

STATE OF VERMONT

**SUPERIOR COURT
Windsor Unit**

**CIVIL DIVISION
Docket # 97-3-16 Wrcv**

**WILLARD F. BUELL,
Petitioner**

v.

**LISA MENARD, Commissioner, DOC
Respondent**

Findings Of Fact, Conclusions Of Law, And Order

This matter came before the Court for final hearing on the merits on May 5, 2016. Petitioner represented himself. Respondent was represented by Attorney Emily A. Carr.

Petitioner is an inmate in the custody of the Commissioner of the Department of Corrections who contends that his sentence has been improperly calculated, and that if calculated properly, he is entitled to release from incarceration. He initially sought habeas corpus relief, but the case has been treated as a Rule 75 Petition for Review of Governmental Action for the purposes of reviewing the sentence calculation.

Findings of Fact

Willard Buell is serving three concurrent sentences. He was resentenced on May 4, 2007, at which time it was clarified that his three sentences were concurrent, and he was given credit on each for time periods he had served prior to that date. The amounts of credit were:

Docket # 960-7-00 Bncr	2323 days
Docket # 632-7-06 Bncr	299 days
Docket # 70-10-06 Bncr	177 days

Since then, the DOC recalculated his sentence in Docket # 960-7-00 Bncr and credited him with an additional 37 days, so his total credits against that sentence are 2360. This is his longest and controlling sentence. The DOC calculates that his maximum release date is July 22, 2017.

Petitioner contends that DOC's calculation does not give him credit for the 299 days and 177 days attributable to the other two sentences. He argues that if he were given credit for those 476 days, he should have been released already.

The 299 day credit Mr. Buell is entitled to for Docket # 632-7-06 Bncr is for the period of July 9, 2006 to May 3, 2007. He was given credit for that time period in Docket # 960-7-00 Bncr, in which he was given credit for March 7, 2002 through September 22, 2006 and September 23, 2006 through October 29, 2006, and October 30, 2006 through May 3, 2007 (altogether 3/7/02 to 5/3/07). During that period, while he was getting credit against the longer sentence, he also got credit of 299 days, from July 9, 2006 to May 3, 2007, against the shorter sentence in Docket # 632-7-06 Bncr. For that 299 day period, he got 299 days of credit against *each* of the two sentences. This is because they are concurrent sentences. He is not entitled to an additional 299 days, as that would give him double the credit to which he is entitled. While he may feel that he is not getting the benefit of the 299 days, that credit has shortened his release date in Docket # 632-7-06 Bncr, which could have some effect depending on what happens with the longer sentence.

The analysis is the same with respect to Docket # 70-10-06 Bncr. The 177 day credit is for the time period of November 8, 2006 to May 3, 2007. This falls within the period during which he was receiving credit on *both* of the other sentences. Thus, during that period, he got 177 days' worth of credit against all three of the sentences. However, he is not entitled to an additional 177 days of credit over and above what he has already received, as that would give him double credit. While he may feel that he is not getting the benefit of the 177 days, that credit has shortened his release date in Docket # 70-10-06 Bncr, which could have some effect depending on what happens with the longer sentence.

Conclusions of Law

Based on the facts, the court concludes that Petitioner has not shown that the Department of Corrections has miscalculated his sentence computation, and he has not shown that he is entitled to immediate release.

Order

For the foregoing reasons, the Petition for Review of Governmental Action is *dismissed*.

Dated this 16th day of May, 2016.

Mary Miles Teachout
Superior Court Judge