

Matter of Maldonado v Howard
2016 NY Slip Op 30975(U)
May 25, 2016
Supreme Court, Franklin County
Docket Number: 2015-926
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
ANGEL MALDONADO, #13-B-0191,
Petitioner,

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

DECISION AND JUDGMENT

RJI #16-1-2015-0551.80

INDEX # 2015-926

ORI #NY016015J

-against-

TIMOTHY B. HOWARD,
Erie County Sheriff, and
ANTHONY J. ANNUCCI, Acting Commissioner,
NYS Department of Corrections and Community
Supervision,

Respondents.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Angel Maldonado, verified on December 7, 2015 and filed in the Franklin County Clerk's office on December 21, 2015. Petitioner, who is an inmate at the Bare Hill Correctional Facility, is challenging the calculation of jail time credit (Penal Law § 70.30(3)) associated with an indeterminate sentence imposed against him on January 7, 2013. An Order to Show Cause was issued on December 28, 2015. The Court has since received and reviewed the Answer of the county respondent Howard, verified on February 12, 2016, as well as the Answer and Return of the state respondent Annucci, verified on February 17, 2016 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated February 17, 2016. Annexed to the state respondent's Answer and Return as Exhibit G thereof is a copy of a letter dated February 12, 2016 (with exhibits) from Richard de Simone, Esq., Deputy

Counsel in Charge, DOCCS Office of Sentencing Review, to the Plattsburgh Regional Office of the New York State Attorney General (hereinafter the de Simone Letter). A detailed review of petitioner's sentencing history and the relevant DOCCS sentence calculation methodology is set forth in the de Simone Letter. The Court has also received and reviewed petitioner's Affirmation in Reply, sworn to on February 25, 2016 and filed in the Franklin County Clerk's Office on March 3, 2016.¹

In 2003 petitioner was sentenced in Suffolk County Court to a merged/aggregate indeterminate sentence of 5 to 15 years upon his convictions of a variety of crimes. He was received into DOCCS custody certified as entitled to 273 days of jail time credit. At that time DOCCS officials calculated the maximum expiration date of petitioner's 2003 Suffolk County sentence(s) as July 31, 2017. Following a 2009 parole delinquency DOCCS officials calculated the adjusted maximum expiration date of petitioner's 2003 Suffolk County sentence(s) as August 6, 2017². DOCCS sentence calculations up to this point do not appear to be in dispute.

Petitioner was again released from DOCCS custody to parole supervision on September 29, 2010. On or about May 10, 2011, however, he was arrested in the State of Tennessee. Although it is asserted in paragraph nine of the petition that the arrest was

¹ Petitioner's Affirmation and Reply was specifically designated as having been submitted in response to the Answer and Return of the state respondent Annucci. By letter dated February 16, 2016 petitioner advised chambers that he would not be submitting a Reply with respect to the Answer of the County respondent Howard. In his February 16, 2016 letter petitioner stated that his decision not to submit a Reply with respect to the Answer of the county respondent was not based upon any concession but, rather, such decision was ". . . due to the fact that a reply would be redundant as [the] answer [of the county respondent] does not really address any of my points of law nor does it controvert any of the cases which I cited within my argument. For this reason I will respectfully rely on my argument within my petition."

² Petitioner was also declared delinquent as of March 16, 2010 but the results and disposition of the final parole hearing wherein that declaration of delinquency was sustained was vacated by order of the Supreme Court, Erie County, dated December 13, 2010.

based upon a new criminal warrant out of Erie County (New York) as well as a New York parole violation warrant, respondent's papers suggest that the parole warrant was not lodged against petitioner until May 18, 2011 (deSimone Letter at page four). Petitioner was received into local custody in Erie County, pursuant to the warrant(s), on May 25, 2011. Following a final parole revocation hearing petitioner's parole was revoked, by written decision dated August 10, 2011, with a modified delinquency date of February 5, 2011. A delinquent time assessment of time served plus 3 months was imposed. On November 10, 2011, upon expiration of the delinquent time assessment, petitioner was restored to parole supervision, ultimately credited with 7 days of parole jail time covering the time period from May 18, 2011 (when the New York parole warrant was lodged against petitioner in Tennessee) through May 24, 2011 (the day before petitioner was returned to local custody in Erie County). Petitioner nevertheless remained incarcerated in local custody pending disposition of the new criminal charges still pending in Erie County.

On January 7, 2013 petitioner was sentenced in Supreme Court, Erie County, as a second felony offender, to an indeterminate sentence of 3½ to 7 years upon his conviction of the crime of Grand Larceny 3°. The Erie County Sentence and Commitment Order specified that such sentence “. . . shall run CONSECUTIVELY to any parole time.” Petitioner was apparently determined to be delinquent as of the January 7, 2013 sentencing date.

Petitioner was received back into DOCCS custody on January 24, 2013 initially certified by the Erie County Sheriff's Department as entitled to 610 days of jail time credit covering the entire period from May 25, 2011 (the date petitioner was received in Erie County following his arrest in Tennessee) to January 23, 2013. By correspondence dated

July 31, 2013, however, the Erie County Sheriff's Department amended its certification of jail time credit by reducing such credit to 186 days covering only the periods from May 25, 2011 to November 9, 2011 (the day before petitioner was restored to parole supervision upon the expiration of the 3-month delinquent time assessment) and from January 7, 2013 (sentencing/delinquency date) to January 23, 2013. According to the correspondence from the sheriff's department, "[p]ursuant to Penal Law §70.30(3), jail time cannot include any time that is credited against the term or maximum term of any previously imposed sentence . . . Therefore, the jail time certificate cannot include the following period, 11-10-11 to 1-6-13. Please accept this letter as a corrected certificate of jail time."

The calculation of jail time credit is controlled by Penal Law §70.30(3) which provides, in relevant part, as follows:

“. . . [T]he maximum term of an indeterminate 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 . . . The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the . . . maximum term of any previously imposed sentence . . ." (Emphasis added).

Where, as here, the 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 Correctional Services 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, as here, 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.

Citing *Sparago v. New York State Board of Parole*, 132 AD2d 881, *mod* 71 NY2d 943, petitioner maintains that his entitlement to jail time credit against the 2013 sentence was unlawfully reduced by the county respondent Howard from 610 days to 186 days. In this regard petitioner argues, in effect, that since his 2003 sentence ran uninterrupted from November 10, 2011 (when he was restored to parole supervision) to the January 7, 2013 sentencing/delinquency date, that time period (spent in local custody) should not be considered as “credited” against the 2003 sentence within the meaning of Penal Law §70.30(3). As stated by the Appellate Division, Third Department, in *Sparago*, “[s]uch a crediting, in our view, occurs when the previously imposed sentence is duly interrupted, with jail time accruing during the period of interruption.” 132 AD2d 881 at 883.³

³ In addition to its determination with respect to the jail time credit issue, the Appellate Division in *Sparago* also determined that Mr. Sparago’s most recently imposed (1984) sentence had to run consecutively with respect to the undischarged term of his previously imposed (1980) sentence. It also found that Mr. Sparago’s “. . . maximum release date was properly calculated by aggregating the undischarged portion of the 1980 maximum and the 1984 maximum.” 132 AD2d 881 at 882. There is nothing in the Court of Appeals decision in *Sparago* (71 NY2d 943) to suggest that such court was called upon to review the determination of the Appellate Division, Third Department, with respect to the jail time credit issue. After noting that the Appellate Division had reversed Supreme Court with regard to the jail time credit issue, the Court of Appeals further noted that “[t]he Appellate Division agreed with Supreme Court on the issue now before us, however, holding that because petitioner’s sentences were to run consecutively . . . they had to be aggregated . . . It [the Appellate Division] did not address which aggregation method used by respondents was proper, but implicitly held the recalculated sentence was computed using the correct method. We agree with the Appellate Division that petitioner’s sentences had to be aggregated, but disagree, under these facts, as to the aggregation method which should be used.” 71 NY2d 943 at 945 (citations omitted) (emphasis added). Indeed, the Court of Appeals’ only specific mention of the jail time credit issue occurred after it set forth its reasoning with respect to the sentence aggregation issue, stating as follows: “This [aggregation] method not only effectuates the stipulation which provided petitioner’s parole would not be revoked, but also credits him with the 217 days of jail time to which the Appellate Division found him entitled.” *Id* at 946. It is therefore the finding of this Court (Supreme Court, St. Lawrence County) that the *Sparago* holding with respect to the jail time credit issue, as well as the rationale underlying that holding, is that of the Appellate Division, Third Department, rather than the Court of Appeals.

The rationale of the Appellate Division, Third Department, in *Sparago* might arguably be applied to the facts and circumstances of this case. The Court notes that although the fact pattern in *Sparago* (which the Third Department deemed “unusual”) bears little resemblance to the fact pattern in the case at bar, the relevant language of the Appellate Division, Third Department, as quoted in the final sentence of the preceding paragraph, appears broad enough on its face to be applied under the facts and circumstances of petitioner’s case. It is also noted, however, that although the Appellate Division, Third Department, issued its decision in *Sparago* more than 28 years ago, the relevant holding therein has not been favorably cited in any officially-reported case. More importantly, since 1987 the Appellate Division, Third Department, has issued a number of decisions seemingly at odds with the relevant holding in *Sparago*. See e.g. *Russell v. Annucci*, 131 AD3d 772, *Parker v. Annucci*, 130 AD3d 1115, *Murphy v. Wells*, 95 AD3d 1575, *lv. denied* 19 NY3d 811 and *DuBois v. Goord*, 271 AD2d 874. The facts and circumstances of the *Russell* case, in particular, appear to be quite similar to those in the case at bar. Although the facts and circumstances of the other cases cited above (*Parker*, *Murphy* and *DuBois*) are factually distinguishable from those in the case at bar, the unifying feature in all four cases (and others) is that the Appellate Division, Third Department, applied the proscription against double crediting set forth in Penal Law §70.30(3) with respect to periods of time spent by individuals in local custody, pending the disposition of new criminal charges, notwithstanding the fact that such individuals’ prior sentences ran uninterrupted during such periods of time.

Based upon the foregoing, this Court finds that the proscription against double crediting set forth in Penal Law §70.30(3) is applicable notwithstanding the fact that

petitioner's previously imposed 2003 sentence(s) continued to run, uninterrupted, while he was confined in local custody from November 10, 2011 until July 7, 2013. Accordingly, this Court further finds that the county respondent Howard did not err in excluding that time period in the amended jail time certificate of July 31, 2013.

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: May 25, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice