

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

REGINALD BLASSINGALE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2396 EDA 2013

Appeal from the PCRA Order August 15, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0407501-2006

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY OTT, J.:

FILED JULY 23, 2014

Reginald Blassingale appeals from the order entered on August 15, 2013, in the Court of Common Pleas of Philadelphia County, dismissing, without a hearing, his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541–9546. Blassingale contends the PCRA court erred in failing to grant him credit for time served against his sentence. Based upon the following, we affirm.

The PCRA Court summarized the procedural background of this case as follows:

On February 20, 2008, following a jury trial, [Blassingale] was found guilty of robbery. [Blassingdale had been arrested on robbery and related charges on March 31, 2006.] On May 28, 2008, [the trial] court imposed a sentence of not less than three

* Retired Senior Judge assigned to the Superior Court.

and one-half (3½) years nor more than seven (7) years of incarceration followed by three (3) years of probation. Post sentence motions were filed and were subsequently denied. ...

... [Blassingale] filed a direct appeal, and judgment of sentence was affirmed on October 14, 2009. A petition for allowance of appeal was denied by the Supreme Court on April 27, 2010. [***Commonwealth v. Blassingale***, 987 A.2d 810 (Pa. Super. 2009), *appeal denied*, 993 A.2d 899 (Pa. 2010).]

On September 10, 2010, [Blassingale] filed a *pro se* petition for post-conviction collateral relief. Counsel was appointed and filed an Amended Petition alleging that [Blassingale] was entitled to credit for time served and that state prison officials erroneously applied time credit to [Blassingale's] back-time. After conducting an exhaustive review of the record, [the PCRA] court [issued notice of intent to dismiss pursuant to Pa.R.Crim.P. 907, on May 20, 2013, and] dismissed the petition on August 15, 2013[, as not cognizable.] A timely Notice of Appeal was filed.

PCRA Court Opinion, 9/17/2013, at 1–2 (footnote omitted).¹

By way of background, at the time of Blassingale's March 31, 2006 arrest in the underlying case, he was still serving a sentence of parole. The Pennsylvania Board of Probation and Parole ("Board") lodged a detainer against Blassingale the same day as his arrest. Blassingale argues that "at all times prior to being sentenced herein he was held in custody[,]" yet "[n]either at the sentencing hearing nor in the signed sentencing order did the sentencing court mention credit for time served or how the time [Blassingale] spent in custody prior to trial should be delineated between the instant matter and the matter underlying the Board Detainer." Blassingale's

¹ The PCRA court did not direct Blassingale to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

Brief at 4. Blassingale contends the PCRA court erred in failing to grant him credit for time served against his sentence because “the [trial] court violated the mandate of [42 Pa.C.S § 9760], which requires that a court shall consider whether a defendant is entitled to credit for time served at the time of sentencing.” Blassingale’s Brief at 10.

This Court’s standard of review regarding a PCRA court’s order is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. ***Commonwealth v. Fowler***, 930 A.2d 586, 590 (Pa. Super. 2007), *appeal denied*, 944 A.2d 756 (Pa. 2008). The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record. ***Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa. Super. 2001). Moreover, a PCRA court may decline to hold a hearing if it determines that a petitioner’s claim is patently frivolous and is without a trace of support in either the record or from other evidence. ***Commonwealth v. Jordan***, 772 A.2d 1011, 1014 (Pa. Super. 2001).

Preliminary to our review, we note that when a petitioner challenges the legality of a trial court’s alleged failure to award credit for time served as required by law in imposing sentence, that challenge is deemed cognizable as a due process claim in PCRA proceedings. ***Commonwealth v. Perry***, 563 A.2d 511, 513 (Pa. Super. 1989). However, “[a] challenge to the Bureau of Correction’s [sic] computations or construction of the terms of sentences imposed is neither a direct nor even a collateral attack on the sentences

imposed; and so, such claims [are] not deemed cognizable in [post-conviction] proceedings.” ***Id.***

This Court, in ***Commonwealth v. Mann***, 957 A.2d 746 (Pa. Super. 2008), discussed the manner in which credit for time served was to be apportioned in cases where a defendant is awaiting trial for new charges while simultaneously awaiting disposition of an alleged parole/probation violation:

[A]ll time served by a parole violator while awaiting disposition on new charges must be credited to the original sentence if he or she remains in custody solely on a Board detainer. If the defendant is incarcerated prior to disposition, and has both a detainer **and** has failed for any reason to satisfy bail, the credit must be applied to the new sentence by the sentencing court. In this circumstance, the credit must be applied by the trial court as a sentencing condition, as the Board and the Commonwealth Court have no jurisdiction to alter sentencing conditions on later review. If the new sentence is shorter than the time served, the balance can be applied to the original sentence, but the sentencing court must specify “time served” in the sentencing order for the new offense, so that the Board will be able to apply the credit.

Id. at 751 (citations omitted) (emphasis in original).

Here, Blassingale in his brief admits “all of the time he spent in custody prior to being sentenced in the instant matter was [] applied as back time to the matter on which state authorities had issued a detainer and not on the instant matter.” Blassingale’s Brief at 5. However, as the PCRA court explained, Blassingale “argues that because he did not make bail on the new case and because he was being held on a detainer for violating parole, credit should have been applied to the new case pursuant to the

holding in **Mann.**" PCRA Court Opinion, **supra** at 4–5 (footnote omitted). The PCRA court rejected Blassingale's claim, finding that Blassingale had been granted "ROR [Release on Recognizance] bail [in the instant matter] on April 21, 2006 and was transported upstate as a parole violator on April 24, 2006[.]" PCRA Court Opinion, **supra** at 6. The PCRA court therefore determined that "no time was available for credit[.]" **Id.** at 8. The PCRA court opined that Blassingale was "challeng[ing] the Department of Correction[s'] computations or construction of the sentence[.]" and therefore petition was not cognizable under the PCRA. **Id.** at 7. In addition, the PCRA court concluded Blassingale was not serving an illegal sentence. **Id.**

The record supports the determination of the PCRA court. According to Blassingale, he "did not make bail following his arrest in the instant matter and at all times prior to being sentenced herein he was in custody both on the Board Detainer and on the instant matter." Blassingale's Brief at 4. However, the trial court found, and the record reflects, that Blassingale was granted ROR bail in this case on April 20, 2006. **See** Certification of Bail and Discharge, 4/20/2006. Furthermore, the Commonwealth points out in its brief, and we take judicial notice, that the Municipal Court docket for Blassingale in the instant matter indicates he posted bail on April 1, 2006. **See** Docket No. MC-51-CR-0344431-2006 (**Commonwealth v. Blassingale**).

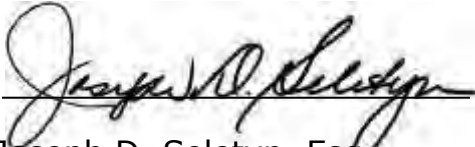
Because Blassingale was not incarcerated on the robbery charge in this case, he was not entitled to receive credit against this sentence for his

pretrial incarceration. Consistent with ***Mann, supra***, state officials did apply credit for time served from April 1, 2006 to May 28, 2008, while Blassingale was held in custody on the Board detainer, to his back-time. In sum, given the record before this Court, there is no basis upon which to disturb the decision of the PCRA court that dismissed Blassingale's PCRA petition.

Order affirmed.

Shogan, J., concurs in the result.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014