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Although it is posted on the internet, this opinion is only binding 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-2598-15T2

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

WILLIAM J. DICKINSON, a/k/a
WILLIAM DICKENSON, WILLIAM E.
JARRETT, WILLIAM E. JARRETT,
III, and WILLIAM JARETT,

Defendant-Respondent.

Submitted September 20, 2016 - Decided October 5, 2016

Before Judges Koblitz, Rothstadt and
Summers.

On appeal from Superior Court of New Jersey,
Law Division, Warren County, Indictment No.
14-06-0215.

Richard T. Burke, Warren County Prosecutor,
attorney for appellant (Kelly Anne Shelton,
Assistant Prosecutor, on the brief).

Joseph E. Krakora, Public Defender, attorney
for respondent (Marcia Blum, Assistant
Deputy Public Defender, of counsel and on
the brief).

PER CURIAM

The State timely appeals from the award of 161 days of jail credit to defendant for time served in Pennsylvania custody, with a New Jersey detainer lodged against him, after his release from New Jersey custody and before sentencing in New Jersey. We affirm the award of credits based on recent New Jersey case law.

Defendant William J. Dickinson was arrested at the scene of a one-car accident in Hackettstown on April 29, 2014. He was charged with various crimes as a result of his driving while intoxicated (DWI), the injuries suffered by his passenger and defendant's assault on a law enforcement officer. Defendant remained incarcerated in the Warren County Correctional Center for several weeks during which time he entered a guilty plea to fourth-degree assault by auto with bodily injury, N.J.S.A. 2C:12-1(c)(2), fourth-degree assault on a police officer, N.J.S.A. 2C:12-1(b)(5)(a); and his second DWI motor vehicle offense, N.J.S.A. 39:4-50. All remaining charges were to be dismissed at the time of sentencing. Six days after pleading guilty, on June 19, 2014, defendant posted bail. When he did not appear for sentencing five weeks later, the judge issued a bench warrant for his arrest.

The following month, on August 28, 2014, defendant was charged for unrelated offenses in Pennsylvania and incarcerated in that state. Within twenty-four hours, a New Jersey bench warrant was sent to Pennsylvania to serve as a detainer preventing defendant's

release without notice to the New Jersey authorities. Defendant was sentenced on the Pennsylvania charges on February 5, 2015, served his sentence, and subsequently was paroled on May 28 of the same year. He remained in custody in Pennsylvania until the New Jersey authorities brought him to New Jersey on June 9 after he waived extradition. Defendant was released from custody the following day.¹

The judge sentenced defendant on February 23, 2016, to an aggregate sentence of three years of probation conditioned on serving 270 days in jail, with credit for 268 days spent in custody prior to sentencing.² The State objects only to the award of 161 days, the time from August 28, 2014, when defendant was arrested in Pennsylvania, until February 4, 2015, the day before his sentencing date in Pennsylvania. During that period of time defendant had a bench warrant lodged against him from New Jersey as a detainer.

Rule 3:21-8 provides that "[t]he defendant shall receive credit on the term of a custodial sentence for any time served in

¹ Although not relevant to the jail credits at issue, we note that defendant again failed to appear for sentencing in New Jersey in November 2015, and again a bench warrant was issued. Again defendant was arrested in Pennsylvania, this time as a fugitive from parole. In January 2016 defendant waived extradition for the second time to return to New Jersey, where he remained in custody until his sentencing.

² The judge also imposed the mandatory fines, penalties and driving license suspension.

custody in jail or in a state hospital between arrest and the imposition of sentence." When the rule applies, the credit is mandatory, not discretionary. State v. Grate, 311 N.J. Super. 544, 548 n.3 (Law Div. 1997), aff'd, 311 N.J. Super. 456, 459 (App. Div. 1998). Jail credit was "conceived as a matter of equal protection or fundamental fairness" to avoid "the double punishment that would [otherwise] result" State v. Hernandez, 208 N.J. 24, 36 (2011). It also serves to create equality in sentencing; in its absence, a defendant with means to post bail would serve less time in total than a similarly-situated defendant unable to post bail and left incarcerated while awaiting disposition of the charged offenses. State v. Rawls, 219 N.J. 185, 193 (2014). Jail credits are applied to the "front end" of a sentence and therefore reduce a defendant's overall sentence, as well as any parole ineligibility term. Hernandez, supra, 208 N.J. at 37.

In Hernandez, our Supreme Court considered how jail credits for time spent in pre-sentence custody in one New Jersey county should be applied to charges pending in another New Jersey county. 208 N.J. at 45-47. Hernandez was arrested in Passaic County in connection with a series of armed robberies. Id. at 28-29. While incarcerated awaiting disposition of the Passaic charges, she was indicted on other charges in Ocean County. Id. at 29. Hernandez was first sentenced in Ocean County, and jail credits for her time

spent in custody pending sentencing in Passaic County were applied to reduce the time she had to serve on the Ocean County sentence only. Id. at 29. The Court interpreted Rule 3:21-8 to require jail credits for multiple charges so long as those charges were pending during the defendant's pre-sentence incarceration. Id. at 47-49. The Court held that "jail credits, which are earned prior to the imposition of the first custodial sentence, are to be awarded with respect to multiple charges. [O]nce the first sentence is imposed, a defendant awaiting imposition of another sentence accrues no more jail credit under Rule 3:21-8." Id. at 50. The Court instructed that Rule 3:21-8 "should be liberally construed." Hernandez, supra, 208 N.J. at 36 (quoting State v. Beatty, 128 N.J. Super. 488, 491 (App. Div. 1974)).

We have rigorously adhered to that liberal construction. For example, in State v. DiAngelo, 434 N.J. Super. 443, 461 (App. Div. 2014), we held that a statement of charges issued for a violation of probation (VOP) to a defendant already held in custody, vests in that defendant the right to jail credits against both the VOP sentence as well as the sentence for the new offense. The same holds true when a defendant is resentenced after a violation of the Intensive Supervision Program. State v. Adams, 436 N.J. Super. 106, 115 (App. Div.), certif. denied, 220 N.J. 101 (2014). In Rippy we concluded that a defendant was entitled to jail credit, and not gap-time, for all pending charges during a period of

confinement following the reversal of a conviction, and ending on the day before defendant was sentenced on four other indictments, which had been pending disposition prior to the reversal. State v. Rippy, 431 N.J. Super. 338, 354-55 (2013).

None of the above-cited cases, nor Rule 3:21-8 itself, address the specific question presented here: whether a defendant is entitled to jail credit for pre-sentence time in custody in another state with a bench warrant from New Jersey for pending charges lodged as a detainer. Defendant received jail credit from the date New Jersey lodged a detainer in Pennsylvania until the date prior to sentencing in Pennsylvania. If defendant had been incarcerated in New Jersey, as opposed to Pennsylvania, unquestionably Hernandez's application would have required the award of jail credit granted by the sentencing judge. We find the factual distinctions between this circumstance and Hernandez to be immaterial.

The State has failed to present a principled reason for reaching a different conclusion. The State's reliance on State v. Hemphill, 391 N.J. Super. 67 (App. Div.), certif. denied, 192 N.J. 68 (2007), and Beatty, supra, 128 N.J. Super. at 488, is misplaced, as those cases not only preceded Hernandez, but also because they did not involve the effect of multistate charges that is implicated here. The State also mistakenly relies on State v. Carreker, 172 N.J. 100, 111 (2002). Carreker concerned gap-time credit, which

unlike jail credit is a creature of statute, N.J.S.A. 2C:44-5(b)(2).

The State urges us to limit Hernandez to the facts presented in that case. We reject this not only because the Court did not suggest such a limitation in its opinion, but also because the Court in its later Rawls decision recognized Hernandez's broad reach. In Rawls, the Court held that a defendant released on bail on one indictment, but subsequently incarcerated on a later indictment, is entitled to jail credit against the sentence imposed in the first matter. Rawls, supra, 219 N.J. at 187. In so holding, the Rawls Court did not confine Hernandez to its facts, as the State urges should occur here. To the contrary, the Court concluded that, "[a]lthough the underlying facts of the instant case differ from the Hernandez defendants, we did not limit the Hernandez decision to its facts." Id. at 197.

We are bound to follow Hernandez and Rawls, which both compel the decision to award defendant the jail credits in question. There is nothing about those decisions that would suggest a denial of jail credit because defendant was incarcerated in another state rather than another county prior to being sentenced.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

