

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1516-2010  
:   
vs. :   
:   
:   
TRAVIS DEEKS, : Petition for Habeas  
Petitioner

**OPINION AND ORDER**

On December 6, 2010, the court sentenced Petitioner Travis Deeks to undergo incarceration in a state correctional institution for sixteen (16) months to six years on his conviction for criminal trespass, a felony of the third degree. The court awarded Petitioner credit for time served from September 21, 2010 to the date of sentencing.

Prior to December 23, 2016, Petitioner filed a Petition for Writ of Habeas Corpus Ad Subjiciendum. Petitioner alleged that his maximum sentence expired on October 27, 2016 and he was being illegally and unconstitutionally detained.

On December 23, 2016, the court issued a Rule upon Jack Sommers, Superintendent of SCI – Waymart, to show cause why the Writ should not be issued. The court directed Respondent to file an Answer to the Petition within three days and scheduled a hearing on the Petition for January 12, 2017. Respondent subsequently requested a continuance which was granted. The final hearing in this matter took place on January 19, 2017.

Admittedly, it is difficult to fully understand Petitioner’s position. At the onset of the hearing, he objected to the fact that the Respondent was represented by Attorney Morgan Davis, counsel with the Pennsylvania Board of Probation and Parole (“the Board”). Petitioner asserted that Respondent was the Pennsylvania Department of Corrections (DOC)

and in particular Jack Sommers, Superintendent of SCI – Waymart. Yet, in his Petition, Petitioner seeks an Order “directed to the [the Board] to complete a proper calculation of [his] back time, wherein [the Board] is not permitted to impose back time which exceeds the entire remaining balance of the recommitted...unexpired term.” Petitioner further argued during the hearing in this matter that the Board failed to credit him time served and unlawfully took away his street time.

It appears to the court that Petitioner is asserting two claims: (1) the Board erred in denying him credit continuously from October 27, 2015, when Petitioner was first incarcerated on the Board detainer to the present; and (2) the Board erred in detaining Petitioner past his alleged maximum release date.

The best method to address Petitioner’s claims is by setting forth the procedural history of Petitioner’s commitments, beginning with his sentence under this Information.

As noted previously, on December 6, 2010, the court sentenced Petitioner to a maximum of six years in a state correctional institution and gave him credit for time served from September 21, 2010. Therefore, Petitioner’s original maximum date was September 21, 2016.

The Board first paroled Petitioner on May 29, 2012. (Respondent’s Exhibit B).

In early July 2013, Petitioner was charged with new offenses in Luzerne County, which were resolved before a Magisterial District Judge. (Respondent’s Exhibit C). As a result, Petitioner was “returned” as a technical parole violator on July 7, 2013 to serve a six month set back. (Respondent’s Exhibits E and F) The Board re-paroled Petitioner, and he

was released on January 7, 2014. (Respondent's Exhibit F).

On September 19, 2015, officer from the Northern Berks Regional Police Department stopped Petitioner for driving under the influence (DUI) and related traffic offenses. (Respondent's Exhibit I). Petitioner was subsequently charged with these offenses.

On September 24, 2015, the Board declared the Petitioner delinquent effective September 21, 2015. (Respondent's Exhibit G). A warrant to commit and detain was generated on October 27, 2015. (Respondent's Exhibit H).

On October 27, 2015, the Petitioner was detained as a technical violator. (See Respondent's Exhibit I).

On November 5, 2015, Petitioner waived his violation hearing and admitted to the technical violations (conditions 1, 2, 5A). (Respondent's Exhibit J).

When Petitioner was initially detained on October 27, 2015, he was returned to SCI – Waymart. He remained at SCI – Waymart until he was transferred to Berks County on November 23, 2015 to address the pending DUI charges under Information No. CP-06-CR-5632-15. On November 24, 2015, bail was set on the DUI charges but Petitioner did not post bail. (Respondent's Exhibit Q). He was returned to SCI – Waymart.

On January 20, 2016, Petitioner was returned to Berks County. He was sentenced on the DUI on January 27, 2016 to 11 ½ to 23 months in the “Berks County Jail System.” The Petitioner received credit for 65 days' time served from November 24, 2015 to the date of sentencing. (Respondent's Exhibits L and Q).

By the Board's Notice dated December 10, 2015, Petitioner was re-committed as a technical parole violator to serve six months on multiple technical parole violations. His parole violation max date was reset at October 27, 2016, subject to change if convicted of the

outstanding criminal charges. (Respondent's Exhibit K).

By the Board's Notice dated April 21, 2016, Petitioner was recommitted to the state correctional institution as a convicted parole violator to serve six months concurrently for a total of six months back time "when available pending parole from (or completion of) Petitioner's Berks County conviction." (Respondent's Exhibit N).

Petitioner was made available to begin serving his back time on October 3, 2016 after he was paroled from his Berks County sentence and returned to the custody of the Department of Corrections. (Respondent's Exhibit R).

By the Board Notice mailed December 14, 2016, Petitioner's re-parole eligibility date was set at March 6, 2017 with his parole violation max date set at June 28, 2020. Petitioner was advised that this action was subject to the Board's administrative remedies with specifics regarding such. (Respondent's Exhibit O, page 2). Petitioner filed an administrative appeal from this Board decision on December 29, 2016 (mailing date of Administrative Remedies Form dated December 25, 2016). (Respondent's Exhibit S).

Petitioner contends that because he served his time at SCI – Waymart that the Board did not have the authority to take away his street time or to run consecutive any parole hit for either technical or substantive violations.

Petitioner's Petition, however, must be dismissed on both procedural and substantive grounds.

The Board is correct that this Court does not have jurisdiction to essentially overrule the Board's revocation/recalculation decisions. The Pennsylvania Commonwealth Court has exclusive jurisdiction over any challenges to parole revocation/recalculation decisions. 42 Pa. C.S. § 763. *Commonwealth, Department of Corrections v. Reese*, 774

A.2d 1255, 1260 (Pa. Super. 2001). As the Board properly notes, any challenge to the Board's recalculation of the maximum sentence must be filed in Commonwealth Court.

Furthermore, Petitioner did not exhaust the remedies available through the Board or through the Commonwealth Court. A writ of habeas corpus is not a substitute for appellate review. *Reese, id.*

Even if this court had jurisdiction to review the Board's decisions and calculations, Petitioner would not be entitled to relief.

The Prisons and Parole Code explicitly provides that "a parolee under the jurisdiction of the board released from a correctional facility who, during the period of parole ...commits a crime punishable by imprisonment, for which the parolee is convicted...or to which the parolee pleads guilty..., may at the discretion of the board be recommitted as a parole violator." 61 Pa. C.S.A. § 6138(a)(1). The Board has the statutory power to recalculate a convicted parole violator's maximum date to reflect the forfeiture of time at liberty on parole. *Richards v. Pennsylvania Board of Probation and Parole*, 20 A.3d 596, 598-599 (Pa. Commw. 2011). Determinatively, "[i]f a parolee's recommitment is so ordered, the parolee shall be reentered to serve the remainder of the term which the parolee would have been compelled to serve had the parole not been granted and ...shall be given no credit for time at liberty on parole." 61 Pa. C.S. § 6138(a)(2).

As the Board argued in this case, Petitioner was convicted of a new crime while on parole. The Board's decision mailed December 14, 2016 recalculated Petitioner's maximum date to reflect that he would receive no credit for the time he was at liberty on parole from May 29, 2012 to July 7, 2013 and from January 7, 2014 to October 27, 2015. The Board acted within its statutory power by extending Petitioner's maximum sentence date

to June 28, 2020 based upon his recommitment as a convicted parole violator.

Petitioner seeks credit for the period he was confined on both the new charges and the Board's detainer. In support of his argument, Petitioner relies on the Pennsylvania Supreme Court decision in *Martin v. Pennsylvania Board of Probation and Parole*, 840 A.2d 299 (Pa. 2003).

Petitioner's position, however, is without merit. The *Martin* decision actually supports the denial of Petitioner's claim. In *Martin*, the Court held that pre-sentence confinement time must be credited to either the original sentence or the new sentence; and only in situations where the period of confinement exceeds the new sentence, is it proper to apply the credit to the original sentence. *Id.* at 309; see also *Hammonds v. Pa. Bd. of Prob. & Parole*, 143 A.2d 994, 997-998 (Pa. Commw. 2016).

Moreover, Petitioner was required to serve his new Berks County sentence before serving the remainder of his sentence in this case, because his new term was to be served in a county prison and he was paroled from a state correctional institution. See 61 Pa. C.S.A. § 6138(a)(5)(iii).

When Petitioner was released on parole on January 7, 2014, his max date was September 21, 2016. This left 988 days on his sentence. Because of his DUI conviction on January 27, 2016, the Board denied Petitioner credit for all of the time he previously spent at liberty on parole. As a result, Petitioner also forfeited the 404 days of liberty on parole from May 29, 2012 to July 7, 2013 that was not forfeited when he was first recommitment as a technical parole violator. *Houser v. Pa. Bd. of Prob. & Parole*, 682 A.2d 1365 (Pa. Commw. 1996).

The Board awarded Petitioner 28 days of credit from October 27, 2015 (the

date he was detained) to November 24, 2015 (the date his DUI charges were filed against him).<sup>1</sup>

Petitioner became available to begin serving his back time on October 3, 2016 after he was paroled from Berks County. At that point, he had 1364 days left to serve on his original sentence.<sup>2</sup> Adding 1364 days to October 3, 2016 yields the new parole maximum date of June 28, 2020.

Accordingly, the Board's calculations and credit are correct.

**ORDER**

AND NOW, this \_\_\_ day of February 2017, following a hearing and argument, the court denies Petitioner's Petition for Habeas Corpus Ad Subjiciendum.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Morgan Davis, Esquire  
Pennsylvania Board of Probation and Parole  
1101 South Front Street, Ste. 5100  
Harrisburg, PA 17104-2517  
Travis Deeks, JV4604  
SCI-Waymart, PO Box 256, Route 6, Waymart PA 18472-0246  
Work File  
Gary Weber, Esquire, Lycoming Reporter

---

<sup>1</sup> Defendant received 65 days of credit from November 24, 2015 to January 27, 2015 (the date he was sentenced) on his Berks County DUI. He continued to serve that sentence until he was paroled on October 3, 2016. Therefore, Petitioner has received credit on either his new sentence or his original sentence for all of the time he has been incarcerated. He is not entitled to duplicate credit. *Bright v. Pa. Bd. of Prob. & Parole*, 831 A.2d 775, 778 ("Neither Section 9760 nor any other provision of the Code allows a defendant to receive credit against more than one sentence imposed for multiple convictions of separate and unrelated charges.").

<sup>2</sup> 988 plus 404 minus 28 equals 1364.