

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF10-1852; CF10-1853; CF10-
1854
DIVISION: 56

STATE OF FLORIDA,

vs.

ANDREW DANIEL HILL,
Defendant.

ORDER ON MOTION TO CORRECT SENTENCING ERROR

THIS CAUSE came before the Court upon Defendant's Motion to Correct Sentencing Error filed August 25, 2015. A hearing was conducted with the presence of Defendant in open court on November 2, 2015, at which time the Court heard argument of counsel. After review of the Motion and having considered the arguments of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

On October 29, 2013 Defendant was sentenced to forty-two (42) months in federal custody on federal felony drug charges. While in federal custody, Defendant was arrested on a violation of probation warrant in the above referenced cases and transferred to state custody. On December 3, 2013, Defendant was brought before this Court and sentenced to sixty (60) months to run concurrent with the federal sentence. After the trial court sentencing, Defendant was picked up by state authorities and taken into DOC custody. While in DOC custody, Defendant was served with a federal detainer which states that he has a forty-two (42) month federal sentence to be served *consecutive* to the state sentence.

The Court finds that this Court intended for the sixty (60) month sentence imposed for violation of probation to run concurrent with the federal sentence. Accordingly, Defendant is entitled to credit under his plea agreement. The Court finds that this will conform to the plea agreement as anticipated when the sentence was entered. The Court notes that Section 2255 of the United States Code, the federal mechanism by which to correct a sentencing error, has a one year statute of limitations and is therefore not available in the present situation. 28 U.S.C.A. § 2255.

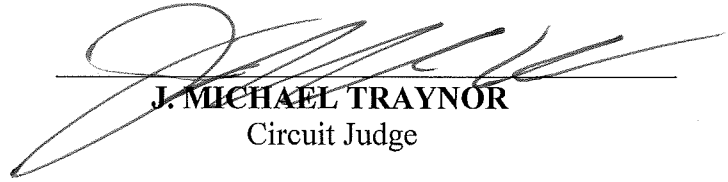
The December 3, 2013 sentence specified that the sixty (60) month state sentence would run concurrent with any active sentence being served. The Court finds that Defendant is entitled to credit for his time in federal custody from March 13, 2013 to November 6, 2013, a total of 8 months and 4 days. The Court also finds that Defendant is entitled to 409 days time served on the state sentence. Subtracting the 409 days from the 60 month state sentence, Defendant is left with 46 ½ months on the state sentence. It was anticipated that Defendant would be transferred immediately (relatively quickly) to BOP and that after serving his time in BOP, Defendant would have 18 ½ months remaining on his state sentence. Since Defendant has not been transferred, he has spent approximately 25 ½ months in DOC. Defendant has approximately 28 months left on his federal prison sentence. In order to be consistent with the terms of the plea agreement, the Court finds that it is:

ORDERED AND ADJUDGED that:

1. Defendant's Motion to Correct Sentencing Error is GRANTED. The Judgment and sentence in the above three cases is hereby AMENDED *NUNC PRO TUNC* to TIME SERVED as of March 24, 2015.¹

¹ 9.8 months or 298 days prior to today.

DONE AND ORDERED in Chambers, in St. Johns County, St. Augustine, Florida, this
20th day of January, 2016.



J. MICHAEL TRAYNOR
Circuit Judge

Copies to:
State Attorney
William Mallory Kent, Esq.