

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Joseph Dougherty,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1046 C.D. 2010
	:	
Pennsylvania Board of Probation and	:	Submitted: January 14, 2011
Parole,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: March 21, 2011**

In this petition for review of a recalculation order, Joseph Dougherty (Dougherty), a state prison inmate representing himself, questions whether substantial evidence supports a finding of parole violation upon which an earlier recommitment order was based. For the following reasons, we affirm.

In 2006, the Board constructively reparaoled Dougherty from his original two to ten year sentence to begin serving a new two-year sentence for DUI. Certified Record (C.R.), at 23, 26, 33. In 2007, the Board paroled Dougherty to an approved private residence with conditions. *Id.* at 29-35. One condition of parole required Dougherty to notify his parole supervisor within 72 hours of receipt of a summons or citation for an offense punishable by imprisonment. C.R. at 34; 37 Pa. Code §63.4(3)(ii)(B).

While Dougherty remained on parole, police arrested him and charged him with various new offenses. C.R. at 44, 47. Around this time, Dougherty's parole supervisor discovered the same police department charged Dougherty with public drunkenness earlier that year. Id. at 47. The Board lodged a detainer. C.R. at 36. The resulting notice of charges and hearings alleged Dougherty violated condition #3(b) of his parole by failing to report the public drunkenness citation to his parole supervisor. Id. at 48.

At hearing, Dougherty admitted the violation. C.R., Hearing of 10/5/09, Notes of Testimony (N.T.), at 60, 63-65, 67, 72. Thereafter, the Board issued an order recommitting Dougherty to serve six months' backtime as a technical parole violator (recommitment order). C.R. at 75. Dougherty filed an administrative appeal from the recommitment order challenging the backtime imposed. Id. at 83. Although Dougherty complained about the severity of the disposition, he did not challenge the finding of the underlying violation. Id.

The Board denied Dougherty's administrative appeal from the recommitment order. C.R. at 90. The Board's determination letter explained Dougherty's six-month period of recommitment was within the applicable range. Id.; 37 Pa. Code §75.4 (presumptive range is three to six months). Dougherty did not seek further review of the recommitment order.

After the magisterial district judge dismissed Dougherty's new charges, Dougherty became available to serve the backtime. C.R. at 39-41, 109.

The Board subsequently issued a recalculation order, which listed Dougherty for parole review on the next available docket (recalculation order). Id. at 82, 90.

Dougherty subsequently filed a second request for administrative relief in an attempt to object for the first time to the evidence supporting the finding of violation for the recommitment order. Id. at 91-101. In that petition, he requested reconsideration of the recommitment order and the recalculation order. Id. The Board deemed Dougherty's second petition an administrative appeal of the recalculation order only. See 37 Pa. Code §73.1 (providing the Board will not accept second or untimely appeals). Dougherty challenged the Board's calculation of the credit for time served after the detainer and requested his immediate parole. C.R. at 92-94.

The Board subsequently denied Dougherty's second petition and affirmed its recalculation order. C.R. at 109. Dougherty now petitions for review from the order denying administrative relief from the recalculation order.<sup>1</sup>

Instead of asserting errors in the recalculation order, however, Dougherty challenges the Board's finding that he violated his parole. In particular, he asserts he was not required to report receipt of a citation for public drunkenness because it is punishable only by a fine.

---

<sup>1</sup> Our review is limited to determining whether substantial evidence supports the Board's decision, and whether the Board erred as a matter of law, or violated the parolee's constitutional rights. McKenzie v. Pa. Bd. of Prob. & Parole, 963 A.2d 616 (Pa. Cmwlth. 2009).

A recommitment order and a recalculation order are separate appealable orders. Wright v. Pa. Bd. of Prob. & Parole, 743 A.2d 1004 (Pa. Cmwlth. 1999); Woodard v. Pa. Bd. of Prob. & Parole, 582 A.2d 1144 (Pa. Cmwlth. 1990). A parolee can not challenge a recommitment order through a challenge to a recalculation order. Woodard. A recommitment order is final as to the propriety of the recommitment itself, and “in an appeal from a [recalculation] order a prisoner cannot resurrect issues pertaining to the recommitment order.” Id. at 1147.

Dougherty failed to petition for review from the Board’s recommitment order; accordingly, Dougherty can not use his appeal from the recalculation order to challenge his recommitment order. Woodard.

Dougherty does not raise any issue relating to the recalculation order in his brief. As such, any issues relating to the recalculation order are waived. See, e.g., Commonwealth v. Montalvo, 598 Pa. 263, 956 A.2d 926 (2008) (failure to brief issues results in waiver).

Moreover, we discern no error in the recommitment order. Where the Board’s recommitment order is supported by substantial evidence and within the published presumptive ranges, a reviewing court will not disturb the Board’s exercise of discretion. Houser v. Pa. Bd. of Prob. & Parole, 675 A.2d 787 (Pa. Cmwlth. 1996).

A parolee may admit a violation. Prebella v. Pa. Bd. of Prob. & Parole, 942 A.2d 257 (Pa. Cmwlth. 2008). Here, Dougherty received a citation for public drunkenness, a summary offense, which carries a possible penalty of incarceration of not more than 90 days. See 18 Pa. C.S. §§1105, 5505. Dougherty's admission at hearing that he failed to report the citation within the requisite period provides ample support for the Board's recommitment order that included a term of recommitment within the applicable range. C.R., N.T. 67, 72.

Based on all the foregoing, we affirm.

---

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph Dougherty,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1046 C.D. 2010
	:	
Pennsylvania Board of Probation and	:	
Parole,	:	
	:	
Respondent	:	

**ORDER**

**AND NOW**, this 21<sup>st</sup> day of March, 2011, the order of the Pennsylvania Board of Probation and Parole, dated April 28, 2010, is **AFFIRMED**.

---

ROBERT SIMPSON, Judge