

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Francis Constantini,	:
	:
Petitioner	:
	:
v.	: No. 45 M.D. 2025
	: Submitted: April 13, 2026
Pennsylvania Department of	:
Corrections,	:
	:
Respondent	:

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: August 20, 2026

Before the Court are the preliminary objections (POs) in the nature of a demurrer¹ of the Pennsylvania Department of Corrections (DOC) to a Petition for Review (PFR) filed by David Francis Constantini (Inmate), an inmate at the State Correctional Institution at Camp Hill (SCI-Camp Hill), seeking a writ of mandamus

¹ Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure provides that a PO may be filed for legal insufficiency of a pleading (demurrer). Pa.R.Civ.P. 1028(a)(4). In ruling on a demurrer, this Court must accept as true all well-pleaded allegations of material fact in the petition as well as inferences deducible therefrom. *Aviles v. Department of Corrections*, 875 A.2d 1209, 1211 n.3 (Pa. Cmwlth. 2005). A demurrer may be sustained only where it appears with certainty that the law will not permit recovery under the allegations pleaded. *County of Dauphin v. City of Harrisburg*, 24 A.3d 1083, 1089 (Pa. Cmwlth. 2011). Any doubt must be resolved in favor of overruling a demurrer. *Id.*

compelling DOC to recalculate his sentence. As set forth in his PFR, Inmate maintains that DOC has unlawfully treated two of his sentences to run consecutively despite the order of the Delaware County Court of Common Pleas (trial court) that they run concurrently, and that DOC has failed to award him custody credit he believes is mandated by statute. We sustain the POs and dismiss the PFR.

According to the PFR, Inmate was detained on May 4, 2017, on a probation violation in case CP-23-CR-0000744-2011 (No. 744-11). Inmate remained incarcerated while new charges were filed under CP-23-CR-0003160-2017 (No. 3160-17), on which he was ultimately sentenced to a county sentence of one to two years less one day on August 2, 2018, with immediate parole granted. Two months later, on October 10, 2018, the trial court imposed a revocation sentence of two to four years on No. 744-11 to run concurrently with the judgment of sentence in No. 3160-17.

Inmate argues that because he had already been paroled from the No. 3160-17 sentence on August 2, 2018, DOC's later commencement of the No. 744-11 sentence on that same date necessarily results in a consecutive, not concurrent, sentence structure, which is something he asserts is directly contrary to the trial court's order. He contends that DOC "manipulated" the commencement principles under Pa.R.Crim.P. 1406(c) and thereby enlarged his sentence contrary to the trial court's express intention. He further maintains that because he was originally detained on the probation violation warrant in No. 744-11 beginning on May 4, 2017, the entire period from that date until the revocation sentence on October 10, 2018, should be credited to the No. 744-11 sentence under Section 9760 of the Sentencing Code, 42 Pa. C.S. §9760, and that DOC's allocation of most of that period to the No. 3160-17 sentence violates the credit-for-time-served statutes.

DOC responded by filing the instant POs, arguing that the PFR fails to establish any entitlement to mandamus relief. DOC asserts that mandamus is available only where an inmate has a clear legal right, a corresponding ministerial duty in the respondent, and no other adequate remedy, citing *Africa v. Horn*, 701 A.2d 273 (Pa. Cmwlth. 1997). DOC emphasizes that its duty is simply to implement the trial court's order, as recognized in *Oakman v. Department of Corrections*, 903 A.2d 106 (Pa. Cmwlth. 2006). DOC argues the record shows it did precisely that. The DC-16E Sentence Status Summary reflects that Inmate received credit on the No. 3160-17 sentence for May 4, 2017, through August 2, 2018, and that only the period of August 2, 2018, through October 10, 2018, was applied to the No. 744-11 revocation sentence. DOC maintains this allocation is the only lawful one because credit for time served cannot be duplicated, citing *Barndt v. Department of Corrections*, 902 A.2d 589 (Pa. Cmwlth. 2006), and Section 9760 of the Sentencing Code.² According to DOC, the credit Inmate seeks was already applied in full to the

² 42 Pa. C.S. §9760. In relevant part, Section 9760(1) through (3) states:

After reviewing the information submitted under section 9737 (relating to report of outstanding charges and sentences) the court shall give credit as follows:

(1) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody ***as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based.*** Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

(2) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody under a prior sentence if he is later reprobsecuted and resenteded for the same offense or for another offense based on the same act or acts. This

(Footnote continued on next page...)

No. 3160-17 sentence, and awarding it again to the No. 744-11 is expressly prohibited.

DOC further argues that although the sentencing order for No. 744-11 contains the word “concurrent,” it was legally impossible for that sentence to run concurrently with No. 3160-17 at the time of imposition. The No. 3160-17 sentence had already been served to completion, through immediate parole, on August 2, 2018. As a result, on October 10, 2018, there was no active sentence with which the No. 744-11 sentence could run concurrently. DOC asserts that it has no authority to “revive” an already-expired sentence to make concurrency effective, nor may it alter a sentence to conform to what Inmate believes the trial judge might have intended. It therefore contends that Inmate has not shown a clear legal right to the concurrent-sentence calculation he seeks.

Finally, DOC argues that mandamus is inappropriate because Inmate had other available remedies, including direct appeal or post-sentence motions. DOC contends that issues involving the enforcement of alleged plea agreements or complaints regarding the benefit of a bargain must be raised in the sentencing court or on appeal, citing *Hoyt v. Department of Corrections*, 79 A.3d 741 (Pa. Cmwlth.

shall include credit in accordance with paragraph (1) of this [S]ection for all time spent in custody as a result of both the original charge and any subsequent charge for the same offense or for another offense based on the same act or acts.

(3) If the defendant is serving multiple sentences, and if one of the sentences is set aside as the result of direct or collateral attack, credit against the maximum and any minimum term of the remaining sentences shall be given for all time served in relation to the sentence set aside since the commission of the offenses on which the sentences were based.

2013), and *Fajohn v. Department of Corrections*, 692 A.2d 1067 (Pa. 1997). Thus, DOC maintains the PFR should be dismissed.

As noted, the PFR asserts that the October 10, 2018 revocation sentence at docket No. 744-11 was ordered to run “CONCURRENT to [No.] 3160-17,” the earlier sentence imposed on August 2, 2018, at No. 3160-17. However, the record also shows, and Inmate himself repeatedly concedes, that he had already completed service of the No. 3160-17 time-served sentence on August 2, 2018, through the trial court’s grant of immediate parole. That parole is reflected not only in the sentencing order but in DOC’s Form DC-16E record, which states that in No. 3160-17, he was sentenced on August 2, 2018, and “immediately paroled.” Thus, when the trial court imposed the No. 744-11 revocation sentence on October 10, 2018, Inmate was not serving the No. 3160-17 time-served sentence and had not been serving it for more than two months.

Once this chronology is acknowledged, the core legal point in this matter becomes inescapable: a sentence of time served on a subsequent unrelated charge cannot run concurrently with a time-served sentence that is no longer being served. DOC has no legal authority to “revive” a completed time-served sentence to create the concurrency that Inmate demands. Nor does DOC have discretion to interpret or rewrite a trial court’s order in a way that would contravene statutory and judicial rules governing credit and concurrency. DOC’s role is simply to implement a sentencing order, not to decide legal questions about its validity or to manipulate dates to achieve an inmate’s preferred outcome. This restriction is crucial because Inmate’s theory requires DOC to do exactly what the law forbids, *i.e.*, disregard the undisputed fact that he finished serving the No. 3160-17 time-served sentence on

August 2, 2018, and treat that sentence as if it were still active on October 10, 2018. Inmate's own filings confirm this reality.

In the PFR, Inmate admits that when the revocation sentence was imposed, “[m]eaning the first sentence, ([No.] 3160-17), had been already served before [he] had received the second sentence, ([No.] 744-11), ORDERED to run CONCURRENTLY to the first.” PFR ¶1 (emphasis in original). That admission alone establishes that concurrency was legally impossible, no matter what the trial court's order may have attempted to express. If a trial court imposes a directive that cannot legally be executed, whether through mistake, inattention, or misunderstanding, the DOC is not empowered to enforce it. Under Section 9760 of the Sentencing Code, credit cannot be duplicated under any circumstances; credit given once cannot be awarded again to a different sentence. This Court made this explicit in *Barndt v. Department of Corrections*, 902 A.2d 589, 595 (Pa. Cmwlth. 2006), which held that Section 9760 “does not contemplate credit for time served to be awarded twice.”³

³ Indeed, as this Court explained:

Martin [*v. Pennsylvania Department of Corrections*, 840 A.2d 299 (Pa. 2003),] recognizes, therefore, that Section 9760 does not contemplate credit for time served to be awarded twice. Similarly, our Courts have consistently held that such double credit for time served is neither contemplated, nor authorized, by Section 9760, albeit again in other distinguished factual scenarios from that presented herein. In *Taglienti v. Department of Corrections*, 806 A.2d 988 (Pa. Cmwlth. 2002), we addressed a prisoner's petition in the nature of mandamus seeking credit on parole violation sentences for time served in Pennsylvania that had already been credited towards an unrelated charge for which he was incarcerated in Virginia. Notwithstanding an apparent trial court order that the prisoner be credited towards his Pennsylvania sentence with credit

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Inmate’s demand for concurrency is therefore, in practical effect, a demand for double credit because concurrency would “re-use” credit already exhausted on August 2, 2018, and apply it again after that date in the guise of an overlapping sentence structure. Inmate’s Brief attempts to sidestep this statutory bar by declaring that he has “never requested credit,” but such a declaration cannot alter the legal consequences of his argument that all of the pre-August 2, 2018 confinement time counts for a second time. This is precisely the result the courts have forbidden. DOC cannot and must not reallocate credit for the purpose of retroactively extending a completed time-served sentence to create concurrency.

for time served that had already been credited towards the Virginia sentence, we noted, in relevant part:

[C]redit for time served prior to the sentencing date is governed by Section 9760 which does not provide for credit for time served on unrelated offenses or when credit has been already credited against another sentence.

Taglienti, 806 A.2d at 993 (emphasis added). *Accord Commonwealth v. Smith*, 853 A.2d 1020 (Pa. Super. 2004) (pretrial incarceration, attributable to both a probation detainer and to new criminal charges, must be attributed to *either* new sentence under criminal charge, *or* to probation violation sentence, but not to both). As such, [the prisoner’s] request for double credit under Section 9760 has no support under the law, and must fail.

[The prisoner] next makes an alternative argument that Section 9761(b) of the Sentencing Code[, 42 Pa. C.S. §9761(b),] authorizes the credit he seeks in this matter. We disagree. As [the prisoner] reluctantly concedes in his brief hereto, *Taglienti* has established that presentence credit is governed by Section 9760, and Section 9761(b) by its express terms provides only for credit for time served after a sentence is imposed.

Barndt, 902 A.2d at 595-96 (emphasis in original and footnote omitted).

Inmate’s argument that DOC “changed the narrative” or acted “dishonestly” is fully refuted by the record. When Inmate first contacted DOC claiming a calculation error, DOC reviewed its computation, determined that the revocation sentence had initially commenced on October 10, 2018, and then granted Inmate exactly the relief the law permitted: credit from August 2, 2018, through October 10, 2018, thereby moving the commencement date of the revocation sentence to August 2, 2018.

Nor do Inmate’s attempts to invoke due process, equal protection, or double jeopardy principles withstand scrutiny. The record shows that DOC implemented the sentences exactly as the sentencing orders, read in light of the law, required. Implementing the legal consequences of a sentencing structure does not violate constitutional protections. DOC did not extend his sentence; it did not “punish” him for a new offense; it did not disregard the time that he served on No. 3160-17. Instead, it credited all allowable time, honored all statutory limitations, and executed the revocation sentence as mandated under the undisputed timeline.

Because concurrency was impossible, DOC implemented the sentence exactly as required. And because DOC implemented the sentence exactly as required, mandamus cannot lie. Mandamus cannot be used to create a legal right where none exists, nor to compel the performance of an act that DOC is legally prohibited from performing.

Accordingly, the POs are sustained, and the PFR is dismissed.

MICHAEL H. WOJCIK, Judge

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ORDER

AND NOW, this 20th day of August, 2026, the Preliminary Objections of the Pennsylvania Department of Corrections (DOC) filed in the above-captioned matter are SUSTAINED; and the Petition for Review filed by David Francis Constantini is DISMISSED.

MICHAEL H. WOJCIK, Judge