

IN THE SUPERIOR COURT THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO. ST-04-CR-63
	)	
v.	)	
	)	
GREGORY WILLIAMS,	)	
	)	
Defendant.	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO. ST-04-CR-96
	)	
v.	)	
	)	
GREGORY WILLIAMS,	)	
	)	
Defendant.	)	

MEMORANDUM OPINOIN AND ORDER

This matter comes before the Court on Defendant's March 8, 2012, Motion for Sentence Reduction and also upon a letter Defendant wrote to the Court dated May 4, 2012, and received May 15, 2012, indicating that the Bureau of Corrections is not giving him credit for all the time served to which he is entitled. The Court will address Defendant's correspondence first.

October 24, 2011, Defendant entered pleas of guilty to the murder in the second degree of Khoy Smith in Case No. ST-04-CR-63 and to murder in the second degree of Travis Poleon in Case No. ST-04-CR-96 under a global plea agreement. Through an Amended Judgment and Commitment dated January 12, 2012, and entered January 17, 2012, the Court sentenced Defendant to concurrent sentences of twenty-five (25) years imprisonment in each case, providing in each case

that Defendant was to receive credit for time served and “any ‘good time’ earned as determined by the Bureau of Corrections”.

There is no need to reiterate the entire history of these cases. It is sufficient for the purposes of addressing Defendant’s letter to indicate that Defendant was arrested on October 29, 2002, and charged with the murder of Travis Poleon in Case No. ST-02-CR-366. On March 8, 2004, the People moved to dismiss that case without prejudice, indicating that additional testing of a firearm was necessary, and by Order dated March 8, 2004, the Hon. Audrey L. Thomas dismissed Case No. ST-02-CR-366 without prejudice. On the same day, the People filed Case No. ST-04-CR-96, again charging Defendant with the same murder. Because Defendant was then also in custody in Case No. ST-04-CR-63, charging him with the murder of Khoy Smith, Defendant was not released from custody from the time of the dismissal of Case No. ST-02-CR-366, and his arrest on the same day in Case No. ST-04-CR-96.

Defendant asserts in his correspondence that the Bureau of Corrections is calculating his time served from February 5, 2004, the date of his arrest in Case No. ST-04-CR-63, but that he is entitled to credit against his sentence from October 29, 2002, the date of his original arrest for the murder of Travis Poleon in Case No. ST-02-CR-366. Defendant is correct with regard to Case No. ST-04-CR-96, but he is incorrect regarding Case No. ST-04-CR-63.

Ordinarily, the dismissal of a criminal case without prejudice ends a defendant’s right to receive credit for the time he served on that case. In most instances in which the accused is again charged with the same offenses in a new case, no credit for time served in the previous case is appropriate. In this instance, however, one case (No. ST-02-CR-366) was dismissed and the other (No. ST-04-CR-96) was filed on the same day, and Defendant was never released from custody in the interim. Thus, because Defendant was continuously in custody on charges that he murdered Travis Poleon after October 29, 2002, he is entitled to credit toward his sentence in Case No. ST-

04-CR-96, for all the time he served and good time he earned from the date of his original arrest on October 29, 2002.

But, that does not mean that Defendant is entitled to receive credit in Case No. ST-04-CR-63 for time served prior to his arrest on those charges on February 5, 2004. In the Amended Judgment and commitment dated January 12, 2012, the Court sentenced Defendant to concurrent sentences of twenty-five (25) years in each case and gave credit in each case for all the time Defendant had served and good time he had earned in that particular case. While Defendant is entitled to credit for time served and good time earned toward his sentence in Case No. ST-04-CR-96 from the time of his original arrest on October 29, 2002, he was not arrested in Case No. ST-04-CR-63 until February 5, 2004. Thus, his credit for time served and good time earned in Case No. ST-04-CR-63 does not begin to run until February 5, 2004.

Defendant's March 8, 2012, Motion for Sentence Reduction is based upon Defendant's completion of the Alternative to Violence Program Basic Workshop on January 13, 2012, and his efforts to obtain his G.E.D. Through an Order dated March 9, 2012, the Court directed the People to respond to the motion by March 30, 2012, but no response has been received. Under the substantially identical provisions of Rule 35.1(b) of the Local Rules of Criminal Procedure of the District Court of the Virgin Islands and Rule 136 of the Rules of the Superior Court, the Court may reduce a sentence within one hundred twenty (120) days after sentence is imposed or a final order is entered that has the effect of upholding a conviction on appeal.

While it certainly appears that Defendant is remorseful and contrite regarding the losses caused by his actions, and while the Court wishes to encourage Defendant to continue his educational pursuits and efforts to gain insight into alternatives to violence, the Court spent a significant period of time determining the appropriate sentence following Defendant's plea of guilty. The Court considered the presentence report, correspondence recommending leniency in

the sentencing of Defendant, the arguments of the attorneys, Defendant's acceptance of responsibility for two killings, and the benefit Defendant received from the plea agreement. At the time it imposed sentence, the Court considered the concurrent twenty-five (25) year sentences to be reasonable in light of all these and other factors. The Court does not find it appropriate to reconsider its considered sentencing decision only a few months after the sentence was imposed. Consequently, it is

ORDERED that Defendant's Motion for Sentence Reduction is DENIED; and it is

ORDERED that the Bureau of Corrections shall give Defendant credit for time served and good time earned consistent with this Memorandum Opinion and Order; and it is

ORDERED that a copy of this Memorandum Opinion and Order shall be served on Defendant c/o the Bureau of Corrections, and copies shall be directed to Agnes George, Warden, Bureau of Corrections, and counsel of record.

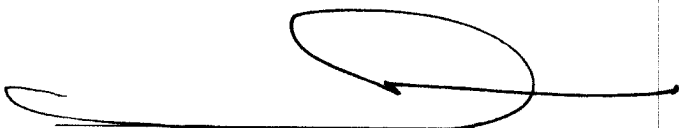
Dated: May 29, 2012.

ATTEST: Venetia H. Velazquez, Esq.
Clerk of the Court

by:

Lori B. Tyson

Court Clerk Supervisor



HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS