

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 THOMAS TIEDEMANN : NO. 95-406-1

MEMORANDUM AND ORDER

Norma Shapiro, S.J.

July 27, 1999

Thomas Tiedemann, a federal prisoner, seeks 58 days credit on his prison sentence for time spent in rehabilitation facilities (Eagleville and Mirmont) while released on bail (before and after his guilty plea) prior to sentencing.

Thomas Tiedemann was arrested on August 3, 1995 and charged with an attempt to possess with intent to distribute phenyl-2-propane. When first arrested, Tiedemann was placed in pre-trial detention. As a result of negotiations with defense counsel, the government agreed to house arrest with electronic monitoring after an inpatient treatment program at Eaglesville Hospital. By court order, Mr. Tiedemann was placed in a rehabilitation program at Eaglesville Hospital from September 11, 1995 to October 2, 1995. He was terminated early for failure to engage actively in the treatment process. He was permitted to remain on house arrest in October and November with continued out patient treatment. In late November, he was arrested for violating the terms of his release by cutting off his electronic

monitoring device and drinking extensively. On December 4, 1995, following a guilty plea, he was released on bail to the Mirmont residential treatment facility in Lima, PA where he remained from December 4, 1995 to January 9, 1996. Again, Tiedemann failed to engage actively in the treatment process. On the day he was released from Mirmont for a court hearing, the courts were closed because of bad weather. Tiedemann took advantage of this and fled. An arrest warrant issued on January 11, 1996; he was subsequently arrested and committed to federal custody. On April 16, 1996, Judge Shapiro imposed a term of imprisonment for 75 months.

Thomas Tiedemann requests that the two court-ordered stays in rehabilitation programs be credited towards his sentence. The Bureau of Prisons (BOP) has informed him that it will not do so of its own volition, but it will honor a court order. The government prosecutor takes no position on the request. Thomas Tiedemann's behavior, while in prison, appears to have improved dramatically.

Under 18 U.S.C. § 3585(b), a defendant must "be given credit toward the service of a term of imprisonment for any time spent in official detention prior to the date the sentence commences." Reno v. Koray, 515 U.S. 50 (1995). "Official detention" requires a court order not only detaining defendant but also committing him to the custody of the Attorney General for confinement. See Koray, 515 U.S. at 56. Mr. Tiedemann's stays in rehabilitation

facilities do not qualify as "official detention" under 18 U.S.C. § 3585 (b).

In Koray, the respondent was released on bail to a rehabilitation facility; the Court held that was not "official detention." The respondent had filed a habeas petition claiming he was entitled to credit for time spent at the Volunteers of America Community Treatment Center. Koray subsequently plead guilty and was sentenced to 41 months imprisonment without credit for time spent in the community treatment facility.

Here, both stays in rehabilitation facilities were on court ordered release prior to sentencing. A defendant on court ordered release, no matter how restricted, is not subject to Bureau of Prison control. When Tiedeman was released on bail with certain restrictions, he was not in the custody of the Attorney General. Since Tiedemann was not under control of the BOP, he was not in "official detention" as defined by § 3585(b).

Under Reno v. Koray, Thomas Tiedemann's court ordered release to Eagleville and Mirmont were not official detentions. Even if the Bureau of Prisons is willing to give credit toward his prison sentence for time spent in those facilities, his request should be denied.

Tiedeman has received credit for all time in federal custody prior to sentencing. Granting credit for time spent in Eagleville and Mirmont prior to revocation of bail would reward him for his disregard of court orders while on bail.

Tiedeman's improvement in prison is encouraging but does not warrant a reduction in sentence.

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ORDER

AND NOW, this 28th day of July, 1999, upon consideration of prisoner's request for credit toward his

overall prison sentence for time spent in rehabilitation facilities, it is hereby ordered that:

1. Prisoner's request for credit toward his prison sentence is **DEEMED A MOTION TO REDUCE SENTENCE**.

2. Prisoner's motion for reduction of his prison sentence is **DENIED**.

3. There are no grounds for appeal.

Norma L. Shapiro, S.J.