

**Matter of Johnson v New York State Dept. of  
Correctional Servs.**

2011 NY Slip Op 31140(U)

March 30, 2011

Supreme Court, St. Lawrence County

Docket Number: 034605

Judge: S. Peter Feldstein

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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF ST. LAWRENCE**

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In the Matter of the Application of  
**JAMES D. JOHNSON, #08-B-2577,**  
Petitioner,

Petitioner,

for Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

**DECISION AND JUDGMENT  
RJI #44-1-2010-0633.28  
INDEX #134605  
ORI # NY044015J**

-against-

**NEW YORK STATE DEPARTMENT  
OF CORRECTIONAL SERVICES,**

Respondent.

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This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the petition of James D. Johnson, verified on September 17, 2010 and filed in St. Lawrence County Clerk’s office on September 28, 2010. Petitioner, who is now an inmate at the Hale Creek Correctional Facility, is challenging the time computation associated with his current incarceration in DOCS custody. The Court issued an Order to Show Cause on October 1, 2010 and has received and reviewed respondent’s Answer and Return, verified on November 19, 2010. The Court has also received and reviewed petitioner’s Reply thereto (denominated Affidavit in Opposition to Respondent’s Verified Answer and the Return), filed in the St. Lawrence County Clerk’s office on November 29, 2010. Additional correspondence from petitioner, dated January 7, 2011, was filed in the St. Lawrence County Clerk’s office on January 11, 2011.

On July 23, 1993, petitioner was sentenced in Onondaga County to an indeterminate sentence of 5 to 15 years upon his conviction of the crime of Burglary 1°. He was received into DOCS custody on July 27, 1993, certified as entitled to 40 days of jail time credit. The maximum expiration date of petitioner’s 1993 sentence was originally calculated as June 16, 2008. On May 24, 2004, while at liberty under parole supervision

from his 1993 conviction, petitioner was arrested in connection with new criminal charges and ultimately declared delinquent as of that date.

On June 13, 2005, petitioner was sentenced in connection with the new charges in Supreme Court, Onondaga County, as a second felony offender, to an indeterminate sentence of 1½ to 3 years upon his conviction of the crime of Attempted Criminal Possession of a Controlled Substance 5°. He was received back into DOCS custody on June 17, 2005, credited with 145 days of parole jail time (Penal Law §70.40(3)(c)) against the interrupted maximum term of his 1993 sentence. Taking into consideration the parole jail time credit, petitioner owed 3 years, 7 months and 27 days against the maximum term of the interrupted 1993 sentence as of his June 17, 2005, return to DOCS custody.

On April 12, 2006, petitioner was again released from DOCS custody to parole supervision. On May 16, 2007, however, he was again arrested in connection with new criminal charges and ultimately declared delinquent as of that date. On September 20, 2007, while the new criminal charges were pending, the Supreme Court, Onondaga County, vacated petitioner's June 13, 2005 sentencing as a second felony offender. As set forth in that court's Decision/Order of September 20, 2007, "[a] review of the plea minutes and sentencing minutes reveals that the defendant was sentenced as a second felony offender, however, he neither stipulated to his predicate felony conviction nor admitted to a predicate felony statement."

On August 1, 2008, petitioner was resentenced in connection with the charges underlying his original 2005 sentence to an identical indeterminate sentence of 1½ to 3 years as a second felony offender. At the same time petitioner was sentenced in connection with the charges stemming from his May 16, 2007 arrest to a concurrent, determinate term of 6 years, with 1½ years post-release supervision, upon his conviction of the crime of Criminal Possession of a Controlled Substance 3°. He was received back

into DOCS custody on August 8, 2008, and was ultimately certified as entitled to 567 days of jail time credit against the 2005 indeterminate sentence/2008 resentence and 450 days of jail time credit against the 2008 determinate term.

Against the backdrop of the relatively complex fact pattern described above, DOCS officials currently calculate the maximum expiration date of petitioner's multiple sentences to be July 17, 2012. Before considering the methodology employed by DOCS officials in calculating the maximum expiration date of petitioner's multiple sentences, a brief discussion of the jail time credit certification process is warranted. Under the relevant provisions of Correction Law §600-a it is the statutory responsibility of the county sheriff to maintain a record of all jail time credit to which an individual in his/her custody is entitled under Penal Law §70.30(3) and to deliver a certified transcript of such record to DOCS officials when such individual is transferred to a state facility. In the case at bar the Onondaga County Sheriff delivered multiple jail time credit certificates and amended jail time credit certificates to DOCS officials. The most recent amended jail time credit certificate issued with respect to petitioner's 2005 sentence/2008 resentence was dated July 10, 2009. That document certified petitioner's entitlement to 567 days of jail time credit covering the periods from May 24, 2004 to May 28, 2004 (5 days), October 21, 2004 to June 16, 2005 (239 days) and September 20, 2007 to August 7, 2008 (323 days). The most recent amended jail time certificate issued with respect to petitioner's 2008 determinate sentence was dated April 30, 2009. That document certified petitioner's entitlement to 450 days of jail time credit covering the period from May 16, 2007 to August 7, 2008.

Citing, *inter alia*, Penal Law §70.30(3)(a) and *Colon v. Vincent*, 41 NY2d 1084, *aff'g* 49 AD2d 939, petitioner contends that the 567-day and 450-day jail time credit figures set forth in the most recent certificates issued by the Onondaga County Sheriff must be aggregated to produce a total of 1,017 days of jail time credit, with that total applied separately to his 2005 indeterminate sentence/2008 resentence as well as to his concurrent 2008 determinate sentence. DOCS officials, however, are bound by jail time credit calculations certified to the department by a county sheriff and can neither add nor subtract therefrom (*see Torres v. Bennett*, 271 AD2d 830 and *Jarrett v. Coughlin*, 136 Misc 2d 981). Therefore, to the extent petitioner's asserts that he is entitled to jail time credit in excess of that most recently certified to DOCS by the Onondaga County Sheriff, such assertion must fail since the petitioner did not name the sheriff as a respondent in this proceeding. *See Neal v. Goord*, 34 AD3d 1142.<sup>1</sup>

To the extent petitioner seeks to characterize this proceeding as representing an attempt to compel the respondent to comply with the jail time credit certificates most recently issued by the Onondaga County Sheriff, as opposed to an attempt to secure jail time credit in excess of that most recently certified, this Court rejects such characterization. The amended jail time certificates which, as previously noted, are binding on DOCS officials, already identify the period(s) of time spent by petitioner in local custody comprising jail time credit against each of the sentences (2005 indeterminate sentence/2008 resentence and 2008 determinate sentence) at issue in this

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<sup>1</sup> Although the respondent, citing *res judicata* principals, seeks the dismissal of this proceeding based upon an August 6, 2010 judgment of the Supreme Court, Onondaga County (Hon. John Brunetti, Acting Supreme Court Justice), this Court declines to reach the *res judicata* issue since it does not appear that the Onondaga County Sheriff was a party to the aforementioned Onondaga County litigation.

proceeding. Thus, the 323-day period from September 20, 2007, when petitioner's 2005 indeterminate sentence was vacated while he was already in local custody in connection with the criminal charges underlying his 2008 determinate sentence, was certified by the Onondaga County Sheriff as jail time credit against both petitioner's 2005 indeterminate sentence/2008 resentencing as well as petitioner's 2008 determinate sentence. For this reason the Court finds that DOCS officials have clearly implemented the jail time credits certified to them by the Onondaga County Sheriff. Any litigation seeking to restructure such credit must be brought against the Onondaga County Sheriff.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

**ADJUDGED**, that the petition is dismissed.

**Dated:** March 30, 2011 at  
Indian Lake, New York

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S. Peter Feldstein  
Acting Justice, Supreme Court