

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 18-00045

PRESENT: CENTRA, J.P., CARNI, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

IN THE MATTER OF MELVIN MOORE,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION, AND PATRICK M. O'FLYNN, SHERIFF OF
MONROE COUNTY, RESPONDENTS-RESPONDENTS.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH OF
COUNSEL), FOR PETITIONER-APPELLANT.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (FREDERICK A. BRODIE OF
COUNSEL), FOR RESPONDENT-RESPONDENT ANTHONY ANNUCCI, ACTING
COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION.

MICHAEL E. DAVIS, COUNTY ATTORNEY, ROCHESTER (MICHELE ROMANCE CRAIN OF
COUNSEL), FOR RESPONDENT-RESPONDENT PATRICK M. O'FLYNN, SHERIFF OF
MONROE COUNTY.

Appeal from a judgment (denominated order) of the Supreme Court,
Wyoming County (Michael M. Mohun, A.J.), entered November 24, 2017 in
a proceeding pursuant to CPLR article 78. The judgment dismissed the
petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding
challenging a jail time credit determination made by the Monroe County
Sheriff's Department. Petitioner was sentenced in 1986 to concurrent
terms of incarceration, the longest of which was 10 to 20 years. He
was released on parole in 1998 but was thereafter declared delinquent
as of November 1, 1999. Petitioner was arrested on December 27, 1999
on a variety of charges (the new charges), and a parole violation
warrant was lodged against him the following day. By a release order
dated December 30, 1999, petitioner was released from custody on the
new charges, but he remained incarcerated at the Monroe County Jail on
the parole violation. Petitioner was re-arrested on the new charges
on December 5, 2001. Following his conviction on several of those
charges, defendant was sentenced on April 25, 2003.

Petitioner contends that the 704 days of jail time between December 31, 1999 and December 4, 2001 should have been credited against the term of the sentence on his 2003 conviction. We reject that contention. Because petitioner was in custody during that 704-day period on the parole violation warrant, the credit accrued during this period applied, by operation of law, to the interrupted 1986 sentence, even if, as petitioner contends, he should not have been "released" on the new charges on December 30, 1999 (see Penal Law § 70.40 [3] [c]; *Matter of Ellis v Head Clerk, Otisville Correctional Facility*, 128 AD2d 525, 526-527 [2d Dept 1987]). Pursuant to Penal Law § 70.30 (3), "petitioner is not entitled to jail time credit against the [2003] sentence for the jail time that was [properly] credited against the [1986] sentence" (*Matter of Graham v Walsh*, 108 AD3d 1230, 1231 [4th Dept 2013] [internal quotation marks omitted]; see *Matter of Smith v Annucci*, 162 AD3d 1430, 1431-1432 [3d Dept 2018], *lv denied* 32 NY3d 909 [2018]; *Matter of Jones v New York State Dept. of Corr. Servs.*, 305 AD2d 891, 892 [3d Dept 2003], *appeal dismissed* 100 NY2d 613 [2003]). Supreme Court thus properly dismissed the petition.

Entered: June 7, 2019

Mark W. Bennett
Clerk of the Court