

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

January 24, 2006

Jose Sanchez  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

RE: Jose Sanchez v. Dave Vinson, Records, SCI, C.A. No. 05M-12-007

DATE SUBMITTED: January 19, 2006

Dear Mr. Sanchez:

Petitioner Jose Sanchez (“petitioner”) has filed a petition seeking a writ of mandamus (“the petition”) regarding the commencement date of his incarceration as well as a motion to proceed in forma pauperis.

I grant the motion to proceed in forma pauperis. However, that does not mean the action proceeds automatically. Instead, the Court reviews the petition before allowing it to proceed to determine if it is meritorious. 10 Del. C. § 8803(b). A review of the complaint, as well as the criminal file in State v. Sanchez, Def. ID# 0308011632, shows that the petition is legally and factually frivolous. Thus, it must be dismissed with prejudice.

On December 1, 2003, petitioner was sentenced in the case of State v. Sanchez, Def. ID# 0308011632 on a driving under the influence (4<sup>th</sup> offense) conviction. The sentence imposed was five years at Level 5, with credit for 103 days previously served, suspended after two years at Level 5 and successful completion of the Key Program for nine months at a Level 4 Residential Substance Abuse Treatment Program (“RSATP”), to be followed by other periods of probation if petitioner was successful at the Level 4 RSATP program.

On December 2, 2003, the Department of Correction (“DOC”) released petitioner from Level 5 by error. Petitioner, knowing he had a period of incarceration to serve, took off. He was recaptured on October 11, 2005.

In a letter dated October 12, 2005, this Court notified petitioner that he would serve the sentence imposed on December 1, 2003. Petitioner moved for a reduction of sentence, arguing that he actually had served the sentence while remaining at home and blaming the State of Delaware for not locating him and bringing him back to prison. This Court denied that motion in a letter dated November 7, 2005.

Petitioner now has filed the pending petition wherein he argues as follows. DOC lists his incarceration start date as June 29, 2005. The Court’s letter of October 12, 2005, stated that the December 1, 2003 order was to stay in effect. Thus, the effective start date for his sentence should be December 1, 2003. He argues the Court must enter an order instructing DOC to run his sentence from December 1, 2003.

Petitioner’s claim is legally and factually frivolous. DOC correctly started the incarceration date on June 29, 2005. That date allows for petitioner to receive 103 days credit time before he actually began serving his Level 5 sentence on October 11, 2005. Petitioner seeks

to receive credit time for the period he was on the lam. Petitioner's claim for relief is frivolous, both factually and legally.

The petition seeking a writ of mandamus is dismissed with prejudice. I warn petitioner that if he files any more actions seeking credit for the period of time he was a fugitive from serving his sentence, this Court will order his good time credits be forfeited in accordance with 10 Del. C. § 8805.

For the foregoing reasons, the petition seeking a writ of mandamus is dismissed with prejudice.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office  
Ophelia Waters, DAG  
State v. Sanchez, Def. ID# 0308011632