

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-2093-2013
 :
 ERIC ECK, :
 :
 Defendant :

OPINION AND ORDER

This matter came before the court on October 17, 2019 for a hearing and argument on Eric Eck’s motion to modify sentence. Eck asserts three claims in his motion.

In his first claim, Eck notes that there is conflicting language in his sentencing order in that there is a sentence that states he is RRRI eligible and his RRRI minimum is 40 months and there is another sentence that states Eck is not RRRI eligible. Eck asks the court to strike the sentence that states he is not RRRI eligible. Eck, through counsel, also argued that Eck has had several sentences where he was made RRRI eligible so that it appears that there may be an error somewhere, perhaps with the count to which he pled guilty under criminal docket number CR-1828-1999.

To be entitled to a Recidivism Risk Reduction Incentive (RRRI) minimum, a defendant must meet the definition of an “eligible offender” which includes the requirement that the defendant or inmate has not been found guilty of or previously convicted of or adjudicated delinquent for or an attempt or conspiracy to commit a personal injury crime as defined in 18 P.S. §11.103. 61 Pa. C.S.A. §4503. A “personal injury crime” includes any “act, attempt or threat to commit an act which would constitute a misdemeanor or felony under the following: ... 75 Pa. C.S. §3742 (relating to accidents involving death or personal

injury). 18 P.S. §11.103. On or about March 17, 2000, Eck was convicted of Count 2, accidents involving death or personal injury while not properly licensed in violation of 75 Pa. C.S. §3742.1. See CP-41-CR-00001828-1999.¹ Despite the fact that a violation of section 3742.1 involves death or personal injury, it is not listed as a “personal injury crime” in 18 P.S. §11.103.

Nevertheless, the court declines to make Eck eligible for RRRI based on 61 Pa. C.S.A. §4505(c)(3), which indicates that if a defendant was previously sentenced to two or more RRRI minimum sentences, the court may, in its discretion, with the approval of the prosecuting attorney, impose a RRRI sentence. The prosecuting attorney has not approved the imposition of a RRRI sentence in this case. Furthermore, the court is not inclined to exercise discretion in favor of Eck under the facts and circumstances of this case.

In his second claim, Eck seeks credit for time served from the date of his sentencing hearing. At the hearing in this matter, Eck’s counsel also requested credit for time served from November 15, 2013 to April 21, 2014. The court finds that Eck is not entitled to any credit for time served in this case.

When Eck’s Intermediate Punishment sentence was revoked on February 12, 2015 under docket number CP-41-CR-0000909-2011, Eck received credit for November 15, 2013 to April 21, 2014, along with several other times periods. A copy of the order is attached to this Opinion as Exhibit 1. Eck is not entitled to duplicate credit. *Commonwealth v. Ellsworth*, 97 A.3d 1255, 1257 (Pa. Super. 2014); *Commonwealth v. Merigris*, 452 Pa.

¹ The docket sheet incorrectly lists this offense as a violation of 75 Pa. C.S. § 3742. However, both the

Super. 78, 681 A.2d 194, 195 (1996).

As a result of convictions in York County,² Eck's parole in case CP-41-CR-0000909-2011 was revoked and he was ordered to serve a total of 2 years of back time. See N.T., 7/19/2018, at 5-6. Additionally, on April 11, 2018, Eck was sentenced to serve one to two years' incarceration in a state correctional institution for a drug offense in York County. See CP-67-CR-0000532-2018. The sentence imposed on July 19, 2018 in Eck's current case (CR-2093-2013) was ordered to be served consecutively to any sentence Eck was presently serving. As a result, Eck is not entitled to any credit in this case and he cannot begin to serve the sentence in this case until after he serves his parole back time and at least his minimum sentence for his York County case.

Eck's third claim is that his sentence is unduly harsh and excessive. The court will deny this claim for the reasons set forth in its Opinion entered on December 7, 2018.

ORDER

AND NOW, this ___ day of October 2019, the court DENIES Eck's motion to modify sentence.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney (JR)
Helen Stolinis, Esquire
Mazza Law Group, 2790 West College Ave, Suite 800, State College PA 16801
Gary Weber, Esquire (Lycoming Reporter)
Work File

Information and the criminal complaint list this offense as a violation of 75 Pa. C.S. § 3742.1.

² See CP-67-CR-0000532-2018 and CP-67-CR-00007826-2017.