

STATE OF VERMONT  
WINDSOR COUNTY, SS.

JAMES BUSHWAY  
v.  
STATE OF VERMONT

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WINDSOR SUPERIOR COURT  
DOCKET NO. S157-96-WrCr

DECISION AND ORDER

Plaintiff filed this action under V.R.C.P. 75 seeking review of the determination made by the Department of Corrections of his date of release from incarceration. Plaintiff is serving time under two consecutive sentences, based on a revocation of probation and a sentence imposed on June 17, 1983.

Plaintiff initially argued that he should have been released already, based on his calculation of his release date. An evidentiary hearing was held on February 3, 1997. At the conclusion of the evidence, Plaintiff clarified his position that his length of service should be fifteen years and 3 months with a release date in August of 1998. The Department's calculations show a release date in March of 1999.

The crux of Plaintiff's claim is that he should have credit for 235 days of presentence detention on the second of his two consecutive sentences as well as on the first. He argues that the Vermont Supreme Court decision in State v. Percy, 158 Vt. 410 (1992) should not apply in his case since he was sentenced on his second conviction on June 17, 1983, prior to the decision in the Percy case, and that the language of the mittimus on the sentence

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imposed on June 17, 1983 specifies such credit.

The law was established long before the Percy case that credit for pretrial detention is only applied once against the total service time on two consecutive sentences. This was clear in 1979, well before Plaintiff's date of sentence. In re: Perry, 137 Vt. 168, 170-71 (1979). This is not altered by a reference to credit for pretrial time served on the mittimus for the second sentence. Such reference is not a specific grant of double credit for presentence time served. Rather, the provisions of 13 V.S.A § 7031(b) as applied in the Perry and Percy cases control, and Plaintiff is entitled to credit for his 235 days of presentence detention only once against his combined consecutive sentences. Therefore, he has shown no error in the Department's application of the credit, or the Defendant's release date calculation of March 8, 1999.

Based on the foregoing, Plaintiff's request for relief is DENIED.

Other issues referred to at the evidentiary hearing on February 3, 1997 had not been pleaded and were not before the court.

DATED AT WOODSTOCK in the County of Windsor and State of Vermont this 14th day of February, 1997.

  
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MARY MILES TEACHOUT  
PRESIDING JUDGE

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