

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH** : **No. CR-2073-2016**  
 :  
**vs.** :  
 :  
**NAOMI CROSS,** :  
**Defendant** :

**OPINION AND ORDER**

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Naomi Cross. In her petition, Cross seeks credit for time served.

By way of background, on October 4, 2017, Cross pled guilty to Driving Under the Influence of a Controlled Substance (DUI), graded as a misdemeanor of the first degree, and she was sentenced to a split sentence of 90 days to 23 months' incarceration in the Lycoming County Prison followed by 37 months' supervision under the Intermediate Punishment Program (IPP) with placement on the Lycoming County Drug Court Program. The court gave Cross credit for time served from August 16 through September 5, 2017. A condition of Cross' supervision was that she attend and successfully complete the Drug Court Program.

On April 24, 2019, the court found that Cross violated the conditions of her parole and IPP by being removed from the Drug Court Program. Cross declined to participate in the State Intermediate Punishment (SIP) Program. The court revoked Cross' IPP and re-sentenced her to serve 1 ½ to 3 years' incarceration in a state correctional institution. The court found that Cross was eligible for a Recidivism Risk Reduction Incentive (RRRI), with the RRRI minimum of 13 months and 15 days. The court specifically found that Cross had no credit for time served toward this sentence.

With respect to the parole portion of Cross' sentence, the court paroled Cross to her new state sentence and indicated that the parole portion would now run concurrent with the state sentence and max out effective January 16, 2020.

On June 10, 2019, Cross filed a petition for reconsideration of sentence nunc pro tunc in which she sought credit for time served. Pursuant to *Commonwealth v. Johnson*,<sup>1</sup> the court treated Cross' petition for reconsideration as a PCRA petition. The court appointed counsel to represent Cross and directed counsel to file either an amended PCRA petition or a *Turner/Finley*<sup>2</sup> no merit letter.

On October 31, 2019, PCRA counsel filed an amended PCRA petition. In this petition, Cross seeks credit for time served for the following time periods: (1) August 16, 2017 to September 5, 2017; (2) October 4, 2017 to December 15, 2017; (3) January 2, 2018 to March 13, 2018; and (4) December 6, 2018 to April 24, 2019.

The court held a conference with counsel for the parties on November 7, 2019. There was no dispute that Cross was incarcerated during these time periods. The only dispute was Cross' entitlement of credit to her new state sentence as opposed to that credit applying to the county incarceration portion of the split sentence in this case or her sentence in case 2085-2016.

As the sentences in this case and 2085-2016 aggregated, the court will take judicial notice of the court orders in 2085-2016.

The court finds that Cross is not entitled to credit for time served on her new state sentence from August 16, 2017 to September 5, 2017. On October 4, 2017, Cross was

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<sup>1</sup> 803 A.2d 1291, 1293 (Pa. Super. 2002).

<sup>2</sup> *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super.

sentenced for two DUI offenses – one under this case number and the other under case 2085-2016. The aggregate sentence imposed was a minimum of 93 days to a maximum of 23 months' incarceration at the Lycoming County Prison with a consecutive 37 month probationary sentence. She was given credit from August 16, 2017 to September 5, 2017 toward her minimum sentence and she was made eligible to serve the remainder of her minimum sentence on electronic monitoring. As this time was applied to the incarceration portion of her split sentence when it was originally imposed, Cross is not entitled to credit on the new state incarceration sentence imposed for her violation of IPP. *See Commonwealth v. Bowser*, 783 A.2d 348, 350 (Pa. Super. 2001). Contrary to the allegations in paragraph 21 of Cross' petition, the parole portion of her sentence and the IPP portion of her sentence were to be served consecutively at that time.

Unfortunately, Cross repeatedly violated the conditions of the electronic monitoring program. As a result, she was recommitted to serve the balance of her minimum sentence with the expiration date being December 15, 2017. See Order dated 29 November 2017 entered under case 2085-2016 (which for the benefit of the parties is attached as Exhibit A). As the time period from October 4, 2017 to December 15, 2017 was also served to satisfy her minimum term of incarceration on her split sentence, she is not entitled to this same credit on her new state sentence imposed for violating IPP.

With respect to the time from January 2, 2018 to March 13, 2018, Cross served this time under case 2085-2016 as a sanction for numerous programmatic violations of the Drug Court Program. See Order dated 10 January 2018 entered under case 2085-2016

(which for the benefit of the parties is attached as Exhibit B). Therefore, she is not entitled to this credit on her new state sentence imposed for violating IPP.

The final time period for which Cross seeks credit is December 6, 2018 to April 24, 2019. During this time period, Cross was detained for violations of both her parole and IPP. On January 31, 2019, the court found that Cross violated the conditions of her parole and IPP, but the court did not resentence Cross at that time. Instead, the court directed the Sheriff to transport Cross to SCI-Muncy for a diagnostic evaluation. The Sheriff transported Cross to SCI Muncy on February 8, 2019 and returned her to the Lycoming County Prison on March 19, 2019.

The court's intent was that any time spent in incarceration prior to the April 24, 2019 hearing would be considered served on the county parole portion of Cross' sentence. See Transcript, 4/24/19, at 16. Such was the reason the court indicated that Cross had no credit for time served on her state sentence. However, the time from February 8, 2019 to March 19, 2019 was not spent in the county prison; it was spent at SCI Muncy. As Cross was on county parole at the time of her violations and the court cannot resentence on parole violations (it can only remand the parolee to serve up to the balance of the original term of incarceration), the purpose of the diagnostic evaluation at SCI Muncy was to assist the court with its re-sentencing determination with respect to the violation of IPP, not Cross' parole. Therefore, the court would award Cross credit for time served from February 8, 2019 to March 19, 2019, but it would deny her claim in all other respects.

**ORDER**

**AND NOW**, this \_\_\_ day of February 2020, after review of the record, the court gives the parties notice of its intent to grant in part and deny in part the PCRA petition filed by Naomi Cross without holding an evidentiary hearing. The court would grant Cross credit for time served from February 8, 2019 to March 19, 2019, but in all other respects it would deny her request for credit for time served. Within twenty (20) days of the date of this order, the parties may respond to the court's intent to grant in part and deny in part the PCRA petition. If no response is received, the court will issue a final order in accordance with this Opinion and Order.

By The Court,

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Marc F. Lovecchio, Judge

cc: District Attorney  
Trisha Jasper, Esquire  
Naomi Cross, #PB9133  
SCI Muncy, PO Box 180, Route 405, Muncy PA 17756  
Work file