

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH** : **No. CR-1831-2012**  
:   
**vs.** :   
:   
**ANTHONY MONROE,** :   
**Defendant** :

**OPINION AND ORDER**

This matter came before the court because of a letter<sup>1</sup> that Anthony Monroe (hereinafter Petitioner) sent to the court, which the court is treating as a second or subsequent Post Conviction Relief Act (PCRA) petition.

By way of background, on November 19, 2012, Petitioner pled guilty to delivery of a controlled substance (heroin) and was sentenced to three (3) to six (6) years’ incarceration in a state correctional institution in accordance with the plea agreement. The Commonwealth dismissed the rest of the charges in this case and all of the charges in case 1834-2012. Petitioner was also sentenced to a consecutive period of 6 to 12 months’ incarceration in Monroe County. Thus, his aggregate sentence was 3 ½ to 7 years’ incarceration in a state correctional institution.

According to Petitioner, the Board paroled him in January 2017 and his parole was set to expire on October 3, 2019. He was home for a year, but committed a new crime and was re-arrested. The Board gave him a “2 year hit” and extended his maximum date from October 3, 2019 to October 10, 2021. The Board did not give him any credit for time spent on parole.

Petitioner claims the Board’s actions violated the sentencing order imposed by

the court and the doctrine of separation of powers. He also asserts that his original three to six year sentence was “a bit outside of the sentencing range.” Petitioner, however, assumes that it is far too late to do anything about his original sentence.

Petitioner’s assumption is correct. It is far too late to do anything about his original sentence.

Any PCRA petition, including a second or subsequent petition, must be filed within one year of the date the judgment of sentence becomes final or the petitioner must plead and prove one of the three statutory exceptions. 42 Pa. C.S. A. §9543(b). Petitioner’s judgment of sentence became final on or about December 19, 2012. To be considered timely, Petitioner needed to file his petition on or before December 19, 2013 or he needed to allege fact to support one of the exceptions. He did neither. Therefore, his petition is untimely, and the court lacks jurisdiction to hold a hearing or grant any relief.

Furthermore, Petitioner’s claims against the Board are not cognizable under the PCRA.

A PCRA petition is not the proper method to challenge the decisions of the Board or the Department of Corrections calculation of sentences. *Commonwealth v. Camp*, 772 A.2d 70, 75 (Pa. Super. 2001)(“a PCRA petition is not the proper avenue for challenging the determination of the Parole Board”); *Commonwealth v. Vega*, 754 A.2d 714, 718 (Pa. Super. 2000)(PCRA is not the proper method to challenge decisions of the Pennsylvania Board of Probation and Parole); *Commonwealth v. Perry*, 563 A.2d 511, 513 (Pa. Super. 1989)(a PCRA petition is not a proper method of contesting the Department of Corrections

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<sup>1</sup>The letter is dated December 1, 2019, and the envelope in which it was sent is postmarked December 4, 2019.

calculation of sentences). Rather, jurisdiction over appeals or challenges to parole orders are within the exclusive jurisdiction of the Commonwealth Court. 42 Pa. C.S.A. §763; *Pittman v. Pa. Bd. of Prob. & Parole*, 639 Pa. 40, 159 A.3d 466, 470 n.7 (2017); *Commonwealth v. Vega*, 754 A.2d 714, 718 (Pa. Super. 2000).

Even if Petitioner's claims were cognizable under the PCRA, his claims lack merit.

The Board is not changing Petitioner's sentence; the Board is simply requiring Petitioner to serve his entire sentence in jail. The Board has the power and authority to do this. Contrary to Petitioner's assertions, the Board's actions do not amount to illegally changing his sentence. *Marshall v. Pa. Bd. of Prob. & Parole*, 200 A.3d 643, 648 (Pa. Commw. 2018)("By definition, when the Board imposes backtime, it does not alter a judicially-imposed sentence; it simply requires the prisoner to serve some or all of the time remaining on the original sentence."); *Hughes v. Pa. Bd. of Prob. & Parole*, 179 A.3d 117, 121 (Pa. Commw. 2018)("when the Board imposed backtime, the Board *did not impose an additional sentence* on Hughes but, rather, directed Hughes to *complete the originally judicially mandated sentence*").

The Board was not required to give Petitioner credit for time served at liberty on parole. When the Board orders the recommitment of a convicted parole violator, "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, except as provided under paragraph (2.1), shall be given no credit for the time at liberty on parole." 61 Pa. C.S.A. §6138(a)(2). Paragraph (2.1) states:

The Board may, **in its discretion**, award credit to a parolee recommitted under paragraph (2) for the time spent at liberty on parole, unless any of the following apply:

- (i) The crime committed during the period of parole or while delinquent on parole is a crime of violence as defined in 42 Pa. C.S. §9714(g)(relating to sentences for second and subsequent offenses) or a crime requiring registration under 42 Pa. C.S. Ch. 97 Subch. H [or I] (relating to registration of sexual offenders).
- (ii) The parolee was recommitted under section 6143 (relating to early parole of inmates subject to Federal removal order).

61 Pa. C.S.A. §6138(a)(2.1)(emphasis added).

Petitioner indicates that his new charge was for the same charges, which leads the court to conclude that Petitioner's new conviction was for another delivery of a controlled substance. Therefore, it is unlikely that Petitioner's circumstances fall within either subparagraph (i) or (ii). Nevertheless, the Board is not required to grant him credit for time spent at liberty on parole.

The Board decides whether to grant such credit. The Board may deny credit; it just must give its reason for doing so.<sup>2</sup> *Pittman v. Pa. Bd. of Prob. & Parole*, 639 Pa. 40, 159 A.3d 466, 475 (2017). If Petitioner wishes to challenge the Board's decision, he must appeal to the Commonwealth Court. This court does not have any jurisdiction over such claims.

### **ORDER**

**AND NOW**, this \_\_\_ day of March 2020, upon review of the petition and the record, the court gives Petitioner notice of its intent to dismiss his petition without holding an

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<sup>2</sup>In this case, it is likely that the Board denied credit for time spent at liberty on parole because Petitioner has not changes his criminal behaviors. Instead, he continues to commit felony violations of the Controlled

evidentiary hearing pursuant to Rule 907 of the Pennsylvania Rules of Criminal Procedure. Petitioner may respond to this notice within twenty (20) days of the date of this order. If the court does not receive a response or if Petitioner files a response but does not show how the court has jurisdiction over Petitioner's claims, the court will dismiss his petition.

By The Court,

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Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (DA)  
Anthony Monroe, #KU8828  
SCI Somerset, 1600 Walters Mill Road, Somerset PA 15510  
Gary Weber, Esquire (Lycoming Reporter)  
Work file