IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLANIA EX. REL. JOHNNY McDANIEL,	: : :
vs.	: No. CP-41-CR-0000938-2014
	:
JOHN WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS,	: : : :

OPINION AND ORDER

Before the court are the Petition for Habeas Corpus Ad Subjiciendum and the

Petition to Proceed In Forma Pauperis filed by Johnny McDaniel on December 27, 2018.

According to McDaniel's habeas corpus petition, he was sentenced on June

23, 2014 in Lycoming County to 9 months to 2 years' incarceration with credit for time

served from April 17, 2014 to June 22, 2014. On November 7, 2014, McDaniel was

sentenced in Snyder County, in case CP-55-CR-0000184-2014, to 6 months to 3 years'

incarceration to be served consecutively to the Lycoming County sentence. He was paroled

on July 20, 2015. On June 18, 2018, he was recommitted to state confinement for technical

parole violations, resulting in a new maximum date of May 31, 2019.

McDaniel contends that he completed his Lycoming County sentence on April

17, 2016, and that the DOC is illegally confining him beyond his maximum date. The court

cannot agree.

Initially, the court does not believe a petition for habeas corpus is the proper

action for McDaniel's claims. The proper method by which a petitioner challenges the

aggregation of his sentences is by filing a mandamus action against the Department of Corrections (DOC) in Commonwealth Court, not a habeas corpus petition in the trial court. *Gillespie v. Commonwealth, Dep't. of Corrections*, 527 A.2d 1061, 1064 (Pa. Cmwlth. 1987).

Even if McDaniel's habeas corpus petition was properly before this court, he would not be entitled to relief. As a matter of law, McDaniel's sentences aggregated to a single sentence of 15 months to 5 years' incarceration in a state correctional institution.

Aggregation of consecutive sentences is mandatory and automatic; the DOC does not have any discretion to treat consecutive sentences separately. 42 Pa. C.S. §§9757, 9762(f); *Commonwealth v. Rathfon*, 899 A.2d 365 (Pa. Super. 2006); *Commonwealth v. Hall*, 652 A.2d 8585, 859 (Pa. Super. 1995)("when a sentence is ordered to be served consecutively with another being imposed or previously imposed, the two sentences are automatically aggregated"). Aggregation is the adding together of consecutive sentences to form one new sentence with one effective date, one minimum date and one maximum date. Therefore, none of McDaniel's sentences are expired or fulfilled. They are still running as one sentence with one minimum and one maximum date.

Although McDaniel filed his habeas corpus petition to his criminal case number, this type of request for habeas relief is a civil action. *Pew v. Mechley*, 929 A.2d 1214, 1218 (Pa. Cmwlth. 2007)("a writ of habeas corpus is a civil remedy regardless of whether a prisoner has been detained pursuant to a civil or criminal process"); *Chadwick v. Caulfield*, 834 A.2d 562, 566 (Pa. Super. 2003)("Traditionally, a writ of habeas corpus is a

2

civil remedy that tests the legality of the detention."). The court may deny a prisoner's request to proceed *in forma pauperis* if the court determines the action or proceeding is frivolous. Pa. R. Civ. P. 240(j)(1); *see also Thomas v. Holz,* 707 A.2d 569 (Pa. Cmwlth. 1998). A frivolous action or proceeding is one that lacks an arguable basis in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 1831-1832 (1989). As McDaniel's sentences aggregated as a matter of law, his claim that his Lycoming County sentence "maxed out" on April 17, 2016 is frivolous.

ORDER

AND NOW, this ___ day of January 2019, upon consideration of the Petition for Habeas Corpus Ad Subjiciendum and the Petition to Proceed In Forma Pauperis filed by Johnny McDaniel, the court summarily denies both petitions.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
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