

Matter of Chaney v Fischer
2012 NY Slip Op 32809(U)
October 24, 2012
Supreme Court, Franklin County
Docket Number: 2012-808
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN
X

In the Matter of the Application of
NAKIA CHANEY, #08-A-0639,
Petitioner,

for Judgment Pursuant to Article 70
of the Civil Practice Law and Rules

-against-

DECISION AND JUDGMENT
RJI #16-1-2012-0378.87
INDEX # 2012-808
ORI # NY016015J

BRIAN FISCHER, Commissioner,
NYS Department of Corrections and
Community Supervision, and **BRUCE S.**
YELICH, Superintendent, Bare Hill
Correctional Facility,

Respondents.

X

This proceeding was originated by the Petition for Writ of Habeas Corpus of Nakia Chaney, verified on September 5, 2012 and filed in the Franklin County Clerk's office on September 7, 2012. Petitioner, who is an inmate at the Bare Hill Correctional Facility, is challenging his continued incarceration in the custody of the New York State Department of Corrections and Community Supervision. The Court issued an Order to Show Cause on September 17, 2012 and has received and reviewed respondents' Return, dated October 3, 2012, as well as petitioner's Reply thereto, filed in the Franklin County Clerk's office on October 12, 2012. The Court has also received and reviewed additional correspondence from petitioner, with exhibits, dated October 12, 2012 and filed in the Franklin County Clerk's office on October 16, 2012.

Although petitioner's overall record of incarceration in DOCCS custody, as set forth in the respondents' Return, is relatively extensive, the Court finds that only a small portion of such record is germane to the disposition of this proceeding. On January 31, 2008 petitioner was sentenced in Schenectady County Court, as a second felony offender,

to a determinate term of 4½ years, with 3 years post-release supervision, upon his conviction of the crime of Attempted Criminal Sale of Controlled Substance 3^o.¹ He was received into DOCCS custody on February 5, 2008 originally certified by the Schenectady County Sheriff's Department as entitled to 341 days of jail time credit. The Schenectady County Sheriff's Department, however, has amended its certification of petitioner's entitlement to jail time credit on multiple occasions. Said credit was reduced to 95 days on August 3, 2010; increased back to 341 days on August 16, 2012; reduced to 92 days on September 7, 2012 and, most recently, by amended Jail Time Certificate dated September 20, 2012 increased to 342 days.

Respondents argue in their Return that petitioner is only entitled to 94 days of jail time credit. Where, as here, however, a criminal defendant was confined in local custody outside the City of New York, jail time credit is calculated by the County Sheriff and certified to the New York State Department of Corrections and Community Supervision upon transfer of the inmate from local to state custody. *See* Correction Law §600-a. State DOCCS authorities are bound by the jail time certified by the County Sheriff and can neither add nor subtract from the time so certified. *See Neal v. Goord*, 34 AD3d 1142, *Torres v. Bennett*, 271 AD2d 830 and *Jarrett v. Coughlin*, 136 Misc 2d 981. Where the County Sheriff amends a previously issued jail time certificate, DOCCS officials are bound by the most recently issued certificate. *See Villanueva v. Goord*, 29 AD3d 1097. DOCCS officials are thus bound by the most recent certification of the Schenectady County Sheriff that petitioner is entitled to 342 days of jail time credit. Since the sheriff is not a party to this proceeding, moreover, the Court is not in position to rule on the propriety of the 342-

¹ On January 31, 2008 petitioner was actually sentenced to a determinate term of 5 years, with 3 years post-release supervision. On September 30, 2010, however, petitioner was re-sentenced, as a second felony offender, to the determinate term of 4½ years, with 3 years post release supervision. *See* Penal Law §70.30(5).

day certification and must therefore conduct its review of the calculation of petitioner's relevant release dates with 342 days of jail time credit factored in. Even after doing so, however, the Court finds, for the reasons set forth below, that petitioner is not entitled to immediate release from DOCCS custody and that his petition must be dismissed.

The running of petitioner's 4½-year determinate term (with 3 years post-release supervision) effectively commenced on February 5, 2008 when he was initially received into DOCCS custody. *See* Penal Law §70.30(1) and (5). Running the determinate term from that date, less 342 days of jail time credit, an initial maximum expiration date of August 22, 2011 would be produced.

On January 11, 2011 petitioner was conditionally released from DOCCS custody to post-release parole supervision. Upon such release the running of the 4½ -year determinate term was interrupted with the 7 months and 11 days still owing to the maximum expiration date of the term "held in abeyance." *See* Penal Law §70.45(5)(a). Also upon petitioner's January 11, 2011 conditional release the running of the 3-year period of post-release supervision commenced (*see* Penal Law §70.45(5)(a)) with the maximum expiration date of that period initially calculated as January 11, 2014. A parole violation warrant, however, was executed against petitioner on March 21, 2012. His post-release supervision was ultimately revoked, with a sustained delinquency date of March 19, 2012, and an 12-month delinquent time assessment was imposed. The delinquency interrupted the running of petitioner's period of post-release supervision (*see* Penal Law §70.45(5)(d)(i)) with 1 year, 9 months and 22 days still owing to the initial maximum expiration date of such period.

Petitioner was returned to DOCCS custody, as a post-release supervision violator, on July 19, 2012 certified as entitled to 120 days of parole jail time credit. The parole jail time credit was applied against the interrupted 2008 determinate term (*see* Penal Law

§70.45(5)(d)(iii)), reducing the time previously held in abeyance against such term from 7 months and 11 days to 3 months and 11 days. The 3 months and 11 days still held in abeyance against petitioner's 2008 determinate term re-commenced running upon his July 19, 2012 return to DOCCS custody. *See* Penal Law §70.45(5)(a). Petitioner will thus complete service of the determinate term on or about October 30, 2012. As of that date the 1 year, 9 months and 22 days still owing against the 3-year period of post-release supervision will re-commence running (*see* Penal Law §70.45(5)(d)(iv)) and the maximum expiration date thereof will be reached on or about August 22, 2014.

Based upon the foregoing, it is clear that even with the application of 342 days of jail time credit petitioner has not reached the adjusted maximum expiration date of the 3-year period of post-release supervision. In the meantime, he remains incarcerated in DOCCS custody pursuant to the 12-month delinquent time assessment imposed following his final parole revocation hearing. The delinquent time assessment is scheduled to expire on March 21, 2013 - 12 months after the execution of the parole violation warrant against petitioner on March 21, 2012. *See* 9 NYCRR §8002.6(b)(1). Since it appears that petitioner will have completed serving the 4½-year determinate term prior to the expiration of the 12-month delinquent time assessment on March 21, 2013, he will presumably be re-released to post-release supervision at that time. *See Hines v. Bradt*, 86 AD3d 678.

Petitioner's arguments to the contrary notwithstanding, this Court finds no basis to apply any portion of the 342 days of jail time credit against the 12-month delinquent time assessment. Insofar as is relevant to this proceeding, Penal Law §70.30(3) - addressing jail time credit - provides that "[t]he term of a . . . determinate sentence . . . imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the

charge that culminated in the sentence.” A delinquent time assessment, on the other hand, “. . . is a period of time which is fixed as a result of a final parole revocation hearing and which determines a date by which time the parole violator will be eligible for re-release.” 9 NYCRR §8002.6(a).

For a DOCCS inmate serving a determinate sentence of imprisonment, the issuance of an amended certification of jail time credit would directly impact the calculation of the maximum expiration date of such inmate’s determinate term. In addition, since the calculations of such an inmate’s conditional release and merit release dates are linked to the maximum expiration date of his/her determinate term, the issuance of an amended certification of jail time credit will also impact the calculations of his/her conditional release and merit release dates. *See* Penal Law §70.40(1)(b) and Correction Law §803(1)(a),(1)(c), (1)(d)(i) and (1)(d)(iii). In the case at bar, when the certification of petitioner’s entitlement to jail time credit was reduced from 341 days to 95 days on or about August 3, 2010 the calculations of his maximum expiration, conditional release and merit eligibility dates were all negatively affected, as demonstrated by the February 5, 2008 and August 6, 2008 DOCCS Legal Date Computation printouts annexed by petitioner to his October 12, 2012 correspondence. Similarly, when the certification of petitioner’s entitlement to jail time credit was increased from 92 days to 342 days on September 20, 2012 (after he had been returned to DOCCS custody as a post-release supervision violator on July 19, 2012), the calculation of the maximum expiration date of his determinate term/period of post-release supervision was positively affected.² The

² Petitioner’s return to DOCCS custody as a post-release supervision violator resulted in the forfeiture of good time allowances granted prior to his release. *See* Correction Law §803(5). In addition, petitioner was/is not entitled to receive any good time allowance against his underlying determinate term while serving the 12-month delinquent time assessment. *See* Penal Law §70.45(5)(d)(iv). Therefore, after petitioner’s return to DOCCS custody as a post-release supervision violator the sentence calculations no longer included conditional release or merit release dates.

Court finds, however, that the September 20, 2012 amendment to the certification of petitioner's entitlement to jail time credit from 92 days to 342 days had no effect on the calculation of the expiration of the 12-month delinquent time assessment.

As noted previously, petitioner's 12-month delinquent time assessment was/is scheduled to expire on March 21, 2013 - 12 months after the parole violation warrant was executed on March 21, 2012. Unlike the maximum expiration date of an determinate term/period of post-release supervision, the calculation of the expiration date of petitioner's delinquent time assessment is wholly unrelated to, and therefore unaffected by, the amendment to the certification of his entitlement to jail time credit. The Court therefore finds that the September 20, 2012 amendment to the certification of petitioner's entitlement to jail time credit from 92 to 342 days did not change the expiration date of the 12-month delinquent time assessment. Petitioner's assertion that the additional 247 days of jail time credit embodied in the September 20, 2012 amendment must be applied against his "earliest release date of March 21, 2013" simply misses the point that such "earliest release date" represents the expiration of a delinquent time assessment, rather than a maximum expiration, conditional release or merit release date, and was therefore not affected by the amended certification of jail time credit.

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: October 24, 2012 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge