

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kenneth Fortune,
Petitioner

v.

Pennsylvania Department
of Corrections,

Respondent : No. 3 M.D. 2006

PER CURIAM

ORDER

Now, March 16, 2006, upon consideration of respondent's preliminary objection in the nature of a demurrer and petitioner's response, the demurrer is sustained, and the petition for review is dismissed.

Because time credit can be given only when it has not already been credited against another sentence, and mandamus is not available to compel an award of double credit, petitioner has failed to state a claim for which relief can be granted. 42 Pa. C.S. §9760; Taglienti v. Department of Corrections, 806 A.2d 988 (Pa. Cmwlth. 2002); Doxsey v. Pennsylvania Department of Corrections, 674 A.2d 1173 (Pa. Cmwlth. 1996). Petitioner acknowledges that at the time of his August 6, 1990 sentencing on Philadelphia County CP No. 2679/1185, he was serving a sentence of 15 to 30 years on Philadelphia County CP No. 1373/1085, imposed on July 28, 1987. Petitioner does not allege that the time period in question was not credited to his 1987 sentence.

Certified from the Record

MAR 17 2006

and Order Exit