

MEMORANDUM

TO: Chairman/Commissioner Croce

FROM: Brian M. Callahan

RE: In the Matter of Guido v. Goord, N.Y.S. Court of Appeals, 2/12/04
Jail time credit for out-of-state detention

DATE: February 24, 2004

Penal Law §70.30(3) generally entitles an inmate to “jail time” credit against a New York sentence for the period of time the inmate spent in custody prior to the commencement of the sentence. The New York State Court of Appeals February 12, 2004 decision of In the Matter of Guido v. Goord has now clarified an inmate’s entitlement to jail time credit when such custody occurs outside of New York State. As a reference to local correctional facilities, the following advisory legal opinion is offered. Accordingly, facilities should contact their County Attorney to discuss this matter and the potential liability associated therewith.

For the past twenty years, courts have relied on the decision in Matter of Peterson v. New York State Dept. of Correctional Servs., 100 A.D.2d 73 (2d Dept. 1984), to apply Penal Law §70.30(3) to an out-of-state detention. In Peterson, the court held that a New York inmate was entitled to jail time credit for the period in which he was detained by the federal government only if (1) bail was set on the federal charge, (2) the inmate had the financial ability to meet the bail set on the federal charge, and (3) the inmate’s failure to post bond or otherwise secure his or her release resulted solely from the lodging of a New York detainer. Id. at 80. In Matter of Keffer v. Reid, 100 A.D.2d 549 (2d Dept. 1984), the Appellate Division applied the Peterson standard to an inmate’s detention by another state.

In Guido, the inmate was arrested and held for trial in Pinellas County, Florida. Seven days later, a warrant was lodged in Pinellas County with regard to charges in

Herkimer County, New York. A little more than a year later, all of the inmate's Florida charges were dismissed, and he was subsequently extradited to New York to stand trial in Herkimer County. Following trial, the inmate was sentenced to concurrent indeterminate terms of imprisonment of 12½ to 25 years and 3½ to 7 years. After receiving the inmate into custody, the New York State Department of Correctional Services (DOCS) credited his sentence with only that time spent detained in Herkimer County following extradition. Following the holdings of Peterson and Keffer, both the Supreme Court and the Appellate Division affirmed this determination, finding that the New York warrant was not the sole cause of the inmate's Florida detention.

Upon appeal, the New York State Court of Appeals reversed the previous holdings of the Appellate Divisions in Peterson and Keffer. More specifically, the Guido Court held:

Notwithstanding the acceptance garnered by Peterson and its offspring, those cases have established a rule that conflicts with the plain statutory language, and they should no longer be followed. Penal Law §70.30(3) makes no distinction whatsoever between inmates who are detained in New York and those who are detained by sister states or the federal government. Indeed, the statute expressly provides that inmates should receive jail time credit "in any case" where they were held in "custody due to a charge that culminated in a dismissal or an acquittal," as long as the warrant giving rise to the New York sentence was "lodged during the pendency of such custody."

While the Guido decision specifically addressed only out-of-state custody culminating in an acquittal or dismissal, Counsel's Office believes the decision impacts any calculation of jail time credit involving previous Federal or out-of-state detainment. In fact, the Guido court held that "Penal Law §70.30(3) does not contemplate the place of detention as a factor [a correctional facility] should consider when computing jail time credit." Following this reasoning, an inmate's entitlement to jail time credit would be identical for periods spent in the custody of another state as those periods spent in the custody of another New York State county, and should, in the opinion of Counsel's Office, from now on be calculated as such. This may involve, in cases where a New York sentence is ordered to run concurrently to another state's previously imposed sentence, credit for time spent in the other jurisdiction's custody prior to the lodging of a New York warrant.

Left unanswered by the Guido decision is the extent to which a local correctional facility in New York State must investigate an inmate's prior incarceration in a foreign jurisdiction to determine whether or not an entitlement to jail time credit exists.

Correction Law §600-a requires a sheriff to keep a record “of all jail time to which the defendant is entitled,” and deliver a certified transcript of such record when the defendant is transferred to an institution not under his jurisdiction pursuant to sentence and commitment. Absent current judicial direction, it is the recommendation of Counsel’s Office that, when an inmate is received from another state or federal authorities, a local correctional facility should, at a minimum, ascertain all dates the inmate was in the other jurisdiction’s custody, all dates of such custody that were credited to a previously imposed sentence, and the dates during which the New York State warrant was lodged.

As a result of the Guido decision, it is likely that local correctional facilities will receive numerous requests from both parolees and state inmates to amend their certified transcript of jail time accordingly. The Court of Appeals has held in Bottom v. Goord, 96 N.Y.2d 870 (2001), that a sheriff’s duty to keep a jail time record pursuant to Correction Law §600-a is “a continuing, nondiscretionary, ministerial obligation.” Id. at 872. As such, an Article 78 proceeding to compel the amendment of an inmate’s jail time record will not be dismissed for failure to bring action within the four months of the date of the original record, but rather the four month statute of limitation period will run from the sheriff’s refusal to amend the record. Id.

Since the foregoing issues have not been dispositively addressed by statute, regulation, or by the courts, facilities are encouraged to discuss this matter with their county attorneys for additional guidance.