

arrested in Washington County, Pennsylvania, on firearms charges and the charge of recklessly endangering another person. The Board lodged a detainer against Foster on April 30, 2005, for potential parole violations. (C.R. at 9.)

On May 12, 2005, Foster posted bail from the new criminal charges filed in Washington County.¹ He was transferred to SCI-Green on July 26, 2005, and the Board conducted a violation hearing on the same day. The Board subsequently determined that Foster violated his parole by leaving the district without permission and recommitted Foster as a technical parole violator to serve six months backtime when available. (C.R. at 20.)

On September 13, 2005, West Virginia authorities charged Foster with various crimes stemming from the April 30, 2005, shooting incident. Foster was temporarily transferred to West Virginia on May 23, 2006, pursuant to the Interstate Agreement on Detainers (IAD), section 9101 of the Judicial Code, 42 Pa. C.S. §9101.² On March 1, 2007, Foster entered a plea of no contest in West Virginia to the charge of attempted murder, and on March 9, 2007, he was sentenced to a term of three to fifteen years to run concurrently with any sentence imposed by the Commonwealth of Pennsylvania. (C.R. at 22, 25-29.)

Foster was returned to Pennsylvania on March 12, 2007 (C.R. at 69), and thereafter the Board held a revocation hearing regarding the West Virginia

¹ The criminal charges pending in Washington County were *nolle prossed* on November 30, 2005. (C.R. at 13.)

² The IAD is an agreement between the states to encourage the expeditious and orderly disposition of outstanding charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. Davis v. Pennsylvania Board of Probation and Parole, 841 A.2d 148 (Pa. Cmwlth. 2004).

conviction. On May 14, 2007, the Board recommitted Foster as a convicted parole violator to serve thirty-six months backtime when available. (C.R. at 70-71.)

On May 31, 2007, Foster was transferred to West Virginia to serve his new sentence. On May 7, 2008, after more than one year of confinement, West Virginia suspended the remainder of Foster's sentence and imposed a term of probation to run concurrently with any period of incarceration imposed by Pennsylvania. (C.R. at 23.) Foster was returned to Pennsylvania on May 16, 2008.

On May 30, 2008, the Board issued a decision recalculating Foster's violation maximum date on his original sentence to October 2, 2012. (C.R. at 74-75.) Foster filed a petition for administrative relief; however, the Board denied Foster's petition and affirmed the recalculation of his maximum date.

On appeal to this Court,³ Foster contends that the Board failed to credit him for three periods of time: (1) April 30, 2005, to May 26, 2006 (initial detainer to transportation to West Virginia);⁴ (2) May 26, 2006, to March 9, 2007 (time served as Pennsylvania prisoner in temporary West Virginia custody); and (3) any time served in West Virginia between March 9, 2007, and May 7, 2008 (encompassing time he was incarcerated in West Virginia following the West Virginia conviction).

³ Our scope of review is limited to determining whether the Board's findings are supported by substantial evidence, whether an error of law was committed, or whether any of the parolee's constitutional rights were violated. Harden v. Pennsylvania Board of Probation and Parole, 980 A.2d 691 (Pa. Cmwlth. 2009).

⁴ Although the record reflects that the Foster was transferred to West Virginia on May 23, 2006, (C. R. at 69), Foster states in his brief that he was transported on May 26, 2006. (Foster's brief at 17.) This discrepancy has no impact on the disposition of this appeal.

The Board now concedes that Foster is entitled to credit on his original sentence from April 30, 2005, through May 31, 2007.⁵ The Board asks this Court to remand the case and states that, upon remand, it will give Foster credit for the preceding period of time and adjust his maximum date from October 2, 2012 to September 2, 2010. Therefore, in light of the foregoing, we will reverse the Board's order in part and remand the case to the Board with directions to award Foster credit on his original sentence for the period from April 30, 2005, through May 31, 2007, and to adjust Foster's maximum date accordingly.

The remaining issue is whether Foster is entitled to credit for the period from May 31, 2007, to May 7, 2008, representing time served in West Virginia custody following his conviction in that state for attempted murder. Foster argues that he is entitled to such credit because his West Virginia sentence was to run concurrently with any sentence imposed by Pennsylvania and Pennsylvania is required to give full faith and credit to the concurrent sentence. He also argues that West Virginia offered to return him to Pennsylvania in the

⁵ The Board explains that Foster is entitled to credit for time that he was incarcerated in Pennsylvania under West Virginia's concurrent sentence (August 18, 2005, to May 23, 2006, and, March 12, 2007, to May 31, 2007) and for time Foster was confined in West Virginia pursuant to the IAD (May 23, 2006, to March 12, 2007). (Board's brief at 8.) The Board also agrees that Foster is entitled to credit on his original sentence from May 7, 2008 to the present. (Board's brief at 9.) The Board does not explain in its brief why it concluded that Foster is entitled to credit for the twelve day period from April 30, 2005 (when he was detained by the Board based on his incarceration in Washington County on new criminal charges), to May 12, 2005 (when he posted bail from those new charges). However, because the new criminal charges were ultimately *nolle prossed*, Foster is entitled to credit for that time pursuant to our decision in Davidson v. Pennsylvania Board of Probation and Parole, 667 A.2d 1206 (Pa. Cmwlth. 1995) (parolee detained in custody for failure to post bond on new criminal charges that are ultimately *nolle prossed* is entitled to credit against the original sentence).

sentencing order and, under the provisions of the IAD, he became a Pennsylvania prisoner upon the imposition of the West Virginia sentence.

The Board responds that Foster is not entitled to credit pursuant to our decision in Vance v. Pennsylvania Board of Probation and Parole, 741 A.2d 838 (Pa. Cmwlth. 1999), appeal denied, 563 Pa. 695, 760 A.2d 859 (2000), where we held that the Full Faith and Credit Clause of the United States Constitution does not require the Board to give credit to a prisoner for time served in the custody of another state.⁶ We agree with the Board.

The prisoner in Vance was on parole from a Pennsylvania sentence, when he was arrested in New Jersey for possession of a stolen vehicle. The prisoner was convicted in New Jersey and was sentenced to five years of incarceration to run concurrent to any Pennsylvania sentence. He returned to Pennsylvania for a period of time and then was transferred to New Jersey custody, where he was incarcerated from March of 1996 to September of 1998. Thereafter, the prisoner petitioned the Board for credit against his backtime.

The specific issue before the Court in Vance was whether the Board erred by failing to grant the prisoner credit against his original sentence for time served in New Jersey, when the sentencing court in New Jersey provided that its sentence was to run concurrent to any Pennsylvania sentence. We recognized that this Court previously held in Walker v. Pennsylvania Board of Probation and Parole, 729 A.2d 634 (Pa. Cmwlth. 1999), that the Full Faith and Credit Clause required Pennsylvania to recognize a Maryland decision giving a prisoner credit

⁶ The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." U.S. CONST. art. IV, § 1.

towards a Maryland sentence for time served in the custody of this Commonwealth. However, we distinguished Walker and held that the Board was not required to grant the prisoner credit for a period of confinement served outside of the Commonwealth, reasoning as follows:

Petitioner does not seek credit for time served as a result of a Board recommitment order. Nor does Petitioner seek credit for time served in the Commonwealth. Instead, Petitioner seeks credit for time served in the state of New Jersey from March 28, 1996, to September 24, 1998. Applying the principles of Walker to the instant case, the authorities in New Jersey were free to grant Petitioner credit for backtime served in the Commonwealth against his new sentence in New Jersey. However, *Petitioner now seeks to extend our holding in Walker to require that the Commonwealth grant him credit for time served outside of the Commonwealth's jurisdiction. Neither Walker nor the Full Faith and Credit Clause mandate such a result.*

Vance, 741 A.2d at 840-41 (emphasis added).

In this case, Foster, like the prisoner in Vance, is seeking credit for time that he was confined outside of the Commonwealth in the state of West Virginia. While West Virginia imposed a sentence that was to run concurrently with any sentenced imposed in Pennsylvania, the Full Faith and Credit Clause does not require the Board to grant Foster credit for time he was incarcerated in West Virginia. Vance. Therefore, we conclude that the Board did not err by denying Foster credit for time he was incarcerated outside of the Commonwealth's jurisdiction.

Our recent decision in Santiago v. Pennsylvania Board of Probation and Parole, 937 A.2d 610 (Pa. Cmwlth.), appeal denied, 598 Pa. 771, 956 A.2d 437

(2007), does not compel a different result. In Santiago, we held that the Board erred by not granting a prisoner credit toward his Pennsylvania sentence for time he spent in Pennsylvania custody for a Maryland sentence, which was to run concurrent with outstanding or unserved sentences. However, like Walker, the dispute in Santiago involved credit for time the prisoner was confined in the Commonwealth, and the opinion does not indicate that the prisoner was entitled to credit for any time that he was incarcerated in Maryland. Therefore, we conclude that Santiago is not controlling here.

Foster asserts that he is entitled to credit for time served on his West Virginia sentence because, although he was incarcerated in West Virginia, he was in Pennsylvania custody pursuant to the IAD. We disagree. The IAD pertains to detainees based on *untried* criminal indictments, informations, and complaints. Section 9101 of the Judicial Code; Bellochio v. Pennsylvania Board of Probation and Parole, 559 A.2d 1024 (Pa. Cmwlth. 1989). Pennsylvania returned Foster to West Virginia on May 31, 2007, to serve his three to fifteen year sentence for attempted murder, not for disposition of outstanding charges. Therefore, the IAD is inapplicable to Foster's transfer to West Virginia on May 31, 2007.

Accordingly, the Board's order is reversed in part and affirmed in part. The Board is reversed insofar as it denied Foster credit toward his original sentence for time served from April 30, 2005, through May 31, 2007. The Board's order is affirmed in all other respects. The case is remanded to the Board to award Foster said credit and to recalculate his parole violation maximum date.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Romaro L. Foster,	:	
Petitioner	:	
	:	No. 1151 C.D. 2009
v.	:	
	:	
Pennsylvania Board of Probation	:	
and Parole,	:	
Respondent	:	

ORDER

AND NOW, this 3rd day of May, 2010, the May 12, 2009 order of the Pennsylvania Board of Probation and Parole (Board) is reversed insofar as it failed to grant Foster credit on his original sentence for the period from April 30, 2005, through May 31, 2007. The Board's order is affirmed in all other respects. This case is remanded to the Board to recalculate Foster's parole violation maximum date.

Jurisdiction relinquished.

PATRICIA A. McCULLOUGH, Judge