

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Yancey,
Appellant

v.

Penny R. Grissinger, Grievance
Officer of PA Department of
Corrections and Randall N. Sears,
Chief Deputy Counsel Officer of
General Counsel

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: No. 2019 C.D. 2001
: Submitted: March 8, 2002

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE RENÉE L. COHN, Judge
HONORABLE CHARLES P. MIRARCHI, JR., Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE COLINS**

FILED: May 3, 2002

Petitioner Michael Yancey, *pro se*, petitions for review of the order of the Court of Common Pleas of Huntingdon County (trial court) which granted Respondent's preliminary objections and dismissed Petitioner's petition for review for failure to state a cause of action. We affirm.

Petitioner, an inmate at the State Correctional Institution at Huntingdon, Pennsylvania (SCIH), was arrested on October 18, 1994 in Delaware County, Pennsylvania and charged with theft and related charges (Delaware County sentence). Petitioner entered a plea of guilty on January 9, 1995, and

Judge Keeler of Delaware County sentenced him to serve not less than 21 months nor more than 60 months in a state correctional facility. On December 27, 1996, Petitioner entered a plea of guilty in the Court of Common Pleas of Northumberland County, Pennsylvania to riot and related offenses (Northumberland County sentence). He was sentenced to serve not less than 25 months nor more than 84 months, with this sentence to run consecutively to, and not concurrently with, the Delaware County sentence.

Petitioner filed a petition to modify sentence *nunc pro tunc*, and a hearing was held on October 15, 1999. On this date, Judge Keeler vacated his Delaware County sentence and resentenced Petitioner to serve not less than 12 months less one day and not more than 24 months less one day.¹ Subsequently, the trial court granted Petitioner immediate discharge because he served his parole period and was returned to the custody of the Department of Corrections (DOC) to begin serving his Northumberland County sentence. Thereafter, Petitioner contacted Ms. Grissinger, the records supervisor at SCIH, who changed Petitioner's status sheet to reflect that the effective date of the Northumberland County sentence was October 15, 1999.²

Petitioner next filed a petition for review in the nature of mandamus to the trial court.³ Respondents filed preliminary objections in the nature of a

¹ Petitioner filed a petition to modify sentence *nunc pro tunc* in order to correct an error made in connection with sentencing calculations made at his original sentencing. The Commonwealth did not object to this petition. (Hearing Transcript, October 15, 1999, pp. 3-4.)

² Ms. Grissinger explained, "the sentence from Northumberland County could not start until [Petitioner] had satisfied the Delaware County matter. Because the Delaware County sentence was modified/satisfied on 10/15/99, the effective date of the Northumberland County sentence should be 10/15/99."

³ The action was originally initiated in the Commonwealth Court. By order dated February 21, 2001, we ordered the matter transferred to the Court of Common Pleas of (Footnote continued on next page...)

demurrer seeking dismissal of the petition for failure to state a cause of action. The trial court dismissed the petition. In denying Petitioner's motion for reconsideration, the trial court noted that Judge Keeler vacated his January 9, 1995 sentence and resentenced Petitioner to serve not less than 12 months less one day and not more than 24 months less one day. The trial court reasoned that because Petitioner had served the Delaware County sentence, he was immediately discharged and explained,

[t]he Northumberland County sentence of Judge Ranck was ordered to begin at the completion of the Delaware County sentence, which was October 15, 1999, when Judge Keeler discharged Petitioner from his sentence. There is no authority whatsoever that would allow the Department of Corrections to give Mr. Yancey credit on his Northumberland County sentence for time served on a Delaware County sentence that was vacated.

(Trial Court Opinion, August 21, 2001, p. 4). Citing *Commonwealth v. Romolini*, 557 A.2d 1073 (Pa. Super. 1989), the trial court stated that a vacated sentence is no longer in effect and reimposition of a sentence may not be made retroactive to the date of the original sentence.

(continued...)

Huntingdon County because the Petitioner failed to name a state-wide officer so as to vest the Commonwealth Court with original jurisdiction.

On appeal,⁴ Petitioner argues that 1) he should have received credit for the time he spent in custody under the prior sentence, even though he was later resentenced for this same offense; 2) the trial court erred in finding that Petitioner's sentence of one year less a day to two years less a day for the Delaware County sentence commenced and expired on the day of resentencing; 3) his prison file should reflect the minimum and maximum expiration dates of the modified Delaware County sentence of one year less a day to two years less a day; and 4) the trial court did not render a final judgment on the merits of the issues raised.

In the instant case, Petitioner seeks relief in the form of an order in mandamus. We decline to grant such relief. Mandamus is an extraordinary writ and will only be granted to compel performance of a ministerial duty where the plaintiff establishes a clear legal right to relief and a corresponding duty to act by the defendant. *Wassell v. Pennsylvania Board of Probation and Parole*, 658 A.2d 466 (Pa. Cmwlth. 1995). Petitioner is currently serving a sentence unrelated to the Delaware County sentence; he is serving a sentence imposed by the Court of Common Pleas of Northumberland County lasting 28 to 84 months, ordered to be served consecutive to the expiration of the Delaware County sentence. Petitioner maintains that Respondents have failed to apply credit for time Petitioner spent in custody for the Delaware County sentence, which was then modified.

⁴ In ruling on preliminary objections in the nature of a demurrer, this Court must accept as true all well-pleaded facts and all inferences reasonably deducible therefrom. *Turner v. Pennsylvania Board of Probation and Parole*, 749 A.2d 1018 (Pa. Cmwlth. 2000). "However, we need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion." *Myers v. Ridge*, 712 A.2d 791, 794 (Pa. Cmwlth. 1998), *petition for allowance of appeal denied*, 560 Pa. 677, 742 A.2d 173 (1999). The question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. *Jackson v. Garland*, 622 A.2d 969 (Pa. Super. 1993).

Contrary to Petitioner's arguments, we find that the trial court properly dismissed his petition. The Northumberland County sentence clearly states that it is to begin at the completion of the Delaware County sentence. This sentence was completed on October 15, 1999, the date Judge Keeler modified the sentence.⁵ As a result, Petitioner was resentenced on this date to serve 12 months

⁵ The following exchange took place at the hearing:

Judge Keeler: All right. We will grant your Motion with respect to your Petition to Modify *nunc pro tunc*, based upon the guidelines as now calculated. We'll sentence the Defendant, therefore, to a - we will revoke our previous sentence and sentence the Defendant to a term of 12 months less a day to 2 years less a day in a County sentence and grant immediate parole status.

Plaintiff's counsel: Would that be considered immediate discharge also, Your Honor? Since he would technically have served at the parole period already?

Judge Keeler: Yes. I believe you're right.

Plaintiff's counsel: So it would be immediate parole and immediate discharge.

Commonwealth's counsel: Well, Your Honor, the one concern that I have with the immediate parole should already cover the fact that he should be released now. Immediate discharge, just in case there is any confusion with the fact that there may be or may not be a detainer. We don't know if there are any detainers or any other reasons that Mr. Yancy is currently incarcerated.

Plaintiff's counsel: Well, I think the present prison would still check that before they released him, period.

Judge Keeler: Yeah. But it's all originally stated on this case. What we do . . .

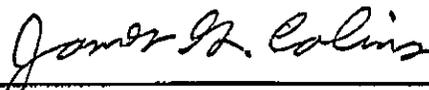
Plaintiff's counsel: Right.

Judge Keeler: . . . with respect to this case has no impact on any cases that might be outstanding.

(Footnote continued on next page...)

less one day to two years less one day and was granted immediate discharge on the Delaware County sentence.⁶ The new Delaware County sentence became effective on October 15, 1999 and could not have ended before that date. Consequently, Petitioner began serving the Northumberland County sentence on October 16, 1999. This sentence was ordered to run consecutive to any sentence currently being served. As such, the DOC could not have applied a credit to serve retroactively on a separate and unrelated sentence. *See Romolini*.

Accordingly, the order of the trial court is affirmed.



JAMES GARDNER COLINS, President Judge

(continued...)

(Hearing Transcript, October 15, 1999, pp. 5-7.)

⁶ Petitioner satisfied the one year less a day to two years less a day sentence as he had been in custody from October 18, 1994 and was immediately discharged for this offense.

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Corrections and Randall N. Sears,	:
Chief Deputy Counsel Officer of	: No. 2019 C.D. 2001
General Counsel	:

ORDER

AND NOW, this 3rd day of May 2002, the order of the Court of Common Pleas of Huntingdon County in the above-captioned matter is affirmed.

James G. Colins

JAMES GARDNER COLINS, President Judge