

Procedural History

On December 15, 2011, Defendant Anthony Kareem Hayes was found guilty of third-degree murder in the stabbing death of Kenneth Ramos. On February 2, 2012, we sentenced the Defendant to a term of not less than twenty nor more than forty years' incarceration. The Superior Court affirmed the judgment of sentence on December 5, 2012. The Pennsylvania Supreme Court denied Defendant's petition for allowance of appeal on June 27, 2013. On October 10, 2013, Defendant filed his first petition pursuant to the PCRA. A hearing was held on this petition on January 29, 2015. On March 24, 2015, we entered an order finding that trial counsel was ineffective for failure to request a limiting instruction regarding Defendant's gang activity and awarded the Defendant a new trial on this basis. On November 10, 2015, the Superior Court affirmed our order.

Defendant's second jury trial took place from January 17, 2017 to January 19, 2017. On January 19, 2017, the jury acquitted the Defendant on the charge of third degree murder and found him guilty on the charge of involuntary manslaughter. On that same date, we sentenced the Defendant to a term of not less than two years and six months nor more than five years' incarceration. On September 6, 2017, Defendant filed a writ of habeas corpus. On November 21, 2017, we denied Defendant's request for relief. On December 20, 2017, Defendant filed a timely notice of appeal of our decision to deny Defendant's writ of habeas corpus. On January 10, 2018, Defendant filed his statement of

matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b).

Issue

Defendant presents one issue on appeal:

1. Whether the trial court erred in denying Defendant's Writ of Habeas Corpus.

Discussion

Defendant argues that we erred in denying his writ of habeas corpus.

In Defendant's petition, he sought an order from our court to clarify the exact days he was to receive as credit for time served after he was resentenced on January 19, 2017 on his conviction for involuntary manslaughter. Defendant argues that the Department of Corrections is not giving him credit for the time he has served from October 20, 2009 until April 1, 2013 and from April 1, 2015 until October 20, 2016, when he alleges he would have reached his five year maximum on the sentence. We concluded that we lack jurisdiction to address his credit concerns.

In *Commonwealth v. Heredia*, the Defendant was sentenced to a term of four to eight years' incarceration, followed by five years' probation after pleading guilty to one count each of possession with intent to deliver a controlled substance and criminal

conspiracy. 97 A.2d 392, 393 (Pa. Super. 2014). Defendant filed a PCRA petition requesting an order from the PCRA Court “stating that he is to receive time credit for the time he spent in custody prior to the time that he was sentenced and the [Department of Corrections] is to correct the prison record accordingly[.]” *Id.* The PCRA Court dismissed Defendant’s petition, without a hearing. *Id.*

The Superior Court found that “[Defendant’s] claim seeking correction of the DOC’s alleged error is an administrative matter and therefore is not cognizable [under the PCRA].” *Id.* at 394; *Commonwealth v. Perry*, 533 A.2d 511 (Pa. Super. 1989). “If the alleged error is thought to be the result of an erroneous computation of sentence by the Bureau of Corrections, then the appropriate vehicle for redress would be an original action in the Commonwealth Court challenging the Bureau’s computation.” *Perry*, 563 A.2d at 537-38; *Wilson v. Commonwealth, Bureau of Correction*, 480 A.2d 392, 393 (Pa. Cmwlth. 1984). “If, on the other hand, the alleged error is thought to be attributable to ambiguity in the sentence imposed by the trial court, then a writ of *habeas corpus ad subjiciendum* lies to the trial court for clarification and/or correction of the sentence imposed.” *Id.* at 513; *Commonwealth v. Isabell*, 467 A.2d 1287, 1291 (Pa. 1983).

The *Heredia* Court found that when the trial court imposed the Defendant’s sentence, they “expressly and unambiguously granted [Defendant] ‘credit for any time served.’” 97 A.3d at 395. The *Heredia* Court further found that Defendant was requesting that the Department of Corrections would enforce the trial court’s sentencing order as

valid, not a challenge to the legality of his sentence. *Id.* Therefore, Defendant should have raised his challenge with the Commonwealth Court and not the PCRA Court. *Id.*

Such a holding makes practical sense. Frequently, as in the case at bar, the trial judge is not in a position to readily determine what sentence or what case a defendant may be incarcerated on at any given point in time. In this case, when the Defendant was resentenced, we included a statement in the sentencing order that the Defendant was to receive credit for the time that he served, but we did not have sufficient information during the sentencing hearing to determine what sentence he was serving at that point in time. The Defendant was serving a sentence of one to two years' incarceration from a case in Centre County and was also facing charges under Docket Number CP-67-CR-0004568-2016 for aggravated harassment by prisoner, for which he received a sentence of two to four years' incarceration. However, we stated, unambiguously, that the Defendant was to receive any credit for time that he served on his previous sentence for third-degree murder.

Based on the ruling in *Heredia*, we determined that we could not grant Defendant's writ of habeas corpus because we had no jurisdiction to issue this type of relief. Like the *Heredia* case, we had already issued an order that stated the Defendant was to receive credit for time he already served on his sentence. The remaining portion of Defendant's petition alleges that the Department of Corrections is not giving him credit for the time he has served from October 20, 2009 until April 1, 2013 and from April 1, 2015 until October 20, 2016. Defendant's argument is in relation to an error in the

computation of his sentence and, therefore, the Defendant must either pursue his administrative remedies within the Department of Corrections or file a petition with the Commonwealth Court. The PCRA Court had no jurisdiction to grant the relief requested by the Defendant either pursuant to that Act or pursuant to a petition for Writ of Habeas Corpus. Pursuant to *Heredia*, we were required under the law to deny his petition.

Conclusion

For the reasons stated above, we respectfully submit that the Defendant's arguments on appeal are without merit and our order denying Defendant's petition for writ of habeas corpus should be affirmed.

Copies of this statement shall be sent to counsel for the parties.

BY THE COURT:

February 9, 2018

Richard K. Renn, Judge