

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Eric Watson,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 12 C.D. 2010
	:	
Pennsylvania Board of Probation	:	Submitted: August 27, 2010
and Parole,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: October 29, 2010

Eric Watson (Watson) petitions for review from an order of the Pennsylvania Board of Probation and Parole (Board) that denied his request for administrative relief. Watson challenges the underlying recalculation of his maximum sentence date following a decision to recommit him as a convicted parole violator. Watson also raises several issues that his appointed counsel now acknowledges lack merit. The Board contends its calculations in the order on appeal are correct; however, it acknowledges an error in a recalculation order from 1999. The Board asks us to remand the matter so that it can correct this prior error and, by doing so, shorten Watson's maximum sentence date. We affirm and remand for the Board to make the appropriate corrections.

On January 8, 1990, the Court of Common Pleas of Philadelphia County sentenced Watson to four to 15 years on five counts of burglary. Over the

ensuing years, the Board paroled Watson on several occasions. Watson repeatedly violated his parole, and was arrested and convicted of new offenses while on parole. These violations led the Board to repeatedly recommit Watson to serve backtime and to repeatedly recalculate his maximum sentence date.

In particular, in January 2008, Philadelphia police arrested Watson for drug possession. At the time of his arrest he was delinquent from a community corrections residence to which he had been paroled. His maximum sentence date was June 1, 2008.

In February 2009, the Philadelphia Municipal Court convicted Watson of drug possession. The Board charged Watson as a convicted parole violator, and it scheduled a timely parole revocation hearing.

A Board hearing examiner conducted a revocation hearing. Ultimately, the Board issued an order that recommitted Watson as a convicted parole violator to serve nine months' backtime. Certified Record (C.R.) at 84. The Board also issued an order in which it recalculated his maximum sentence date as May 27, 2014, based on Watson's forfeiting 1806 days he spent at liberty on parole from his original state sentence. C.R. at 83.

Watson sought administrative relief from the Board. C.R. at 86. Significant to our analysis, he did not challenge the Board's decision to recommit him. Instead, he challenged the Board's recalculation of his maximum sentence date. He averred the new maximum sentence date could not be correct because it

exceeded his original maximum sentence date by nine years. However, he did not assign any specific errors in the Board's calculation. Rather, he argued the Board could not extend his maximum sentence by more time than that left on his sentence. He noted, "this is basically a whole new sentence." C.R. at 86. Watson did not provide any legal authority in support of his position.

The Board's regulations provide: "The failure of a petition for administrative review to present with accuracy, brevity, clearness and specificity, whatever is essential to a ready and adequate understanding of the factual and legal points requiring consideration will be a sufficient reason for denying the petition." 37 Pa. Code §73.1(b)(1). Applied to this case, Watson's failure to identify the specific periods of time for which he was seeking credit, and the legal basis for entitlement to credit, provided the Board sufficient basis to deny the petition. Nevertheless, the Board denied administrative relief and provided a thorough explanation of how it arrived at its calculation.

Watson's counsel filed an amended petition for review, in which he raised four issues: (1) the denial of relief from the Board's order revoking parole was an error of law, a violation of constitutional rights, and not supported by substantial evidence; (2) the Board erred in recommitting Watson after the expiration of his maximum sentence date; (3) the conviction for drug possession was not in a "court of record"; and, (4) the Board failed to give Watson credit for

all time he served solely under its warrant.¹

Watson's counsel subsequently filed a brief indicating the first three issues are meritless. However, Watson's counsel argues the fourth issue is meritorious and that Watson's maximum sentence date should be recalculated as September 5, 2013.

The Board responds that Watson waived questions regarding its decision to revoke his parole. The Board notes that Watson did not raise these issues at his revocation hearing, or in his request for administrative relief. Also, the Board argues Watson's counsel correctly identified the first three issues as meritless.

Preliminarily, we agree with Watson's counsel and the Board that the first three issues in the amended petition for review are meritless.

I.

Watson's first issue is essentially a restatement of our standard of review. He argues the Board violated his constitutional rights, committed errors of law, and lacked substantial evidence for its decision. Watson presents no discussion or authority to support his position.

¹ Our review is limited to whether the Board committed a constitutional, violation or error of law, and whether the Board's findings of fact were supported by substantial evidence. Dorsey v. Pa. Bd. of Prob. & Parole, 854 A.2d 994 (Pa. Cmwlth. 2004).

To the extent Watson challenges the Board's authority to increase his maximum sentence date, our Supreme Court repeatedly upholds the constitutionality of the Board extending the maximum sentence dates of convicted parole violators. Gaito v. Pa. Bd. of Prob. & Parole, 488 Pa. 397, 412 A.2d 568 (1980) (finding no double jeopardy, due process, or bill of attainder violations); Young v. Pa. Bd. of Prob. & Parole, 487 Pa. 428, 409 A.2d 843 (1979) (concluding the Board's exercise of this power did not unconstitutionally usurp judicial power); Commonwealth ex rel. Thomas v. Myers, 419 Pa. 577, 215 A.2d 617 (1966) (finding no equal protection violation).

With regard to Watson's contention that the revocation decision was not supported by law, we agree with the Board that Watson did not raise any issues relating to the revocation but focused his request for administrative relief on the maximum sentence date. Issues not raised before an administrative agency are waived. Pa. R.A.P. 1551. Accordingly, any issues as to revocation are waived.

For these reasons, we conclude Watson's first issue lacks merit.

II.

Watson next assigns error in the Board's exercise of jurisdiction over him after he reached his maximum sentence date. Watson argues the Board lacked authority to recommit him because he was already released from prison after serving his maximum sentence. Similarly, Watson argues the Board lost the authority to extend his maximum sentence date once he was released. The issue is meritless.

The Board has statutory authority to recommit an offender for an offense that occurs while on parole even if the conviction occurs after the expiration of the offender's original maximum sentence date. 61 Pa. C.S. §6138.² Here, the Board retained jurisdiction over Watson because the offense at issue occurred in January 2008, while he was under Board supervision. Adams v. Pa. Bd. of Prob. & Parole, 885 A.2d 1121, 1124 (Pa. Cmwlth. 2005) (Board can recommit and recompute the sentence of a parolee who commits a crime while on parole but is not convicted until after his original sentence expired). Accordingly, we conclude this issue lacks merit because the Board's actions were consistent with statutory authority.

III.

Watson next assigns error in the Board's reliance on a conviction from the Philadelphia Municipal Court, which Watson argues is not a "court of record." This issue also relates to the Board's authority to revoke Watson's parole rather than his maximum sentence date. The issue is waived for reasons previously discussed. Further, the issue is meritless.

The Board is authorized to recommit parolees who are convicted of a crime "in a court of record." 61 Pa. C.S. §6138(a)(1). Section 301 of the Judicial Code identifies Philadelphia Municipal Court as a court within Pennsylvania's

² The Prisons and Parole Code, 61 Pa. C.S. §§101-6309 became effective on October 13, 2009. Although the Board's decision preceded the effective date, the Board nonetheless relied on Section 6138. We note that the provision relied on by the Board is substantively identical to prior law, Section 21.1(a) of the "Parole Act," Act of August 6, 1941, P.L. 861, as amended, 61 P.S. §331.21a(a).

unified judicial system. 42 Pa. C.S. §301. In turn, Section 321 states “every court of this Commonwealth shall be a court of record unless otherwise provided.” 42 Pa. C.S. §321. No section of the Judicial Code, or other statute, provides that the Philadelphia Municipal Court is not a court of record. See generally Wile Pa. Law of Prob. & Parole at 858 (2d ed. 2003) (defining the term “court of record” to “include Philadelphia Municipal Court”). Thus, the Board did not err in relying on the conviction from the Philadelphia Municipal Court to recommit Watson.

Accordingly, we conclude this issue is meritless.

IV.

Watson next assigns error in the Board’s calculation of his maximum sentence date. Specifically, Watson argues he had a remaining balance of 3,694 days on his original state sentence when the Board paroled him in 1994. In his brief, he recounts his various periods of incarceration, dating back to 1996, which he contends total 2,152 days. Subtracting the latter from the former, Watson argues he owes 1,542 days on his sentence, which results in a maximum sentence date of September 5, 2013.

As in his request for administrative relief filed with the Board, Watson’s argument offers no specific explanation. He fails to account for his history of repeat parole violations and times when he was incarcerated to serve sentences subsequent to the 1990 burglary sentence. By failing to raise any specific credit issue with the Board in his request for administrative relief, Watson waived all credit issues. Indeed, failure to meaningfully develop an issue before

the administrative body waives the issue and precludes this court from addressing it. Pa. R.A.P. 1551; Koehler v. Pa. Bd. of Prob. & Parole, 935 A.2d 44 (Pa. Cmwlth. 2007); see also 37 Pa. Code §73.1(b)(1).

Further, our independent review supports the Board's recalculation of Watson's maximum sentence date.³

Nevertheless, the Board indicates it erred in its order of January 1999.⁴ This order was itself issued to correct Watson's maximum sentence date as previously calculated by the Board. The Board recalculated the maximum sentence date because Watson was sentenced for a new criminal offense. The Board acknowledges that it previously erred in reading the sentence, and Watson actually completed his sentence earlier than the Board determined. The Board further acknowledges that correcting this error will impact all subsequent

³ Once the Board recommitted Watson as a convicted parole violator, he forfeited credit for all time he spent at liberty on parole. 61 Pa. C.S. §6138(a)(2) (requiring a convicted parole violator "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 the time at liberty on parole.")

Here, the Board properly calculated that Watson forfeited 2087 days. This number is derived from two time periods: 1) 1808 days that Watson spent at liberty on parole before absconding, between September 21, 1999, and September 2, 2004; and 2) 279 days that Watson owed on his sentence at the time the Board reparaoled him on August 27, 2007.

Further, the Board provided Watson 281 days of credit for a period in which he remained confined solely on the Board's detainer. See Gaito.

Subtracting 281 of credit days from 2087 forfeited days results in 1806 days owed. Watson became available to serve this time when the Board relogged its warrant on June 16, 2009. Adding 1806 days to June 16, 2009 yields the new maximum sentence date of May 27, 2014.

⁴ The Board also filed a Supplemental Certified Record containing documents relating to the 1999 recalculation order.

maximum sentence date recalculations, including the one at issue in this appeal. In particular, it would reduce Watson's maximum sentence date from May 27, 2014 to January 17, 2014. In the interest of justice, and in light of the Board's acknowledgment of error in this earlier order, we remand the matter for the Board to make the appropriate correction.

For these reasons, we reject Watson's first three issues raised in the amended petition for review. As to Watson's fourth assignment of error relating to the Board's calculation of Watson's maximum sentence, we agree with the Board's assessment, affirm the Board's order, and remand for it to correct Watson's maximum sentence date for a different reason.

ROBERT SIMPSON, Judge

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Pennsylvania Board of Probation	:	
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	:	
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ORDER

AND NOW, this 29th day of October, 2010, the order of the Pennsylvania Board of Probation and Parole is **AFFIRMED**; but, in the interest of justice, and the matter is **REMANDED** for further proceedings consistent with the attached opinion.

Jurisdiction is relinquished.

ROBERT SIMPSON, Judge