

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Valenteen a/k/a Valtion, :  
Petitioner :  
 :  
v. : No. 2006 C.D. 2010  
 : Submitted: January 14, 2011  
Pennsylvania Board of Probation :  
and Parole, :  
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED April 6, 2011

Michael Valenteen<sup>1</sup> petitions for review of an adjudication of the Pennsylvania Board of Probation and Parole denying his petition for administrative relief and affirming his recommitment as a convicted parole violator to serve a total of 24 months of backtime. Valenteen argues that the Board did not adequately consider his good behavior in federal prison as a mitigating factor when it calculated his backtime. Finding no merit to this contention, we affirm the Board.

Valenteen is currently incarcerated at the State Correctional Institution (SCI) at Waymart. He was convicted of burglary and criminal conspiracy in 1982 and sentenced to a term of imprisonment of one to ten years. Valenteen was

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<sup>1</sup> Valenteen also goes by the name Michael Valtion.

paroled on October 25, 1991. He was arrested by federal authorities for firearms offenses on December 4, 1992, and charges were filed in the United States District Court for the Middle District of Pennsylvania. The Board lodged a detainer against Valenteen on December 4, 1992, but he was not immediately returned to a state correctional institution.

On October 28, 1993, a federal jury found Valenteen guilty of two counts of possession of a firearm by a felon; one count of receiving a stolen firearm; one count of selling a stolen firearm; and one count of possession of ammunition by a felon. On July 15, 1994, the district court sentenced Valenteen to a term of imprisonment of 235 months. Valenteen completed service of his federal sentence on February 12, 2010, and was returned to state custody on February 14, 2010.

The Board conducted a revocation hearing on March 29, 2010. At the hearing, Valenteen's parole agent offered proof of his federal firearms convictions into evidence. Valenteen testified about his good behavior in prison, emphasizing that he never failed a drug test, never possessed a weapon, was never affiliated with a gang, and never engaged in misconduct involving prison staff or other inmates. Valenteen also offered documentation regarding numerous programs he attended and certificates of completion for those programs.

In a decision mailed on May 6, 2010, the Board recommitted Valenteen to serve 24 months as a convicted parole violator. Valenteen filed an administrative appeal, *pro se*, challenging the Board's recommitment order. The Board denied relief by order dated September 7, 2010. Valenteen now petitions for this Court's review.

On appeal,<sup>2</sup> Valenteen argues that the Board abused its discretion by not considering his exemplary progress in federal prison as a mitigating factor when it calculated his backtime. Valenteen asks this Court to reverse the Board's decision and order the Board to recommit him for a period of nine months rather than 24 months. Valenteen is not entitled to relief.

Recommitment of convicted parole violators is governed by the Board's regulations at 37 Pa. Code §§75.1 – 75.2. The regulation at 37 Pa. Code §75.2 contains a list of offenses and the presumptive recommitment range for each offense. This list “is not intended to be exhaustive, and the most closely related crime category in terms of severity and the presumptive range will be followed if the specific crime which resulted in conviction is not contained within the listing.” 37 Pa. Code §75.1(e). Our Supreme Court has held that “[a]s long as the period of recommitment is within the presumptive range for the violation, the Commonwealth Court will not entertain challenges to the propriety of the term of recommitment.” *Smith v. Pennsylvania Board of Probation and Parole*, 524 Pa. 500, 504, 574 A.2d 558, 560 (1990).

Here, the federal firearms offenses for which Valenteen was convicted are not listed in 37 Pa. Code §75.2. The Board found that each of Valenteen's five offenses are most closely related to the offense of “Violation of any Provision of the Pennsylvania Uniform Firearms Act,” which carries a presumptive range of 18 months to 24 months. Therefore, the Board determined that Valenteen's aggregate

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<sup>2</sup> This Court's scope of review of a decision by the Board 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; *Armbruster v. Pennsylvania Board of Probation and Parole*, 919 A.2d 348, 350 n.1 (Pa. Cmwlth. 2007).

presumptive range was 18 months to 120 months.<sup>3</sup> Valenteen does not challenge the Board's methodology. Rather, he alleges that the Board did not give adequate consideration to the evidence he presented as a mitigating factor. Because Valenteen's 24-month recommitment period fell within the presumptive range, his claim is not reviewable. *Smith*, 524 Pa. at 506, 574 A.2d at 561.

Moreover, Valenteen's assertion that the Board failed to consider his mitigation evidence is belied by the record. The Board's hearing report states that Valenteen offered documentation and testimony regarding his program involvement in federal prison. Certified Record, Item No. 13, at 47. Under the heading of "TPV/CPV Mitigation," the Board listed "[l]ength of Federal incarceration [and] programs completed in [federal correctional institution]." *Id.* at 48. Contrary to Valenteen's assertion, the Board apparently did consider his good behavior in federal prison as a mitigating factor in its recommitment decision. In this regard, it bears noting that Valenteen's recommitment period of 24 months fell at the lower end of the 18 to 120-month presumptive range.

For all of the foregoing reasons, we affirm the order of the Board.

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MARY HANNAH LEAVITT, Judge

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<sup>3</sup> The Board may consider each criminal conviction as a separate parole violation and aggregate backtime accordingly. *Corley v. Pennsylvania Board of Probation and Parole*, 478 A.2d 146, 149 (Pa. Cmwlth. 1984). Thus, the maximum period of recommitment in Valenteen's case was 120 months (5 violations times 24 months for each offense).

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**ORDER**

AND NOW, this 6<sup>th</sup> day of April, 2011, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter, dated September 7, 2010, is AFFIRMED.

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MARY HANNAH LEAVITT, Judge