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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1537-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

STEVEN E. PEREZ,
a/k/a STEVEN PEREZ,

Defendant-Appellant.

Submitted May 2, 2022 – Decided May 11, 2022

Before Judges Sabatino and Rothstadt.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Indictment Nos. 14-03-
0257 and 14-12-1303.

Steven Perez, appellant pro se.

Yolanda Ciccone, Middlesex County Prosecutor,
attorney for respondent (Nancy A. Hulett, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

This appeal involves the narrow issue of whether the trial court correctly calculated jail credits and gap-time credits with respect to the sentence defendant Steven Perez is currently serving.

Defendant, who is representing himself on this appeal, argues he is entitled to 814 days of jail credit. The trial court instead labeled those 814 days, counted from September 8, 2015 (when defendant was sentenced for the first offense, not underlying this appeal) to November 29, 2017 (when defendant was sentenced for the second offense, relevant to this appeal) as gap time. The trial court labeled the 507 days defendant spent in custody between April 19, 2014 (when he was arrested in Ohio and extradited to Middlesex County) and September 7, 2015 (when he was sentenced for the first offense) as jail credit.

We affirm.

This is the pertinent background. In December 2014, defendant was indicted along with others by a Middlesex County grand jury and charged with numerous offenses, including murder.

On October 10, 2017, defendant entered a plea agreement with the State under which he pled guilty to an amended charge of a single count of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1). The State stipulated it would

move to dismiss all other counts in the indictment and recommend a fifteen-year sentence, subject to a parole disqualifier under the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2. That sentence would be served concurrent to a prison sentence defendant had already started serving for an unrelated, earlier-in-time offense.

The November 2017 presentence report ("PSR") notes the offense underlying the October 2017 plea agreement was committed on March 1, 2014.

On September 8, 2013, defendant had been arrested for an unrelated weapons charge ("the first offense") and later posted bail. According to the PSR, defendant "failed to appear for a Pre-Arrest Conference [on March 19, 2014] on charges appearing in [that] unrelated case[] (I#14-0309257) and a bench warrant was issued."

Defendant was thereafter arrested in Ohio, signed a waiver of extradition on April 19, 2014, and was remanded on April 29, 2014. Defendant was then sentenced pursuant to the charges in I#14-0309257, or the first offense, on September 8, 2015.

On November 30, 2017, as to defendant's second offense that was set forth in an amended indictment charging him with one crime, the trial court sentenced defendant to a fifteen-year custodial term. The court specified that under NERA,

"defendant must serve 85% of the maximum term before being eligible for parole and five (5) years of parole supervision." Further, the sentence was to be concurrent with the sentence that the defendant was then serving on a different indictment.

The trial court also determined the total time credits applicable to defendant's sentence. Specifically, the court ascribed to defendant 507 days of jail credits, representing the period between his arrest and extradition from Ohio on April 19, 2014, and the date he was sentenced for his first offense, or September 7, 2015. The court labeled the 814 subsequent days between defendant's sentencing for the two individual offenses—the first on September 7, 2015, and the second on November 29, 2017—as gap time.

Defendant appealed his fifteen-year sentence. On May 7, 2019, this court remanded defendant's sentence to the trial court, so it could "provide a detailed statement of reasons for imposing the sentence under review," particularly with regard to the aggravating and mitigating factors, "and to amend the judgment of conviction accordingly."

Although the State's brief and appendix represents that a hearing pursuant to our remand order took place on August 1, 2019, no further mention or

documentation of any change to the trial court's original judgment of conviction was noted.

After the remand, defendant filed a pro se motion raising for the first time the trial court's calculation of jail credits. The trial court responded by letter dated March 3, 2020, stating that "[t]he [c]redits were awarded correctly and will stay as is."

Defendant then moved before the Law Division, again pro se, for reconsideration of the trial court's March 3, 2020 letter denying his request for 814 days of jail credit. Defendant argued that under State v. Hernandez, 208 N.J. 24 (2011), he is entitled to jail credit for the entire period of his incarceration.

On September 18, 2020, the trial court issued an order denying defendant's motion for those additional jail credits.

This appeal ensued.

An appeal of a denial of jail credits, as allegedly being inconsistent with Rule 3:21-8, constitutes a claim that a sentence was "not imposed in accordance with law." State v. Rippey, 431 N.J. Super. 338, 347 (App. Div. 2013) (citation and internal quotation marks omitted). We review such a claim de novo. See, e.g., State v. DiAngelo, 434 N.J. Super. 443, 451 (App. Div. 2014) (applying a

de novo review to a defendant's appeal of a jail credit denial). Having done so, we conclude the trial court's denial of the additional 814 days of jail credits sought by defendant was indeed legally correct.

Defendant's argument that the 814 days labeled gap-time credit by the trial court should be instead classified as mandatory jail credit is unsupported by law, Court Rule, and statute. Under Rule 3:21-8, jail credit is explicitly applicable only before the imposition of an actual sentence. In other words, an award of jail credit is dependent on the time spent confined while serving no valid sentence, and is not dependent on the filing of a complaint or indictment. State v. Garland, 226 N.J. Super. 356, 361-62 (App. Div. 1988).

In the present case, defendant's sentence for the first offense on September 8, 2015 closed the door on him accumulating further jail credits. The time defendant spent confined following that sentence for the first offense, and before he was sentenced for the second offense on November 30, 2017, was properly credited as gap-time by the trial court.

As described by the Supreme Court, gap-time under N.J.S.A. 2C:44-5(b) "awards a defendant who is given two separate sentences on two different dates credit toward the second sentence for the time spent in custody since he or she began serving the first sentence." Hernandez, 208 N.J. at 38. Following that

principle, the 814 days at issue here were correctly treated as gap-time credits,
not jail credits.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION