

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2019-0103

State of New Hampshire

v.

Jason Candello

**MEMORANDUM OF LAW IN LIEU OF BRIEF  
PURSUANT TO SUPREME COURT RULE 16(4)(b)**

**STATEMENT OF THE CASE AND FACTS**

On December 6, 2007, in the Cheshire County Superior Court (*Arnold, J.*), the defendant, Jason Candello, pleaded guilty to one felony count of being a felon in possession and one felony count of possession of a controlled drug. SA 13-16;<sup>1</sup> *see* RSA 159:3 (2014) (felon in possession); RSA 318-B:2 (2017) (drug possession). The defendant refers to these two convictions as “charge 2” and “charge 1,” respectively. DB 5.

The superior court accepted a negotiated disposition for his pleas of guilty. SA 13-16. On charge 2, the court imposed a sentence of 2½ to 9 years stand committed, which was subsequently amended to 2½ to 7 years

<sup>1</sup> References to the record are denoted as follows:

“SA” refers to the appendix attached to this State’s memorandum of law;

“DB” refers to the defendant’s brief;

“DBA” refers to the appendix to the defendant’s brief.

stand committed. *Id.* at 13. On charge 1, the court imposed a sentence of 3½ to 7 years in the state prison, all suspended for 10 years. *Id.* at 15. The sentence for charge 1 was ordered to run consecutively to the stand-committed sentence for charge 2. *Id.*

The defendant earned parole while serving the charge 2 sentence. While on parole, the defendant engaged in felony criminal conduct—second degree assault (“charge 3”), contrary to RSA 631:2 (2016) (amended 2017)—on November 12, 2012. DBA A8. As a result, the defendant returned to the prison. The defendant’s parole was revoked and he resumed serving the sentence for charge 2 on November 18, 2012. DBA A10–11.

Meanwhile, the trial court ordered bail set at \$10,000 cash at his arraignment on charge 3 on March 6, 2013. DBA A26–28. A jury in Cheshire County convicted the defendant on charge 3. DBA A6. After the conviction on charge 3, the State filed a motion to impose the defendant’s suspended prison sentence on charge 1. *Id.* The court (*Kissinger, J.*) imposed the suspended sentence of 3½ to 7 years on May 6, 2014. SA 17-20. Consistent with the terms of the original sentence, the court imposed the prison time for charge 1 to run consecutively to the sentence for charge 2. DBA A6.

On charge 3, the trial court sentenced the defendant to a prison term of 2 to 4 years. SA 21-25. The trial court ordered this sentence to run consecutively to the imposed sentence for charge 1. *Id.* The trial court awarded the defendant pretrial confinement credit of seven days. *Id.* On July 8, 2016, the trial court ordered that the defendant’s pretrial confinement credit be amended to 65 days, following the defendant’s

motion to address when his sentence commenced and the State's partial objection to that motion. DBA A19; SA 26-32.

On or about December 3, 2018, the defendant filed a motion conceding that he was not entitled to pretrial confinement credit for either the charge 1 or charge 3 sentence, but asking the trial court to amend his sentences to run concurrently with each other and to commence on May 6, 2014, the date on which he was sentenced for charge 3 and on which the charge 1 sentence was imposed. DBA A3–5. The State objected, asserting that the trial court had the authority to impose consecutive sentences. DBA A6–7.

On or about December 17, 2018, the defendant filed another motion, arguing that he was entitled to pretrial confinement credit of 540 days, which would have included the time from November 12, 2012, to May 6, 2014. DBA A8–9. The defendant filed a subsequent motion to amend, arguing that he was serving an illegal sentence under RSA 651:3, and asked that his sentence on charge 1 run concurrently with his parole setback. DBA A10–11.

The State objected, asserting the provision of RSA 651:3 that the defendant had cited was merely a legislative bill that had not been enacted into law. DBA A12–15. The State included the legislative record with its objection, in which Representative Robert Renny Cushing for the Criminal Justice and Public Safety Committee stated that limiting a judge's ability to decide if a sentence should run concurrently or consecutively "would be counter to the desired policy of providing discretion to judges in sentencing." *N.H.H.R. Jour.* 285-9 (2017).

The trial court requested that the State respond to the defendant's claims about pretrial confinement credit under *State v. Allain*, 171 N.H. 286 (2018). DBA A16. In response, the State asserted that the defendant was awarded pretrial confinement credit for the days when he was not serving another sentence for his parole setback and would not serve more time than a similarly situated non-indigent defendant. DBA A17–20.

The defendant then filed another motion arguing that *Allain* controlled and asking the court to amend his pretrial confinement credit. DBA A21–25. The court denied the defendant's motion and his subsequent motion to reconsider. DB 7. This appeal followed.

### **ARGUMENT**

**The trial court did not err in denying the defendant's motion to amend his sentences because it had common law authority to order his sentences to run consecutively, consistently with the statutory scheme, and therefore the sentences would commence on a date other than the date they were imposed.**

The defendant contends that his sentences impermissibly commenced on a date other than sentencing when the trial court sentenced him to consecutive sentences. DB 8, 11. However, the defendant's argument overlooks common law authority to impose consecutive sentences and would conflict with the statutory scheme. *See* RSA 651:3; *Duquette v. Warden, New Hampshire State Prison*, 154 N.H. 737, 742–44 (2007).

The Supreme Court of New Hampshire reviews questions of statutory interpretation *de novo*. *State v. Forest*, 163 N.H. 616, 619 (2012). The Court reviews the plain meaning of the statute as a whole. *Forest*, 163

N.H. at 619. The Court “construe[s] provisions of the Criminal Code according to the fair import of their terms and to promote justice.” *Id.* It will first “look to the language of the statute itself, and, if possible, construe the language according to its plain and ordinary meaning...in the context of the entire statutory scheme.” *Id.*

The defendant contends that the plain language of RSA 651:3 requires his sentences to commence on the date of sentencing because he was in “custody.” DB 11–13. But that argument runs contrary to this Court’s prior decisional law construing RSA 651:3, because it would effectively foreclose the common law judicial discretion to impose consecutive sentences. The defendant’s argument would require concurrent sentences simply because he was in “custody” for serving a parole violation.

This Court has unequivocally held that, absent a statutory provision to the contrary, the trial court has common law authority to impose consecutive sentences. *Duquette*, 154 N.H. at 742–44. In *Duquette*, the Court concluded that the legislature intended to restore common law authority for judges to impose consecutive sentences when it repealed paragraph III of RSA 651:3, which required all sentences to run concurrently. *Id.* at 744. The Court concluded that the repeal, per the legislature’s intent, restored the common law authority that RSA 651:3, III abrogated, namely, to impose consecutive sentences. *Id.* This Court identified an important legislative objective in the repeal: to deter habitual offenders. *Id.*

Since *Duquette*, this Court has reiterated that, “[s]entencing courts have the discretion to pronounce sentences concurrent with or consecutive

to one another.” *State v. Bosa*, 170 N.H. 452, 457 (2017)(citing *State v. Rau*, 129 N.H. 126, 129–30 (1987) (“The legislature repealed RSA 651:3, III to afford a judge, with discretion, the option to impose consecutive sentences in order to deal with that group of criminals who need the deterrent of consecutive sentences.”)).

A consecutive sentence must commence after completing another sentence. The court has defined consecutive sentences as “[t]wo or more sentences of jail time to be served in sequence.” *Id.* at 457. The pretrial credit statute contemplated that an individual may be in custody, may surrender into custody, or may become in custody at a future time when addressing sentencing, but the statute’s fair meaning is that the sentence commence when a defendant has completed serving a consecutive sentence. *See* RSA 651:3, I; *see also State v. Decker*, 127 N.H. 468, 471 (1985).

It must follow that the ordinary meaning of the statute refers to when the defendant actually begins serving that particular sentence. Any contrary construction would do exactly the opposite of what the legislature did in repealing the third paragraph of RSA 651:3: it would abrogate the trial judge’s common law authority to impose consecutive sentences. *See Duquette*, 154 N.H. at 744.

The defendant’s argument would also require this court to overlook the statutory scheme of RSA 651:3. In relevant part, RSA 651:3, I states, “A sentence of imprisonment commences when it is imposed if the defendant is in custody or surrenders into custody at that time. Otherwise, it commences when he becomes actually in custody.”

RSA 651:3, is a credit statute that is intended to ensure that defendants are given credit for days served pretrial in lieu of bail. *See State*

*v. Decker*, 127 N.H. at 470; *see also State v. Philbrick*, 127 N.H. 353, 355 (1985). The trial court must exercise allocation discretion to reflect “an application of the credit statutes that ensures the equal treatment of those confined prior to trial due to their indigency...” *Forest*, 163 N.H. at 620. This is because “[a] principle underlying the credit statutes is that an indigent offender unable to furnish bail should serve neither more nor less time in confinement than an otherwise identically situated offender who was succeeds in furnishing bail.” *Forest*, 163 N.H. at 619; *see also Decker*, 127 N.H. at 470. Despite its allocation discretion, the trial court may not “award more days than the defendant was actually in custody *while not under any sentence of confinement.*” *State v. Bosa*, 170 N.H. at 457 (quotations omitted; emphases added).

It is well-established that the pretrial confinement credit statute does not allow for double credit when an individual is serving another sentence of confinement. *Bosa*, 170 N.H. at 457; *see Forest*, 163 N.H. at 619–20; *see also State v. Lopez*, No. 2017-0455, slip op. at \*2 (N.H. Mar. 29, 2018). Rather, the statute entitles the defendant to the “amount of time in custody both prior to and during his trial... against the time he must serve *for that time in custody.*” *Philbrick*, 127 N.H. at 355 (quotations omitted; emphases added).

In *Forest*, the Court determined the defendant was, at least in part, incarcerated on a parole violation, and there was no evidence that he would have been released, if he had posted bail on his new charges. *Id.* at 620. Instead, this Court observed that had that defendant been incarcerated solely because of his inability to make bail, he would have been entitled to pretrial confinement credit for the time spent awaiting resolution of the

underlying charges. *Forest*, 163 N.H. at 620. The Court found he was not entitled to pretrial confinement credit because “his incarceration was not exclusively related to the criminal episode for which he was sentenced.” *Id.*

Here, the defendant’s construction would stray from the core purpose in RSA 651:3, namely, to ensure parity in confinement between indigent and non-indigent, similarly situated defendants. *See id.* Having violated his parole and having been incarcerated for criminal conduct, the defendant cannot invoke the pretrial confinement credit for any period during which he awaited resolution of charge 3. Indigent or not, he would have been in prison, not because he could not make bail, but because he violated the terms of his parole. DBA A3–5, 11, 23; *see Forest*, 163 N.H. at 620.

The legislature intended to give an individual credit for time actually served pretrial, but the defendant would be entitled to no more or less than intended by the credit statutes. *See Decker*, 127 N.H. at 470. If the trial court’s sentence for charge 3 had to commence on the date of sentencing, the defendant’s request would presume the legislature intended to give him greater credit simply because he had engaged in criminal conduct that violated the conditions of his parole. It would reward him, in other words, for that parole violation. *See id.*

The defendant’s contention that “in custody” applies to any sentence would not import a fair meaning into the statute. Rather, in context of the statutory scheme it must mean in custody for the sentences implicating the pretrial confinement credit statutes. *See DB 5*, DBA A11. Otherwise, the defendant’s contention would have the effect of giving him greater credit for committing new crimes while released on parole supervision. This



Court does not presume the legislature would desired an absurd result when reviewing statutory interpretation. *See Decker*, 127 N.H. at 471.

Accordingly, the trial court properly followed its common law authority to impose consecutive sentences and its orders were consistent with the statutory scheme of the pretrial confinement credit statute, and the defendant's sentences for charge 1 and charge 3 would commence after he completed serving any prior sentences.

### **CONCLUSION**

The State respectfully requests that this honorable Court affirm the judgment below.

The State waives oral argument pursuant to Supreme Court Rule 16(4)(b).

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

Gordon J. Macdonald  
Attorney General

October 3, 2019

/s/ Meghan C. Hagaman  
Meghan C. Hagaman, NH Bar # 20804  
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**CERTIFICATE OF COMPLIANCE**

I, Meghan Hagaman, hereby certify that pursuant to Rule 16(4)(b) of the New Hampshire Supreme Court Rules, this memorandum of law in lieu of brief contains approximately 2,200 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

October 3, 2019

/s/ Meghan C. Hagaman  
Meghan C. Hagaman

**CERTIFICATE OF SERVICE**

I, Meghan C. Hagaman, hereby certify that a copy of the State's brief shall be served on Stephanie Hausman, Deputy Chief Appellate Defender, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

October 3, 2019

/s/ Meghan C. Hagaman  
Meghan C. Hagaman

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# The State of New Hampshire

Cheshire County

Superior Court

No. 07-S-0739

## RETURN FROM SUPERIOR COURT

Name: Jason Candello

DOB: 3/13/1977

☒ Indictment   ☐ Waiver   ☐ Information   ☐ Complaint

Offense: Felon in Possession/Extended Term of Imprisonment   RSA: 159:3 & 651 II(a)  
 Date: 5/15/2006

Disposition: Guilty By ☒ Plea ☐ Jury ☐ Court

T/N:

Conviction: ☒ Felony ☐ Misdemeanor

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 9 year(s), nor less than 2 1/2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: Stand committed. Commencing December 7, 2007. The sentence is concurrent with 07-S-740. Pretrial confinement credit: 269 days. The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant has waived sentence review in writing or on the record. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. Defendant to not abuse (as defined in RSA 173-B) Virginia Torres-Siandre.

12/6/2007

Date

Hon. John P. Arnold

Presiding Justice

Barbara Hogan, Clerk of Court

Clerk

### MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **NH State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

12/6/2007

Date

Attest: 

Clerk

### SHERIFF'S RETURN

I delivered the defendant to the **NH State Prison** and gave a copy of this order to the **Warden**.

Date

Sheriff

cc: ☒ State Police  
☒ Pros. Attorney  
☒ Offender Recs  
☒ Meredith Lugo, Esq.

☒ Dept. of Corr.  
☒ Office of Cost Cont.  
☒ SRB

☒ Defendant  
☒ Sheriff  
☒ CCHOC

CHESHIRE, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT  
OCTOBER TERMINDICTMENT

At the Superior Court, held at Keene, within and for the County of Cheshire, on the 22<sup>nd</sup> of October, in the year of our Lord TWO THOUSAND SIX (2006), the Grand Jurors for the State of New Hampshire, upon their oath, present that

**JASON CANDELLO**  
of HINSDALE, NEW HAMPSHIRE

*did commit the crime of*

**FELON IN POSSESSION/ EXTENDED TERM OF IMPRISONMENT**

*contrary to* **RSA 159:3 and RSA 651 II (a)**

**A CLASS B FELONY**

**ON OR ABOUT MAY 15, 2006**  
**IN HINSDALE, NEW HAMPSHIRE**

*In that:*


Candello did have in his possession a deadly weapon as defined at RSA 625:11; namely: a knife, which Candello used to stab at a vehicle driven by V.T.S., and Candello had been convicted in a state court of a felony under RSA 318-B, namely: Possession of Controlled Drug on May 31, 2000; Manufacture Controlled Drug on May 31, 2000; and Candello had been previously convicted and sentenced to excess of one year, namely: Escape on April 18, 2001; Possession of Controlled Drug and Manufacture Controlled Drug on May 31, 2000,

*contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State.*

*This is a true bill.*

Jason Candello  
160 River Road  
Westmoreland, NH 03467

State v. Jason Candello  
Date of Birth: 3/13/77

  
Grand Jury Foreman

  
John W. Vorder Bruegge  
Assistant Cheshire County Attorney

INDICTMENT

07-739

# The State of New Hampshire

Cheshire County

Superior Court

No. 07-S-0250

## RETURN FROM SUPERIOR COURT

Name: Jason Candello

DOB: 3/12/1977

☒ Indictment    ☐ Waiver    ☐ Information    ☐ Complaint

Offense: Possession of a Controlled Drug    RSA: 318-B:2, -B:26, -B:27 & 651:6 II (a)  
 Date: 3/12/2007

Disposition: Guilty By ☒ Plea ☐ Jury ☐ Court

T/N:

Conviction: ☒ Felony ☐ Misdemeanor

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 7 year(s), nor less than 3 1/2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: All of the minimum sentence is suspended; All of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within 10 year(s) of today's date. The sentence is consecutive to 07-S-739, 740. The sentence is concurrent with 07-S-251. The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant has waived sentence review in writing or on the record. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. Defendant to not abuse (as defined in RSA 173-B) Virginia Torres-Siandre.

December 6, 2007

Date

Hon. John P. Arnold

Presiding Justice

Barbara Hogan, Clerk of Court

Clerk

### MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **NH State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_

Clerk

### SHERIFF'S RETURN

I delivered the defendant to the **NH State Prison** and gave a copy of this order to the **Warden**.

Date

Sheriff

cc: ☒ State Police  
☒ Pros. Attorney  
☒ Offender Recs  
☒ Meredith Lugo, Esq.

☒ Dept. of Corr.  
☒ Office of Cost Cont.  
☒ SRB

☒ Defendant  
☒ Sheriff  
☒ CCHOC



CHESHIRE, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT  
APRIL TERMINDICTMENT

*At the Superior Court, held at Keene, within and for the County of Cheshire, on the 23<sup>rd</sup> of APRIL, in the year of our Lord TWO THOUSAND SEVEN (2007), the Grand Jurors for the State of New Hampshire, upon their oath, present that*

**JASON CANDELLO**  
**of WESTMORELAND, NEW HAMPSHIRE**

*did commit the crime of*

**POSSESSION OF A CONTROLLED DRUG/EXTENDED TERM OF  
IMPRISONMENT**

*contrary to* **RSA 318 -B:2, -B:26, -B:27 and RSA 651:6 II (a)**

**A CLASS B FELONY**

**ON MARCH 12, 2007**

**IN SWANZEY, NEW HAMPSHIRE**

*In that:*

1. Candello knowingly possessed a controlled drug, namely: heroin wrapped in a plastic "bindle";
2. After a prior offense as defined in RSA 318-B:27, namely conviction for: Possession of Controlled Drug on May 31, 2000 and/or Manufacture Controlled Drug on May 31, 2000;
3. Candello had been previously convicted and sentenced to excess of one year, to include dispositions for: Possession of Controlled Drug on May 31, 2000, Manufacture Controlled Drug on May 31, 2000 and Escape on April 18, 2001.

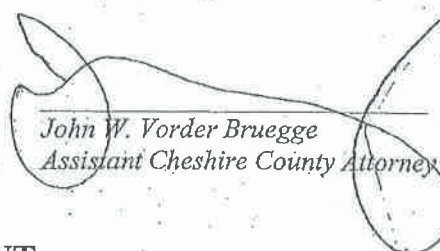
*contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State.*

*This is a true bill.*

*Jason Candello*  
160 River Road  
Westmoreland, NH 03467

*State v. Jason Candello*  
Date of Birth: 3/12/77

  
Grand Jury Foreman

  
John W. Vorder Bruegge  
Assistant Cheshire County Attorney

INDICTMENT

07-250



**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Cheshire Superior Court  
33 Winter Street, Suite 2  
Keene NH 03431

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

MAY 06 2014

**RETURN FROM SUPERIOR COURT - STATE PRISON SENTENCE**

Case Name: **State v. Jason Candello**  
Case Number: **213-2007-CR-00250**

Name: **Jason Candello, NH State Prison PO Box 14 Concord NH 03302**  
DOB: **March 12, 1977**

Charging document: **Indictment - Motion to Impose Suspended Sentence**

<b>Offense:</b>	<b>Charge ID:</b>	<b>RSA:</b>	<b>Date of Offense:</b>
Acts Prohibited; Controlled Drug Act		318-B:2	March 12, 2007
Disposition: Guilty/Chargeable By: Plea	T/N: _____		

**A finding of GUILTY/CHARGEABLE is entered.**

Conviction: **Felony**

Sentence: see attached

May 06, 2014  
Date

Hon. John C. Kissinger, Jr.  
Presiding Justice

James I. Peale  
Clerk of Court

**MITTIMUS**

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
Clerk of Court

**SHERIFF'S RETURN**

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheriff

C: ☒ State Police ☐ DMV ☒ Dept. of Corr. ☒ Offender Recs ☒ Sheriff ☒ Sentence Review Board  
☐ Defendant ☒ Pros. Atty John S. Webb, ESQ. ☒ Defense Attorney James P. O'Rourke, Jr.,  
ESQ  
☐ Office of Cost Cont. ☐ Sex Offender Registry ☐ Other \_\_\_\_\_ ☐ \_\_\_\_\_ Dist Ct. \_\_\_\_\_



# THE STATE OF NEW HAMPSHIRE

## JUDICIAL BRANCH

<http://www.courts.state.nh.us>

Court Name: Cheshire County Superior Court  
Case Name: State v. Jason Candello  
Case Number: 213-2007-CR-0250 Charge ID Number: \_\_\_\_\_  
(if known)

### STATE PRISON SENTENCE

Plea/Verdict:	Clerk:
Crime: Possession of a Controlled Drug (motion to impose suspended sentence)	Date of Crime: motion to impose dated 2/20/13
Monitor:	Judge: Hon. John C. Kissinger, Jr.

A finding that defendant has violated the terms of his suspended sentence is entered.

- ☐ If this box is checked, the defendant is a member or veteran of the armed forces.
- ☐ The presentence investigation report prepared under RSA 651:4 was considered by the Court.
- ☐ A presentence investigation report was waived by: ☐ Defendant and State ☐ Court
- ☒ 1. The defendant is sentenced to the New Hampshire State Prison for not more than 7 years, nor less than 3 1/2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- ☒ 2. This sentence is to be served as follows: ☒ Stand committed ☐ Commencing \_\_\_\_\_
- ☐ 3. \_\_\_\_\_ of the minimum sentence is suspended  
\_\_\_\_\_ of the maximum sentence is suspended
- Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within \_\_\_\_\_ years of today's date.
- ☐ 4. \_\_\_\_\_ of the sentence is deferred for a period of \_\_\_\_\_  
Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- ☐ 5. \_\_\_\_\_ of the minimum sentence may be suspended by the Court on application of the defendant provided the defendant demonstrates meaningful participation in a sexual offender program while incarcerated.
- ☒ 6. The sentence is ☒ consecutive to 213-2007-CR-00739  
☐ concurrent with \_\_\_\_\_
- ☐ 7. Pretrial confinement credit: \_\_\_\_\_ days.
- ☐ 8. The Court recommends to the Department of Corrections:
- ☐ A. Drug and alcohol treatment and counseling
- ☐ B. Sexual offender program
- ☐ C. Sentence to be served at the House of Corrections
- ☐ D. \_\_\_\_\_



Case Name: State v. Jason CandellaCase Number: 213-2007-CR-0250**STATE PRISON SENTENCE**

Pursuant to RSA 499:10:a, the clerk shall notify the appropriate health care regulatory board if this conviction is for a felony and the person convicted is licensed or registered as a health care provider.

**PROBATION**

- ☐ 9. The defendant is placed on probation for a period of \_\_\_\_\_ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.  
Effective: ☐ Forthwith ☐ Upon Release \_\_\_\_\_
- ☐ The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.
- ☐ 10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 5 days in response to a violation of a condition of probation.
- ☐ 11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

**OTHER CONDITIONS**

- ☒ 12. The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence.
- ☐ A. The defendant is fined \$ \_\_\_\_\_ plus statutory penalty assessment of \$ \_\_\_\_\_
- ☐ The defendant shall also pay the time payment fee of \$25.00.
- ☐ The fine, penalty assessment and any fees shall be paid:
- ☐ Now ☐ By \_\_\_\_\_ ☐ Through the Department of Corrections as directed by the Probation/Parole Officer.
- ☐ \$ \_\_\_\_\_ of the fine is suspended
- ☐ \$ \_\_\_\_\_ of the penalty assessment is suspended.
- ☐ B. The defendant is ordered to make restitution of \$ \_\_\_\_\_ plus statutory 17% administrative fee
- ☐ Through the Department of Corrections as directed by the Probation/Parole Officer
- ☐ Through the Department of Corrections on the following terms:
- ☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
- ☐ Restitution is not ordered because:
- ☒ C. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- ☐ D. Under the direction of the Probation/Parole Officer, the defendant shall tour the
- ☐ New Hampshire State Prison ☐ House of Corrections
- ☐ E. The defendant shall perform \_\_\_\_\_ hours of community service under the direction of the Probation/Parole Officer.
- ☐ F. The defendant has waived sentence review in writing or on the record.
- ☒ G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

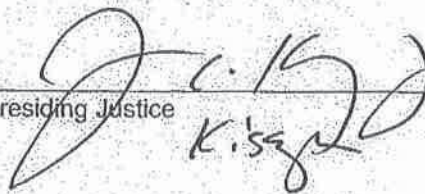


Case Name: State v. Jason CandelloCase Number: 213-2007-CR-0250STATE PRISON SENTENCE☐ H. Other: \_\_\_\_\_

Date

5/6/14

Presiding Justice

  
K. Kissel

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

**SENT**  
5/11/14

Cheshire Superior Court  
33 Winter Street, Suite 2  
Keene NH 03431

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**RETURN FROM SUPERIOR COURT - STATE PRISON SENTENCE**

Case Name: **State v. Jason N Candello**

Case Number: **213-2013-CR-00099**

Name: **Jason N Candello, NH State Prison PO Box 14 Concord NH 03301**

DOB: **March 12, 1977**

Charging document: Indictment

**Offense:**

2nd Deg Asst

**Charge ID:**

757803C

**RSA:**

631:2

**Date of Offense:**

November 12, 2012

Disposition: Guilty/Chargeable By: Plea T/N: \_\_\_\_\_

**A finding of GUILTY/CHARGEABLE is entered.**

Conviction: Felony

Sentence: see attached

May 06, 2014

Date

Hon. John C. Kissinger, Jr.

Presiding Justice

James I. Peale

Clerk of Court

**MITTIMUS**

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

5/6/2014  
Date

Attest:

James I. Peale  
Clerk of Court

**SHERIFF'S RETURN**

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheriff

C: ☒ State Police ☐ DMV ☒ Dept. of Corr. ☒ Offender Recs ☒ Sheriff ☒ Sentence Review Board  
☐ Defendant ☒ Pros. Atty John S. Webb, ESQ ☒ Defense Attorney James P. O'Rourke, Jr.,  
ESQ  
☒ Office of Cost Cont. ☐ Sex Offender Registry ☐ Other \_\_\_\_\_ ☐ \_\_\_\_\_ Dist Ct. \_\_\_\_\_



**STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
<http://www.courts.state.nh.us>

Court Name: Cheshire County Superior Court  
Case Name: State v. Jason Candello  
Case Number: 213-2013-CR-0027 Charge ID Number: 757803C  
(if known)

**STATE PRISON SENTENCE**

Plea/Verdict:	Clerk:
Crime: Second Degree Assault	Date of Crime: Nov. 12, 2012
Monitor:	Judge: Hon. John C. Kissinger, Jr.

A finding of GUILTY is entered.

- ☐ If this box is checked, the defendant is a member or veteran of the armed forces.
- ☐ The presentence investigation report prepared under RSA 651:4 was considered by the Court.
- ☐ A presentence investigation report was waived by: ☐ Defendant and State ☐ Court
- ☒ 1. The defendant is sentenced to the New Hampshire State Prison for not more than 4 years, nor less than 2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.
- ☒ 2. This sentence is to be served as follows: ☒ Stand committed ☐ Commencing \_\_\_\_\_
- ☐ 3. \_\_\_\_\_ of the minimum sentence is suspended  
\_\_\_\_\_ of the maximum sentence is suspended
- Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within \_\_\_\_\_ years of today's date.
- ☐ 4. \_\_\_\_\_ of the sentence is deferred for a period of \_\_\_\_\_.  
Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- ☐ 5. \_\_\_\_\_ of the minimum sentence may be suspended by the Court on application of the defendant provided the defendant demonstrates meaningful participation in a sexual offender program while incarcerated.
- ☒ 6. The sentence is ☒ consecutive to 213-2007-CR-00739 & 213-2007-CR-0250  
☐ concurrent with \_\_\_\_\_
- ☒ 7. Pretrial confinement credit: 7 days.
- ☐ 8. The Court recommends to the Department of Corrections:
- ☐ A. Drug and alcohol treatment and counseling
- ☐ B. Sexual offender program
- ☐ C. Sentence to be served at the House of Corrections
- ☐ D. \_\_\_\_\_



Case Name: State v. Jason CandelloCase Number: 213-2013-CR-0027**STATE PRISON SENTENCE**

Pursuant to RSA 499:10:a, the clerk shall notify the appropriate health care regulatory board if this conviction is for a felony and the person convicted is licensed or registered as a health care provider.

**PROBATION**

- ☐ 9. The defendant is placed on probation for a period of \_\_\_\_\_ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.  
Effective: ☐ Forthwith ☐ Upon Release \_\_\_\_\_
- ☐ The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.
- ☐ 10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 5 days in response to a violation of a condition of probation.
- ☐ 11. Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

**OTHER CONDITIONS**

- ☒ 12. The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence.
- ☐ A. The defendant is fined \$ \_\_\_\_\_ plus statutory penalty assessment of \$ \_\_\_\_\_
- ☐ The defendant shall also pay the time payment fee of \$25.00.
- ☐ The fine, penalty assessment and any fees shall be paid:
- ☐ Now ☐ By \_\_\_\_\_ ☐ Through the Department of Corrections as directed by the Probation/Parole Officer.
- ☐ \$ \_\_\_\_\_ of the fine is suspended
- ☐ \$ \_\_\_\_\_ of the penalty assessment is suspended.
- ☐ B. The defendant is ordered to make restitution of \$ \_\_\_\_\_ plus statutory 17% administrative fee
- ☐ Through the Department of Corrections as directed by the Probation/Parole Officer
- ☐ Through the Department of Corrections on the following terms:
- ☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
- ☐ Restitution is not ordered because:
- ☒ C. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- ☐ D. Under the direction of the Probation/Parole Officer, the defendant shall tour the
- ☐ New Hampshire State Prison ☐ House of Corrections
- ☐ E. The defendant shall perform \_\_\_\_\_ hours of community service under the direction of the Probation/Parole Officer.
- ☐ F. The defendant has waived sentence review in writing or on the record.
- ☒ G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.



Case Name: State v. Jason Candeno

Case Number: 213-2013-CR-0027

STATE PRISON SENTENCE

☐ H. Other: \_\_\_\_\_

Date

5/6/14

Presiding Justice

J. L. Kissin



CHESHIRE, SS.

## THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT  
FEBRUARY TERMINDICTMENT

At the Superior Court, held at Keene, within and for the County of Cheshire, on the 25<sup>TH</sup> of FEBRUARY, in the year of our Lord TWO THOUSAND THIRTEEN (2013), the Grand Jurors for the State of New Hampshire, upon their oath, present that

**JASON CANDELLO**  
of **KEENE, NEW HAMPSHIRE**

did commit the crime of  
**SECOND DEGREE ASSAULT**

contrary to **RSA 631:2**  
a **CLASS B FELONY**

On or about **NOVEMBER 12, 2012**  
in **KEENE, NEW HAMPSHIRE**

In that:

1. Candello caused serious bodily injury to M.C. in the form of broken ribs and splenic laceration;
2. Candello caused the serious bodily injury to M.C. by striking M.C.; and
3. Candello acted recklessly;

contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State.

This is a true bill.

Jason Candello  
LKA:  
PO Box 14  
Concord, NH 03302-14

State v. Jason Candello  
Date of Birth: 3/12/1977

*Jason Mullen*  
Grand Jury Foreman

*John Webb*  
Assistant Cheshire County Attorney

INDICTMENT

CCSC #213 2013 CR 99

CHG ID # 757803C

State of New Hampshire

Superior Court

Cheshire, ss.

State of New Hampshire

V.

Jason Candello

JUL 07 2016

July Term, 2016

No. 07-S-250, 07-S-739

and No. 213-2013-CR-99

Motion to Address Effective Date of Sentence

Now Comes the defendant Jason Candello, Pro Se and respectfully states the following and requests the following relief:

1. The defendant's motion to amend his prior sentence (docket 00739) was granted by this Court on 3-8-16.
2. The State objected to the defendants request for the Court to correct the sentence so that there would be no confusion to the prison about the start date of the defendant's new sentence and any pre trial credit that was afforded him.
3. The defendant is being denied credit for roughly 98 days of the new sentence because prior to the amendment to the sentence the defendant was paroled to his new sentence (docket 0250) at his classification board hearing on 5-6-14. The prison computer has this date as the sentences start date.

4. The defendant believes that the correct sentence start date should be on the same date that his prior sentence was maxed out on, which is 3-9-14, unless pre trial credit puts it before then.
5. The defendant has sent 6 request slips to the prisons offender records, all with the same response of confusion and the suggestion to put the proper motion in to address the effective date of sentence.

WHEREFORE, the defendant requests that this Court:

- a) Grant the defendants motion and inform the prison of the effective start date of the new sentence;
- b) Hold a hearing on the motion;
- c) Grant such other and further relief as this Court deems equitable and just.

Respectfully Submitted,  
Jason Candello  
Jason N. Candello

Certificate of Service

I hereby certify that a copy of the foregoing motion is being forwarded to Assistant County Attorney, John Webb on this 1st day of July, 2016.

Jason N. Candello

COPY

## STATE OF NEW HAMPSHIRE

CHESHIRE, SS.  
DOCKET NUMBER:  
213-2007-CR-250 & -739 and 213-2013-CR-00099

SUPERIOR COURT  
JULY TERM, 2016

## STATE OF NEW HAMPSHIRE

v.

## JASON CANDELLO

**STATE'S PARTIAL OBJECTION TO DEFENDANT'S "MOTION TO  
ADDRESS EFFECTIVE DATE OF SENTENCE"**

**NOW COMES** the State of New Hampshire, by and through the Office of the Cheshire County Attorney, and offers this partial objection to defendant's motion to address effective date of sentence. The State offers the following:

1. By way of background, pursuant to a negotiated resolution, the defendant pled guilty to being a Felon in Possession and was sentenced (on 12/6/2007) to 2 ½ - 9 years based on application of the Extended Term of Imprisonment statute. The predicate sentences included one qualifying conviction for Escape (for which he received a stand-committed prison sentence in excess of one year) and two suspended prison sentences.
2. In a previous motion, the defendant moved to amend his sentence from 2 ½ - 9 years down to 2 ½ - 7 years, stand-committed. The defendant, citing State v. Dansereau, 157 N.H. 596 (2008), argued in support that his sentence was illegal because the suspended sentences should not have qualified to trigger application of the Extended Term provisions. By way of relief, the defendant requested "that his prior sentence of 2 ½ - 9 be changed to 2 ½ - 7 years, and that his current sentence be corrected accordingly."



3. The State objected only in part. The State did not oppose the reduction of the maximum, because it appeared to the State that the defendant was correct regarding the caselaw. The State objected to any additional relief at that time.
4. The Court granted the defendant's motion in part, thereby reducing the maximum sentence on 07-CR-739 to 7 years (down from 9 years).
5. By way of additional background, after a trial in February, 2014, the defendant was convicted of Second Degree Assault (docket 213-2013-CR-99). The defendant was sentenced on or about May 6, 2014, for the conviction in docket 2013-CR-99. Defendant was sentenced to 2-4 years at the NHSP, stand-committed. This sentence was to be consecutive to 213-2007-CR-00739 and 213-2007-CR-0250. (The defendant had been out on parole in docket 2007-CR-00739 at the time of the assault; and 213-2007-CR-0250 was a suspended sentence imposed at the request of the State based on the assault.) The Court denied a motion for a new trial in docket 2013-CR-99. On information and belief, defendant's appeal, which had been stayed, is pending.
6. The defendant has now filed the pending motion asking for the Court to change the sentence start date in docket 07-CR-250.
7. The State objects to changing the start date of docket 07-CR-250. The 07-CR-250 sentence was a suspended sentence that was imposed by the Court on May 6, 2014. As such, it begins on the date it is imposed (unless it is consecutive to another sentence and that previous sentence *has not yet been completed*, in which case it starts to run in the future). Consecutive sentences are not, however, "backed up" to commence at an earlier date merely to make it run flush with the earlier sentence. In this case the previous sentence was not yet completed (although, in hindsight, it should have been). Nonetheless, the defendant was apparently

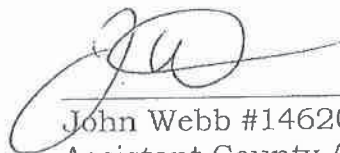
paroled into 07-CR-250 on the very same day as his sentencing (see defendant's motion at ¶ 3). Therefore, the effective start date should remain on the date the sentence was imposed.

8. All that said, the State agrees with the defendant that he deserves some relief. He should, in other words, get credit for the time he was incarcerated between when 07-CR-739 ended (on or about 3/9/14, post modification), and when he was sentenced (on May 6, 2014). As it is, the defendant got only limited pre-trial credit (7 days) on docket 2013-CR-99 because at the time of his sentencing on May 6, 2014, the parties believed that the defendant was, while being held pre-trial on 2013-CR-99, serving the sentence in docket 07-CR-739. (And indeed he was, before his maximum was reduced.) But given the recent adjustment of the maximum in 07-CR-739 from nine years to seven, the State asserts that it is appropriate to now award the defendant additional pre-trial confinement credit in docket 2013-CR-99. The current order, as noted above, indicates 7 days of pre-trial credit in 2013-CR-99. The State believes the Court should amend the sentence to indicate that defendant's pre-trial credit in docket 2013-CR-99 is 65 days, rather than 7. The State reaches this number by calculating the time from March 10, 2014 (which is, on information and belief, the day after the defendant "maxed out" his sentence in 07-CR-739, taking into account the reduction recently granted) to the date of his sentencing on May 6, 2014 (plus the 7 days originally awarded).
9. The State recognizes that the defendant has not requested an adjustment of his pre-trial credit in docket 07-CR-99. Nevertheless, it appears to the State to be the appropriate remedy under the particular circumstances before the Court.

**WHEREFORE**, the State respectfully requests that this Court:

- a) DENY the defendant's motion with respect to changing the start date of docket 07-CR-250; but
- b) AMEND the defendant's sentence in docket 07-CR-99 to increase the defendant's pre-trial credit from 7 to 65 days;
- c) HOLD a hearing, but only if deemed necessary; and
- d) Grant such other and further relief as this Court deems equitable and just.

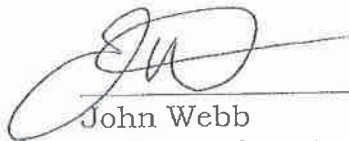
Respectfully Submitted,  
STATE OF NEW HAMPSHIRE



John Webb #14620  
Assistant County Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded on or about this 8th day of July, 2016, to the defendant, who filed *pro se*.



John Webb  
Assistant County Attorney  
12 Court Street  
Keene, NH 03431

State of New Hampshire  
Superior Court

Cheshire, ss.

State of New Hampshire

v.

Jason Candello

July 14, 2016

No. 07-S-250, 07-S-739

and No. 213-2013-CR-99

Motion to Address Effective Date of Sentence

Now Comes the defendant Jason Candello, Pro Se and respectfully states the following and requests the following relief:

1. The defendant's motion to amend his prior sentence docket (00739) was granted by this Court on 3-8-16.

2. The State objected to the defendant's request for the Court to correct the sentence so that there would be no confusion to the prison about the start date of the defendant's new sentence and any pre-trial credit that was afforded him.

3. The defendant is being denied credit for roughly 98 days of the new sentence because prior to the amendment to the sentence the defendant was paroled to his new sentence (docket 0250) at his classification board hearing on 5-6-14. The Prison computer has this date as the sentence's start date.

CLERK'S NOTICE DATED

8/22/16

cc: J. Webb / def. NHSP

Amic.

However, in accord

with the

State's

request,

to Court

award the

defendant

addition

of the

credit for

213-2013-CR-99

as to a

subject

65 days.

so ordered

9/1/16

3/9/16

RECEIVED  
CHESHIRE SUPERIOR COURT  
2016 JUL 14

AUG 22 2016