Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-074

SEPTEMBER TERM, 2020

Brian LeClair* v. Michael Touchette	}	APPEALED FROM:
	}	
	}	Superior Court, Caledonia Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 124-6-19 Cacv
		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Defendant appeals pro se from the civil division's denial of his Vermont Rule of Civil Procedure 75 petition seeking credit for time served. He argues that he was entitled to credit against his controlling sentence for time served prior to his arraignment for the crime that led to the controlling sentence. We affirm.

On September 24, 2018, petitioner was sentenced in six separate criminal dockets for four counts of burglary, one count of possession of heroin, and one count of operating a vehicle without the owner's consent. Petitioner was sentenced to serve zero-to-one year for the vehicle theft, and four-to-eight years for each of the other counts. All of the sentences were imposed concurrently to each other.

Petitioner was incarcerated for much of the time that he was awaiting trial in the six dockets, apparently because he was unable to post bail. He was not serving time for a preexisting sentence during that period. As a result, he had up to 520 days of sentence credit in some of the dockets. He had the least amount of credit for the burglary conviction in docket number 1688-5-17 Cncr—482 days—because he was arraigned for that charge after he was arraigned in the other dockets. The Department of Corrections used the sentence and credit applicable to this docket to calculate the dates on which petitioner will have served his minimum and maximum sentences for all of the dockets. The Department refers to this as the "controlling sentence."

Petitioner filed grievances with the Department, asserting that because his sentences were imposed concurrently, he was entitled to the maximum amount of credit toward each sentence, namely, 520 days. The grievances were denied. In June 2019, petitioner filed a Rule 75 complaint in superior court. In February 2020, the superior court denied petitioner's motion for judgment on the pleadings and granted the Department's motion for summary judgment, holding that the sentence had been properly calculated. Petitioner appealed to this Court.

The superior court's decision denying credit for time spent in custody involves a legal question, which we review without deference. Bridger v. Systo, 2018 VT 121, ¶ 6, 208 Vt. 649. Petitioner bears the burden of demonstrating that he is entitled to relief. Id.

Section 7031 of Title 13 requires the sentencing court to award defendants credit toward service of their sentence for any days spent in custody. 13 V.S.A. § 7031(b). The statute provides:

> The period of credit for concurrent and consecutive sentences shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and end on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

Id. § 7031(b)(1). The sentencing statute also provides that in cases where multiple sentences are imposed concurrently, "the shorter minimum terms merge in and are satisfied by serving the longest minimum and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term." Id. § 7032(c)(1). As discussed above, although the court imposed the same minimum and maximum sentences for five of petitioner's six convictions, the sentences had different effective terms because petitioner had differing amounts of sentence credit for each conviction. The Department correctly applied these two statutes by using the sentence with the longest minimum and maximum—here, the one for which petitioner had the least credit—as the controlling sentence.

Petitioner argues that because he received concurrent sentences for his various convictions, he is entitled to the maximum period of credit toward his sentence. He argues that his position is supported by our decisions in State v. Blondin and State v. LeClair. See Blondin, 164 Vt. 55, 61 (1995) (holding that when defendant is incarcerated based on conduct that leads both to revocation of probation or parole and to conviction on new charges, time spent in jail before second sentence is imposed should be credited toward only first sentence if second sentence is imposed consecutively, but toward both sentences if second sentence is imposed concurrently); LeClair, 2013 VT 114, ¶ 10, 195 Vt. 295 (applying Blondin rule where defendant was incarcerated while participating in drug treatment program ordered as condition of release). However, we have made clear that "[t]he presentence credit provided for by these decisions and the applicable statute, 13 V.S.A. § 7031(b), is awarded for the time a person is incarcerated as a result of the conduct on which the sentence is ultimately based." Fleming-Pancione v. Menard, 2017 VT 59, ¶ 20, 205 Vt. 125; see 13 V.S.A. § 7031(b)(1) (awarding credit toward particular sentence for "all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first," and stating that "no credit for one period of time shall be applied to a later period"). Awarding petitioner 520 days of credit toward all of his concurrently imposed sentences would effectively give him credit for time served before he was even charged with some of the offenses that led to those sentences. Neither the statute nor our case law supports such a result. See Fleming-Pancione, 2017 VT 59, ¶ 20 (explaining that "[t]here is simply no provision in the statute or the applicable case law for credit for incarceration before arrest on an unrelated offense").

Petitioner argues that the Department's implementation of the sentencing statutes violates his constitutional right to equal protection because it results in his receiving a slightly longer sentence than a hypothetical person who was charged with the same crimes on the same dates and received the same sentences as defendant, but was able to post bail. Petitioner's argument fails because he has not demonstrated that the Department has treated him differently than others who are similarly situated. See State v. George, 157 Vt. 580, 587 (1991) ("As applied to defendant, the statute violates neither the federal nor the Vermont constitution because he is treated under the statute the same as any similarly situated offender."). A person who is held for lack of bail, or held without bail, will receive credit for time served against the sentence for the charge the time was actually served in, as petitioner did here. A person with the same charges who is released on

bail or conditions will receive no such credit. Because petitioner has not demonstrated that the statute has a discriminatory purpose or effect, his equal protection claim fails.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice