

FILED
Feb 09, 2022
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 37745-8-III consolidated
of:)	with No. 37746-6-III
)	
MAXIMILIANO RODRIGUEZ,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
)	
Petitioner.)	

Maximiliano Rodriguez seeks relief from claimed unlawful restraint in the form of a failure to credit jail time served on his concurrent Douglas County convictions for possession of a controlled substance with intent to manufacture/deliver (case nos. 19-1-00120-09 and 20-1-00028-09), claiming he is entitled to additional credits for presentence jail time in both matters.

On October 31, 2018, Mr. Rodriguez committed the felony of possessing a controlled substance with intent to manufacture/deliver (heroin) in Douglas County. He committed the same crime in Douglas County again on March 4, 2019, and then again in Chelan County on April 18, 2019.

On April 18, 2019, Mr. Rodriguez was arrested and booked under Chelan County

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cause no. 19-1-00244-4. He was held in the Chelan County jail for 103 days and was released on bail on July 30, 2019. On August 9, he was charged under Douglas County cause no. 19-1-00120-09 (pertaining to the October 31 incident). On August 26, he was booked into the Okanogan County jail under that cause number and was held there until April 28, 2020.

On or about November 10, 2019, Chelan County issued a no-bail warrant to Okanogan County jail for Mr. Rodriguez's arrest pursuant to Chelan County cause number 19-1-00244-4.

On February 28, 2020, Mr. Rodriguez was charged with the Douglas County incident from March 4, 2019, under cause number 20-1-00028-09. Accordingly, he was also booked into Okanogan County jail under cause number 20-1-00028-09 as of February 28, and remained there under this cause number as well until April 28, 2020.

On April 28, 2020, Mr. Rodriguez was transferred back to Chelan County jail pursuant to a warrant that the Okanogan County Jail received from the Chelan County Jail on November 10, 2019. Mr. Rodriguez remained in the Chelan County jail under Chelan County cause number 20-1-00028-09 until May 28, 2020.

On May 11, 2020, Mr. Rodriguez was sentenced under the two Douglas County cause numbers to concurrent sentences of 90 months of total confinement plus 12 months of community custody. On May 20, 2020, he was sentenced under the Chelan County cause number to 60 months of total confinement and 12 months of community custody.

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The Chelan County cause number was ordered to run concurrent to the Douglas County sentences. In each of the three cause numbers, the sentencing court ordered that Mr. Rodriguez would receive credit for time served prior to sentencing if the confinement was solely under the cause number pursuant to RCW 9.94A.505, and ordered the jail to compute the time served. On May 28, 2020, Mr. Rodriguez was transferred to DOC custody.

Based on the jail certifications, the DOC calculated Mr. Rodriguez's cause credit¹ as: 268 days against Douglas County cause no. 19-1-00120-09, 82 days against Douglas County cause number 20-1-00028-09, and 111 days against Chelan County cause no. 19-1-00244-04. On the basis of these day-for-day credits, the DOC calculated and added the corresponding amount of good-time credits, termed "cause ERT credits." Response at 4.

Mr. Rodriguez filed two CrR 7.8 motions in Douglas County superior court, one under Douglas County cause no. 19-1-00120-09 and one under cause no. 20-1-00028-09, arguing the DOC failed to properly award him all of his jail credit on the Douglas County cause numbers. He asked the superior court to order the DOC to award him 309 days of day-for-day credit plus 103 days of good-time credit on these two cause numbers, arguing that where the sentences in these matters also ran concurrent to Chelan County cause number 19-1-00244-4, he was entitled to credit in the Douglas County matters for the

¹ The DOC refers to "cause credit" as the day-for-day credit for presentence jail time under RCW 9.94A.505 and day-for-day credit for any eligible post-sentence time

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time he spent in the Chelan County jail from April to July 2019. He also argued that pursuant to the global resolution of these three cases, he was to receive credit for time served under all three cause numbers for the period from April 18 – July 27, 2019, and the period from August 26, 2019, to May 11, 2020. The superior court transferred the motions to this court, and this court consolidated the motions.

Since Mr. Rodriguez is challenging DOC’s presentence credit calculation, a decision for which he has had “no previous or alternative avenue for obtaining state judicial review,” he must show that he is under restraint and that the restraint is unlawful. RAP 16.4(a), (c); *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994). A petitioner under restraint may obtain relief by showing a constitutional violation or violation of the laws of the State of Washington. *Cashaw*, at 148; RAP 16.4(c)(2). A petition will be dismissed as frivolous under RAP 16.11(b) if it “fails to present an arguable basis for relief in law or in fact, given the constraints of the personal restraint petition vehicle.” *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

After receiving Mr. Rodriguez’s petition, the DOC reviewed his “cause credit” calculations and adjusted them slightly as follows:

Douglas County cause number 19-1-00120-09: The DOC determined Mr. Rodriguez was entitled to 263 days of “cause credits” based on the 246 certified days for

spent in jail under a particular cause before being transferred to the Department.

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the period from August 26, 2019, until April 28, 2020, and the 17 days he spent at the Chelan jail after being sentenced on this cause number on May 11, 2020 before his transfer to DOC custody on May 28, 2020.

Douglas County cause number 20-1-00028-09: The DOC determined Mr. Rodriguez was entitled to 77 days of “cause credits” based on the certified 60 days for the period served on this cause number from February 28, 2020 until he was transferred to Chelan County on April 28, 2020, and the 17 days he served in Chelan County jail between his sentencing on this matter and his transfer to DOC custody. The DOC did not award Mr. Rodriguez any credit against the Douglas County cause numbers for the time he spent between April 28, 2020 and May 11, 2020, because he was being held exclusively under the Chelan County cause number.

Chelan County cause number 19-1-00244-4: The DOC determined Mr. Rodriguez was entitled to 124 days of “cause credits” based on the 103 days for the period from April 18, 2019, to July 30, 2019, the 13 days he served at the Chelan jail between April 28, 2020 and May 11, 2020 (when he was sentenced in Douglas County), and the 8 days he served after being sentenced in the Chelan County cause number on May 20 before he was transferred to DOC custody on May 28, 2020. The DOC did not award Mr. Rodriguez any credit against the Chelan cause for the 9 days he served at the Chelan jail after he was sentenced in Douglas County (May 11) and before he was sentenced in Chelan County (May 20).

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This court subsequently obtained jail certifications directly from Chelan County and Okanogan County to facilitate review of the DOC's credit calculations. The Chelan County certification documents indicate Mr. Rodriguez was in jail on cause number 19-1-00244-04 from 4/18/19 until 7/30/19 (a total of 103 days), at which point he posted bail and was out of custody. The jail received him on transport from Okanogan County and he was back in Chelan County custody from 4/28/20 until 5/28/20. The Chelan County certification documents indicate Mr. Rodriguez was never being held in Chelan County custody pursuant to Douglas County cause numbers 19-1-00129-1 and 20-1-00028-4.

The Okanogan County documents reflect that with respect to Douglas County cause number 19-1-00120-09, Mr. Rodriguez was in custody from 8/26/19 until 4/28/20, for a total of 246 days. The certification for that cause number notes that it runs concurrent to Douglas County cause number 20-1-00028-09 and notes that on 4/28/20, Mr. Rodriguez was transferred to Chelan County custody to resolve his pending matter there. The certification for Douglas County cause number 20-1-00028-09 reflects that Mr. Rodriguez was held pursuant to that cause number from 2/28/0 until 4/28/20, for a total of 60 days. It also reflects that the sentence was concurrent to Douglas County cause number 19-1-00120-09, and that Mr. Rodriguez was transferred out of Okanogan County custody to Chelan County custody on 4/28/20 to resolve his pending Chelan County cause number.

Although Mr. Rodriguez's DOC records reflect that Chelan County served an

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arrest warrant on Okanogan County jail on or about November 10, 2019, neither the Okanogan County jail certification nor the Chelan County certification reflect that Mr. Rodriguez was being held on the Chelan County cause number while in Okanogan County custody from November 10, 2019, until April 28, 2020.

“[C]onsiderations of due process, equal protection and the prohibition against multiple punishments dictate that presentence jail time be credited against maximum and mandatory minimum terms where applicable.” *Reanier v. Smith*, 83 Wn.2d 342, 352, 517 P.2d 949 (1974). RCW 9.94A.505(6) provides that “[t]he sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.” Our Supreme Court has recognized that an offender is entitled to credit for time served while awaiting trial on multiple charges, noting that “a person unable to obtain pretrial release may not be confined for a longer period of time than a person able to obtain pretrial release without violating due process and equal protection.” *State v. Lewis*, 184 Wn.2d 201, 205, 355 P.3d 1148 (2015) (accepting State’s concession that offender was entitled to credit for time served while awaiting trial on crimes charged under three different cause numbers). However, an offender is not constitutionally entitled to credit for pre-sentence time served after he began serving a sentence under another cause number. *Id.* at 205-06.

In *State v. Enriquez-Martinez*, 198 Wn.2d 98, 103-04, 492 P.3d 162 (2021), our

Supreme Court recently held that where an offender was arrested in Oregon and Klickitat County filed charges and issued a no-bail warrant for the offender's arrest to the Oregon jail such that the offender was also being held on the Washington charges while in custody in Oregon, the offender was entitled to credit for time served in Oregon following the issuance of the arrest warrant. The court also stressed that "an offender is not entitled to credit for time held on a pending charge if they simultaneously were serving time on a sentence already imposed in another case. *Id.* at 104 (citing *Lewis*, 184 Wn.2d at 206).

Based on the jail certifications pertaining to the Douglas County matters, it appears Mr. Rodriguez's presentence credit time for the Douglas County causes complies with our Supreme Court's decisions in *Lewis* and *Enrique-Martinez*, and thus Mr. Rodriguez fails to demonstrate he is entitled to his requested relief.²

However, it appears that Mr. Rodriguez is entitled to additional presentence credit

² Mr. Rodriguez cites no legal authority to support his assertion that he should receive credit on the Douglas County causes for the time he was held solely on the Chelan County cause between April and June 2019, before the Douglas County charges were filed. Nor does he cite supporting authority for his assertion that he should receive credit on Douglas County cause number 20-1-00028-09 for the period between August 2019 and February 2020, before he was charged in that matter. He appears to argue the credit must apply to all three causes because the court imposed concurrent sentences. However, the concurrent sentence applies to the time served after the sentence was imposed – it does not require all of the pre-sentence jail time to run concurrently. To the extent he contends he was promised all of the pre-sentence time would run concurrently as a condition of pleading guilty, he fails to produce any evidence in support of this argument. The plain language of the guilty pleas does not support his assertion.

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in the Chelan County matter under *Enrique-Martinez*. The record indicates Chelan County issued an arrest warrant for Mr. Rodriguez on November 10, 2019, and thus Okanogan was holding Mr. Rodriguez on the Chelan County cause number (in addition to the Douglas County causes) from that date until he was transferred to Chelan County on April 28, 2020, but he did not receive credit for that time against the Chelan County matter.

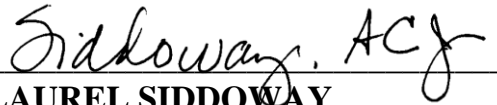
The DOC has indicated it cannot obtain a certification pertaining to this time. According to the DOC, Okanogan County has indicated it cannot provide certification for the Chelan County cause number because such certification must come from Chelan County. However, the DOC notes that any certification from Chelan County pertaining to that time period would be invalid under RCW 9.94A.729(1)(b), as Chelan County cannot “speak directly to the duration or nature of Rodriguez’s time at Okanogan County jail.” DOC’s Notice re: Jail Documents, at 4. The DOC maintains that in the absence of the certification for that time, it cannot grant Mr. Rodriguez additional presentence credit as to the Chelan County matter because only the sentencing court, in conjunction with the jails, is authorized to award presentence credit. *See* RCW 9.94A.505(6); RCW 9.94A.729(1)(b). Accordingly, under *Enrique-Martinez*, the Chelan County superior court must amend Mr. Rodriguez’s judgment and sentence to reflect the proper presentence credit in that matter.

Although it appears Mr. Rodriguez is entitled to additional credit on his Chelan

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County cause number, it appears this relief must come from the Chelan County superior court. Mr. Rodriguez filed his CrR 7.8 motions in Douglas County and only sought relief under the Douglas County cause numbers. Accordingly, where Mr. Rodriguez did not seek relief under his Chelan County cause number, and this court has not identified a procedure under which it may remand Mr. Rodriguez's Douglas County CrR 7.8 motions to Chelan County superior court, it appears this court cannot grant Mr. Rodriguez any relief as to the Chelan County matter. Instead, Mr. Rodriguez must file a new motion in Chelan County superior court seeking an additional award of presentence time for the period he was held in Okanogan County jail pursuant to the Chelan County warrant.

As set forth above, Mr. Rodriguez fails to demonstrate he is entitled to his requested relief under the Douglas County cause numbers. Accordingly, the petition is dismissed. RAP 16.11(b). The court also denies his request for appointed counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250


LAUREL SIDDOWAY
ACTING CHIEF JUDGE