



which time the district justice ordered Zerfoss held for court on the new criminal charges. Zerfoss did not post bail.

On January 15, 2008, Zerfoss was found guilty of the new charges in the Court of Common Pleas of Cambria County (Trial Court), and, on January 29, 2008, Zerfoss was sentenced to a term of twelve to twenty-four months. In May 2008, the Board recommitted Zerfoss as a convicted parole violator.

In January 2009, Zerfoss filed a motion with the Trial Court to modify his sentence so that he could receive automatic parole. The Trial Court granted the motion on January 27, 2009, modifying the sentence to “12 months less one day to 24 months less one day” and granting automatic parole. The Trial Court stated, “The Court finds that [Zerfoss] has been incarcerated for nearly 24 months on this charge. The Court finds that [Zerfoss] began his term of incarceration on January 27, 2008.” (C.R. at 17.)

On February 29, 2008, the Board issued a decision setting Zerfoss's maximum sentence date as December 11, 2010. Zerfoss filed a Petition for Administrative Review asserting that, because the Trial Court did not give him credit on his new sentence for the time he served from February 6, 2007 to January 27, 2008, the Board was required to give him credit for that time on his original sentence. On June 5, 2009 the Board denied the petition, stating that it did give Zerfoss credit on his original sentence for the time he served from February 6, 2007 to March 14, 2007. Zerfoss filed a Petition for Review with this Court.<sup>1</sup>

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<sup>1</sup> Our scope of review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether the constitutional rights of the parolee were violated. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Zerfoss argues that the Board erred in failing to give him credit for his incarceration from March 14, 2007 to January 27, 2008. We disagree.

Where a defendant remains incarcerated prior to trial because he failed to satisfy bail requirements, the time he spends in custody shall be credited to his new sentence. *Gaito v. Pennsylvania Board of Probation & Parole*, 488 Pa. 397, 412 A.2d 568 (1980). Here, Zerfoss did not post bail after his preliminary hearing on March 14, 2007. Thus, Zerfoss was serving time on his new sentence from March 14, 2007 until January 27, 2008 and was entitled to credit on his new sentence for that time.

It is unclear from the Trial Court's sentencing modification order whether the Trial Court gave Zerfoss credit for that time. The Trial Court's January 27, 2009 order states that Zerfoss has been incarcerated for nearly twenty-four months on the new charges; thus, the Trial Court appeared to recognize that Zerfoss began serving his new sentence around March 14, 2007. However, the Trial Court's January 27, 2009 order also states that Zerfoss began serving his new sentence on January 27, 2008. To the extent that the Trial Court failed to give proper credit on the new sentence, Zerfoss's remedy is not to seek credit on the original sentence from the Board. Rather, the remedy is in the Trial Court and through the direct appeal process. *Armbruster v. Pennsylvania Board of Probation and Parole*, 919 A.2d 348 (Pa. Cmwlth. 2007).

Accordingly, we affirm.

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KEITH B. QUIGLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|  |   |                    |
|--|---|--------------------|
| Michael Zerfoss,                               | : |                    |
| Petitioner                                     | : |                    |
|  | : |                    |
| v.   | : | No. 1269 C.D. 2009 |
|  | : |                    |
| Pennsylvania Board of Probation<br>and Parole, | : |                    |
| Respondent                                     | : |                    |

***ORDER***

AND NOW, this 8th day of January, 2010, the Order of the Pennsylvania Board of Probation and Parole, dated June 5, 2009, is hereby affirmed.

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KEITH B. QUIGLEY, Senior Judge