is Defendant's Amended PCRA petition, filed September 3, 2015.¹ Argument on the petition was heard September 22, 2015.

Defendant was re-sentenced on January 13, 2014, as a result of the revocation of two prior probation sentences. Under No. CR – 270-2006, he was sentenced to one to two years incarceration on a count of burglary, one to two years incarceration on a count of conspiracy and three to nine months on a count of forgery. Under No. CR – 284-2006, he was sentenced to three to nine months on a count of Recklessly Endangering Another Person. All of these sentences were to run concurrent with each other, and with a one to three year sentence imposed in Columbia County on the charges which led to the revocation proceeding. Defendant was given credit for time served from, in relevant part, June 6, 2013, through January 12, 2014.

On March 25, 2014, under No. CR – 1548 – 2013, Defendant pled guilty to and was sentenced on one count of fleeing and eluding and one count of Recklessly Endangering Another Person, to 18 to 36 months incarceration. This sentence was to run consecutive to all other sentences Defendant was serving. The charges were based on an incident which occurred on June 5, 2013, and for which Defendant was arrested on June 6, 2013.

In the instant PCRA petition, Defendant seeks reconsideration of the court's having given him credit for the time served from June 6, 2013, through January 12, 2014, against the 2006 sentences, asking that instead the court credit such time to the 2013 sentence. Inasmuch

as the 2006 sentences run concurrent with the longer sentence imposed in Columbia County, the credit in those cases has no practical effect. Credit against the consecutive 18 to 36 month sentence in the 2013 case, however, would reduce the length of that sentence.

As it appears that the time Defendant served from June 6, 2013, through January 12, 2014, was based on his arrest in the 2013 case, and also on a detainer in the 2006 cases, the court *must* grant the credit in either the 2006 cases or the 2013 cases, and *may* grant the credit in either case. See Martin v. Pa. Bd. of Prob. and Parole, 840 A.2d 299 (Pa. 2003); Commonwealth v. Smith, 853 A.2d 1020 (Pa. Super. 2004). Therefore, the court will grant Defendant the relief he seeks and will enter the following:

ORDER

AND NOW, this day of September 2015, for the foregoing reasons, Defendant's motion to modify sentence nunc pro tunc, treated as a PCRA petition, is hereby GRANTED. The sentencing order of January 13, 2014, entered to Nos. CR – 270 – 2006 and 284 – 2006 is hereby modified to remove the credit for time served from June 6, 2013, through January 12, 2014. In all other respects, that order shall continue in effect.

The Order of March 25, 2014, entered to No. 1548 – 2013, is hereby modified to provide for credit for time served from June 6, 2013, through January 12, 2014. In all other respects, that order shall also continue in effect.

BY THE COURT,

cc: DA
PD
APO
Pa.BP&P
Sentence Computation Unit
P.O. Box 598, Camp Hill, PA 17001
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge

¹ Such was filed in response to the Superior Court's remand for the court to consider a Motion to Modify Sentence Nunc Pro Tunc as a first petition under the PCRA. Since that motion was filed within one year of the finality of the sentence about which Defendant complains, it is considered timely.