

J-S37005-21

J-S37006-21

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

EDWARD JOSEPH KULICK, III

Appellant

No. 1385 EDA 2021

Appeal from the Judgment of Sentence Entered May 25, 2021

In the Court of Common Pleas of Monroe County

Criminal Division at No(s): CP-45-CR-0002005-2020

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

EDWARD JOSEPH KULICK, III

Appellant

No. 1386 EDA 2021

Appeal from the Judgment of Sentence Entered May 25, 2021

In the Court of Common Pleas of Monroe County

Criminal Division at No(s): CP-45-CR-0001458-2020

BEFORE: PANELLA, P.J., MURRAY, J., and STEVENS, P.J.E.*

MEMORANDUM BY PANELLA, P.J.:

FILED APRIL 8, 2022

Edward Kulick III appeals from the judgments of sentence entered against him because he claims the trial court did not properly award him credit for time served. After careful review, we affirm.

* Former Justice specially assigned to the Superior Court.

The above two cases are two of at least three unrelated cases Kulick has been charged under in the past three years. Due to the temporal overlapping of these cases, as well as the nature of Kulick's appeals, we have consolidated the appeals from the above two cases *sua sponte*.

On July 24, 2020, a criminal complaint was filed against Kulick for burglary charges in case 1458 CR 2020. Two days later, Kulick was sentenced for a previous drug paraphernalia conviction in case 1288 CR 2019 ("the drug paraphernalia conviction") to a term of incarceration of sixty days to one year. On August 2, 2020, bail was set in case 1458 CR 2020. Kulick did not post bail.

On August 17, 2020, another criminal complaint was filed against Kulick for charges of DUI and possession in case 2005 CR 2020. Bail was set on October 9, 2020. Once again, Kulick did not post bail.

At that same time, Kulick was still serving his sentence of incarceration for the drug paraphernalia conviction. While he became eligible for parole on September 26, 2020, his parole was denied.

On February 26, 2021, Kulick pled guilty to trespass at 1458 CR 2020 ("the trespass conviction"), with all other charges *nolle prossed*. On the same day, Kulick pled guilty to DUI under 2005 CR 2020 ("the DUI conviction"), with all other charges *nolle prossed*.

On March 20, 2021, Kulick was again denied parole for the drug paraphernalia conviction and therefore remained incarcerated.

On May 25, 2021, Kulick was sentenced to six to twenty-four months' imprisonment for the DUI conviction. This sentence was imposed to be served concurrently to the sentence he was already serving at the time for the drug paraphernalia conviction. The judgment of sentence specifically noted that Kulick was not entitled to any time credits for the DUI conviction. On the same day, he was sentenced to two years' probation for the trespass conviction, to be served consecutively to the sentence imposed on the same day for the DUI conviction.

On June 3, 2021, Kulick filed a motion for reconsideration of sentence under both the trespass conviction and the DUI conviction. A week later, the court denied the motions for reconsideration. These appeals followed.

On appeal,¹ Kulick argues the trial court erred when it failed to award credit for time served after failing to post bail in the trespass and DUI convictions. A claim asserting that the trial court failed to award credit for time served implicates the legality of the sentence. **See Commonwealth v. Johnson**, 967 A.2d 1001, 1003 (Pa. Super. 2009). Issues relating to the

¹ Kulick attempts to raise a second issue on appeal challenging the court's application of credit for the time he "should have been paroled on [the drug paraphernalia conviction.]" Appellant's Brief, 10/12/2021, at 5, 10. His entire claim in this regard is two sentences long, with no citation to legal authority. Importantly, the gist of his already deficient argument is a challenge to the sentencing court's decision in a case that is not part of this appeal. As such, we find this claim waived. **See Commonwealth v. Clayton**, 816 A.2d 217, 221 (Pa. 2002) ("[I]t is a well settled principle of appellate jurisprudence that undeveloped claims are waived and unreviewable on appeal.").

legality of a sentence are questions of law. **See Commonwealth v. Aikens**, 139 A.3d 244, 245 (Pa. Super. 2016). Our standard of review over such questions is *de novo* and the scope of review is plenary. ***Id.***

"[A] defendant shall be given credit for any days spent in custody prior to the imposition of sentence, but only if such commitment is on the offense for which sentence is imposed. Credit is not given, however, for a commitment by reason of a separate and distinct offense." **Commonwealth v. Clark**, 885 A.2d 1030, 1034 (Pa. Super. 2005) (citations and internal quotations omitted).

The computation of credit for time served is controlled by Section 9760 of the Sentencing Code which provides in pertinent part:

[T]he court shall give credit as follows:

(1) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of conduct on which such a charge is based. Credit shall include credit for the time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

* * *

(4) If the defendant is arrested on one charge and later prosecuted on another charge growing out of an act or acts that occurred prior to his arrest, credit against the maximum term and any minimum term of any sentence resulting from such prosecution shall be given for all time spent in custody under the former charge that has not been credited against another sentence.

42 Pa.C.S.A. § 9760(1), (4). Relevantly, Section 9760(4) makes it clear that time credit on a sentence may be granted only when it has not already been

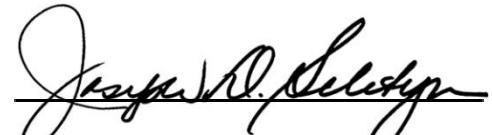
credited toward another sentence. No section of the sentencing code, nor any of our case law, permits a defendant to receive credit against more than one sentence imposed for multiple convictions of separate and unrelated charges.

Kulick sought to receive time credit for the time after he received secured bail in the above two cases and remained incarcerated. The sentencing court denied this request, stating it applied that credit to the drug paraphernalia conviction. Kulick does not dispute that he received this credit to his drug paraphernalia sentence.

Here, it is clear that Kulick remained imprisoned during the pendency of the above two cases due to the sentence he was serving under an unrelated case, the drug paraphernalia conviction. As even Kulick admits, he would not have been released from jail if he had made bail in either of these cases; he would have been released only "if or when paroled" on the drug paraphernalia conviction. In other words, for the entirety of the time Kulik is disputing, he was actively serving, and therefore receiving credit towards, his sentence for the drug paraphernalia sentence. Kulick is not entitled to "double credit" — a duplicate award of credit for the time served under more than one docket. As such, Kulick is due no relief on this claim, and we affirm his judgments of sentence for the trespass and DUI convictions.

Judgments of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/8/2022