

Matter of Centolella v LaClair
2013 NY Slip Op 32466(U)
October 3, 2013
Supreme Court, Franklin County
Docket Number: 2013-676
Judge: S. Peter Feldstein
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN
X

In the Matter of the Application of
ANTHONY J. CENTOLELLA, #10-B-3459,
Petitioner,

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

DECISION AND JUDGMENT
RJI #16-1-2013-0335.86
INDEX # 2013-676
ORI # NY016015J

-against-

DARWIN LACLAIR, Superintendent,
Franklin Correctional Facility,
Respondent.

X

This proceeding was originated by the Petition for Writ of Habeas Corpus of Anthony J. Centolella, verified on July 19, 2013 and filed in the Franklin County Clerk's office on August 1, 2013. Petitioner, who is an inmate at the Franklin Correctional Facility, is challenging his continued incarceration in the custody of the New York State Department of Corrections and Community Supervision. More specifically, petitioner asserts that his properly calculated maximum expiration date fell on June 30, 2013 rather than October 27, 2013 as determined by the respondent. The Court issued an Order to Show Cause on August 7, 2013 and has received and reviewed respondent's Return, dated September 4, 2013. In response to the Court's Letter Order of September 16, 2013 the Court has also received and reviewed correspondence from Hilary D. Rogers, Esq., Assistant Attorney General, dated September 30, 2013. Annexed to such correspondence was a copy of the September 19, 2013 letter to Assistant Attorney General Rogers from Richard de Simone, Esq., Associate Counsel in Charge, DOCCS Office of Sentencing Review.

On November 12, 2010 petitioner was sentenced in Cayuga County Court (re-sentenced as a probation violator) to three indeterminate sentences of 1 to 3 years each upon his convictions of the crimes of Burglary 3^o, Attempted Burglary 3^o and Grand Larceny 3^o. He was received into DOCCS custody on November 18, 2010 ultimately certified as entitled to 234 days of jail time credit. The initial maximum expiration date of petitioner's merged 2010 sentences was calculated as March 23, 2013. After petitioner's arrival into DOCCS custody on November 18, 2010 he was released/restored to parole supervision on three separate occasions. Each time, however, a delinquency ensued. Petitioner was most recently restored to parole supervision on March 29, 2012 with a maximum expiration date, adjusted as a result of two prior parole delinquencies, of July 2, 2013.

On August 20, 2012 petitioner committed a new criminal offense. He was declared delinquent but remained at large until arrested and taken into local custody in connection with new criminal charges on September 23, 2012. A parole warrant was apparently lodged against petitioner, as a detainer, on that date. Following a final parole revocation hearing petitioner's parole was revoked with a modified delinquency date of September 23, 2012 and a delinquent time assessment was imposed directing that he be held to the maximum expiration date of his 2010 sentence(s).

On November 20, 2012, after the final parole revocation hearing, petitioner was sentenced in Auburn City Court, in connection with the criminal offenses committed on August 20, 2012, to definite sentences of 180 days and 15 days upon his convictions of the crimes of Criminal Mischief 4^o and Harassment 2^o. Although the Local Jail Commitment Order specified "180 days And 15 Days Concurrent," there is nothing in the record of this

habeas corpus proceeding to indicate that the city court judge specified whether his sentence(s) would run consecutively or concurrently with respect to the still undischarged term of petitioner's 2010 Cayuga County sentence(s).

Petitioner completed serving his local court definite sentence(s) on January 18, 2013. On January 24, 2013 he was received back into DOCCS custody, as a parole violator. It appears that petitioner was initially credited with 123 days of parole jail time (Penal Law §70.40(3)(c)) covering the entire time spent in local custody from his September 23, 2012 arrest to his return to DOCCS custody on January 24, 2013. By Parole Jail Time Certificate dated January 30, 2013, however, petitioner's entitlement to parole jail time credit was limited to 6 days covering the time spent in local custody from the expiration of his city court sentence(s) on January 18, 2013 to his return to DOCCS custody on January 24, 2013.

It appears that the reduction in petitioner's entitlement to parole jail time credit against his 2010 sentence(s) from 123 to 6 days is the focal point of this proceeding. Although the petitioner does not detail any specific methodology underlying his claim that he should have been released from DOCCS custody on June 30, 2013, if one was to run the 9 months and 9 days still owed by petitioner against the maximum term of his 2010 sentence(s) from January 24, 2013 (the date of his return to DOCCS custody) less 123 days of parole jail time credit, a maximum expiration date of June 30, 2013 would seemingly be produced. Running the 9 months and 9 days from January 24, 2013 less 6 days of parole jail time credit, however, DOCCS officials calculate the maximum expiration date of petitioner's 2010 sentence(s) as October 27, 2013. For the reasons set forth below, this Court finds no reason to disturb the DOCCS calculations.

Since the 117 days petitioner spent in local custody from the September 23, 2012 delinquency date until the expiration of his 2012 definite sentences on January 18, 2013 constituted time spent in custody arising from an arrest on new criminal charges which culminated in a conviction, petitioner was not entitled to parole jail time credit for that 117-day time period under any of the provisions of Penal Law §70.40(3)(c). Since the 6 days petitioner spent in local custody from the expiration of his 2012 definite sentence(s) on January 18, 2013 until his return to DOCCS custody on January 24, 2013 constituted time spent in local custody that exceeded the term of the 2012 sentence(s), petitioner was entitled to 6 days of parole jail time credit pursuant to Penal Law §70.40(3)(c)(iii).

In addition, under the relevant provisions of Penal Law §70.25(1)(b), “. . . when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state and sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to . . . the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run . . . [a] definite sentence shall run concurrently with any sentence imposed at the same time and shall be consecutive to any other term.” This Court therefore finds that DOCCS officials properly concluded that petitioner’s 2012 Auburn City Court sentence(s) must be calculated as running consecutively, rather than concurrently, with respect to the undischarged term of his 2010 Cayuga County Court sentence(s). Petitioner, therefore, is not entitled to any sentence credit against his 2010 sentence(s) for local jail times served in connection with his 2012 sentence(s). See *Campbell v. Fischer*, 82 AD3d 1562 and *Midgley v. Smith*, 63 AD2d 223.

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 3, 2013 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge