

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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|--|---|-----------------------------|
| Norman Echols,                                 | : |                             |
| Petitioner                                     | : |                             |
|  | : |                             |
| v.   | : | No. 1859 C.D. 2009          |
|  | : |                             |
| Pennsylvania Board of Probation<br>and Parole, | : | Submitted: January 29, 2010 |
| Respondent                                     | : |                             |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: March 22, 2010

Norman Echols (Echols) petitions for review of the September 2, 2009, order of the Pennsylvania Board of Probation and Parole (Board) denying his application for administrative relief from the recalculation of his maximum term expiration date following his recommitment as a convicted parole violator. Echols contends that the Board erred by failing to credit his original sentence with the portion of the time he spent incarcerated on both new criminal charges and the Board's detainer that was not applied by the trial court to his new sentence. We affirm.

Echols was serving a sentence of five to ten years for the offense of burglary when he was reparaoled on August 6, 2007, with a recalculated maximum sentence expiration date of May 21, 2009. The Board declared Echols delinquent

in October 2007. On November 24, 2007, Echols was arrested on new criminal charges; he did not post bail and was committed to the Allegheny County Jail. On the same date, the Board issued a detainer warrant. Echols was transferred to the State Correctional Institution at Pittsburgh (SCI-Pittsburgh) on March 11, 2008, and eventually he was transferred back to SCI-Dallas. (Certified Record (C.R.) at 28, 32, 33, 77, 82-83, 96.)

On January 28, 2009, Echols pleaded guilty to a reduced charge of criminal trespass; he received a sentence of nine to eighteen months and was paroled forthwith. The sentencing order reflects that the trial court credited the 108 days of confinement that Echols spent in the county jail, from November 25, 2007, to March 11, 2008, to Echols' new sentence. (C.R. at 72.)

On May 5, 2009, following a revocation hearing, the Board recommitted Echols as a convicted parole violator and recalculated the maximum sentence expiration date on his original sentence to February 22, 2011.<sup>1</sup> (C.R. at 102-03.) In doing so, the Board did not credit Echols with any time he was confined from his arrest on November 24, 2007, to his parole from his new sentence on January 28, 2009. Echols filed a *pro se* petition for administrative review of the recalculation order. (C.R. at 104-07.) Citing *Gaito v. Pennsylvania Board of Probation and Parole*, 488 Pa. 397, 412 A.2d 568 (1980), Echols asserted in part that he was entitled to credit on his original sentence for the balance of time

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<sup>1</sup> Referring to an earlier decision recommitting Echols to serve nine months backtime as a technical parole violator, the Board recommitted Echols as a convicted parole violator to serve six months concurrently for a total of nine months backtime. (C.R. at 102.)

that he spent in county jail not credited by the trial court. (C.R. at 106.) The Board affirmed the recalculation order by decision mailed September 2, 2009, explaining that Echols was not entitled to credit on his new sentence for the period of incarceration from November 24, 2007, to January 28, 2009, because he was not incarcerated solely on the Board's warrant during that period. (C.R. at 114.)

Echols then filed a *pro se* petition for review with this court, which entered an order on September 30, 2009, appointing the Public Defender of Luzerne County as Echols' counsel. Relying on *Martin v. Pennsylvania Board of Probation and Parole*, 576 Pa. 588, 840 A.2d 299 (2003), and *Kelly v. Pennsylvania Board of Probation and Parole*, 900 A.2d 476 (Pa. Cmwlth. 2006), *appeal dismissed as moot*, 597 Pa. 224, 951 A.2d 258 (2008), Echols again argues that he is entitled to credit on his original sentence for the period of pre-sentence confinement that the trial court did not credit to his new sentence.<sup>2</sup> We disagree.

In *Gaito*, our Supreme Court established the general rule governing the allocation of credit for time served while awaiting the disposition of new criminal charges, holding that time spent in custody pursuant to a detainer warrant shall be credited to a parolee's original sentence only when the parolee had satisfied bail requirements and thus remained incarcerated solely by reason of the Board's detainer. Subsequently, in *Martin*, the court clarified its prior decision and held that where an offender is incarcerated on both the Board's detainer and new

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

criminal charges, all time spent must be credited to *either* the new sentence or the original sentence. The court reasoned that, under a contrary holding, an indigent offender who is unable to post bail would serve more time than an offender who was able to post bail, a result that violates principles of equity that are relevant to an award of credit. However, in *McCray v. Department of Corrections*, 582 Pa. 440, 872 A.2d 1127 (2005), the court further refined the law in this area by holding that issues regarding the proper allocation of credit on a new sentence must be addressed by the sentencing court, or the Superior Court on appeal. In *McCray*, the court stated that, although the Department of Corrections (Department) has a duty to credit inmates for all statutorily mandated periods of incarceration, it must do so pursuant to the trial court's sentencing orders. *Id.* Thus, if the trial court does not give an inmate full credit for time served, the Department has no duty to do so. *Id.*

The facts here are similar to those in *Armbruster v. Pennsylvania Board of Probation and Parole*, 919 A.2d 348 (Pa. Cmwlth. 2007). In that case, the Board reparaoled Armbruster from his original sentence and subsequently declared him to be delinquent. On January 13, 2005, Armbruster was arrested on new criminal charges, and he did not post bail. A Board detainer was lodged against him that same day. On July 6, 2005, Armbruster was convicted of the new criminal charges, and he subsequently was sentenced to a term of eight to twenty-four months. The trial court's sentencing orders did not indicate that Armbruster was to receive credit for time served. The Board recommitted Armbruster as a technical and convicted parole violator and recalculated his maximum expiration

date without crediting his original sentence with the 250 days he was held on both the new charges and the Board's warrant.

The Board denied Armbruster's request for administrative relief, and he then appealed to this court, arguing that the Board erred by refusing to apply confinement credit in an equitable manner. We affirmed the Board's determination, concluding that, pursuant to our Supreme Court's decisions in *Melhorn v. Pennsylvania Board of Probation and Parole*, 589 Pa. 250, 908 A.2d 266 (2006),<sup>3</sup> and *McCray*, where a sentencing court does not give a parolee full credit for time served, the parolee's remedy is in the trial court and through the direct appeal process, not through the Board.<sup>4</sup>

We conclude that *Armbruster* is on point and controlling in this matter. Accordingly, we affirm.

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PATRICIA A. McCULLOUGH, Judge

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<sup>3</sup> The parolee in *Melhorn* was confined for five months and ten days because of a Board detainer and new criminal charges on which he did not post bail. The parolee was sentenced to a term of no less than six months and no more than twenty-three and a half months, which exceeded his pre-sentence confinement. The trial court did not credit the parolee's pre-sentence custody to the new sentence, and, upon his recommitment, the Board did not credit that time to the original sentence. This court held that, because the award of credit is equitable in nature, the Board erred in denying the parolee credit against his original sentence when the trial court failed to credit his time served against the new sentence. On appeal, however, the Supreme Court reversed our decision citing *McCray*, *Gaito*, and section 9760 of the Sentencing Code, 42 Pa. C.S. §9760 (requiring the trial court to give credit for time spent in custody).

<sup>4</sup> We also observed in *Armbruster* that the decision in *Kelly v. Pennsylvania Board of Probation and Parole*, cited by Echols here, relied heavily on our overturned opinion in *Melhorn*.

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| Pennsylvania Board of Probation<br>and Parole, | : |                    |
| Respondent                                     | : |                    |

***ORDER***

AND NOW, this 22nd day of March, 2010, the order of the Pennsylvania Board of Probation and Parole, dated September 2, 2009, is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge