

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Hassan Ford,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2230 C.D. 2010
	:	
Pennsylvania Board of Probation and	:	Submitted: February 18, 2011
Parole,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: May 10, 2011**

Hassan Ford (Ford), who is a recommitted convicted parole violator, petitions for review of the determination of the Pennsylvania Board of Probation and Parole (Board) denying Ford's request for credit toward his recalculated sentence for time spent in the Joseph E. Coleman Center (Coleman Center) and the Lycoming House. Ford argues that the Board erred in failing to grant him credit because the conditions at these facilities were sufficiently restrictive so as to constitute "custody."

In 1996, Ford was convicted of robbery, aggravated assault, burglary, possessing an instrument of crime, and criminal conspiracy and began serving a 12-year state prison sentence, with a maximum term expiry of April 11, 2007. (Order to Release on Parole/Reparole at 1, R. Item 3, R. at 15.) The Board paroled Ford on January 6, 2003, and ordered him to report to the Coleman Center. (Order to Release on Parole/Reparole at 1, R. Item 3, R. at 15; Conditions Governing Parole/Reparole ¶ 2, R. Item 3, R. at 16.) Ford was housed at the Coleman Center for 57 days from January 6, 2003, to March 4, 2003. (Evidentiary Hearing Report, June 10, 2010, at 6, R. Item 9, R. at 42.) He was removed from the Coleman Center for violating the facility's security rules for possession of contraband when he was found in possession of a cellular telephone. (Hr'g Tr., June 10, 2010, at 81, R. Item 10, R. at 125; Notice of Board Decision, July 15, 2010, at 2, Findings of Fact (FOF) ¶ 4, R. Item 11, R. at 148.) Ford subsequently resided at the Lycoming House for 25 days from March 5, 2003, to March 30, 2003. (Evidentiary Hearing Report at 7, R. Item 9, R. at 43.) Ford absconded from the Lycoming House on March 30, 2003. (Notice of Board Decision at 2, FOF ¶ 8, R. Item 11, R. at 148.) Both the Coleman Center and Lycoming House are Community Correction Centers (CCCs). The Board took administrative action on April 2, 2003,<sup>1</sup> declaring Ford delinquent effective March 30, 2003. (Administrative Action at 1, R. Item 4, R. at 19.) Ford was recommitted by a Board Decision recorded July 28, 2004, to serve 9 months backtime with a recalculated parole violation max date of June 6, 2008. (Notice of Board Decision, August 3, 2004, at 1, R. Item 4, R. at 20.)

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<sup>1</sup> Ford's brief incorrectly states that the Board took administrative action on April 12, 2003.

Ford was subsequently paroled, and while on parole, he committed a crime, was arrested by the Philadelphia Police Department on May 8, 2007, and was detained by the Board pending the disposition of criminal charges as a result. (Notice of Board Decision, June 15, 2007, at 1, R. Item 6, R. at 30.) After he was convicted, the Board recommitted Ford as a convicted parole violator by Decision mailed April 24, 2009, to serve an unexpired term of 2 years, 3 months, and 1 day, with a recalculated parole violation max date of May 10, 2011. (Notice of Board Decision, April 24, 2009, at 1, R. Item 7, R. at 34.) This recalculated parole violation max date did not include any credit for the combined 82 days Ford spent in the Coleman Center and Lycoming House. Therefore, Ford mailed a pro se petition for administrative review of the Board Decision mailed April 24, 2009, which the Board received on May 22, 2009. (Petition for Administrative Review at 1, R. Item 10, R. at 132.) The Board initially scheduled an evidentiary hearing to determine only the custodial nature of the program at the Coleman Center; however, Ford requested a continuation since he also wanted credit for the time spent at Lycoming House. (Supplemental Response at 1, R. Item 10, R. at 141.) The Board, therefore, rescheduled the evidentiary hearing to determine whether Ford is entitled to credit for the periods of time spent at both CCCs. Id. The evidentiary hearing was held at SCI-Dallas on June 10, 2010. (Hr'g Tr. at 1, R. Item 10, R. at 45.)

At the hearing, Ford testified that the Coleman Center has the appearance of a prison and that upon arrival he was subjected to a search, his belongings were inventoried, and he was required to submit to urinalysis and a breathalyzer test. (Hr'g Tr. at 19, R. Item 10, R. at 63.) Ford further explained that standing

headcounts took place on a daily basis and the resident's living quarters were subject to random searches. (Hr'g Tr. at 21-22, R. Item 10, R. at 65-66.) Moreover, Ford testified that each resident is assigned to a particular unit and that the doors are locked and do not open unless a staff member opens them. (Hr'g Tr. at 23-24, R. Item 10, R. at 67-68.) Darrin Mouzon, who resided at the Coleman Center during at least part of the same period as Ford, also testified that the Coleman Center looked like a miniature prison with a barbed wire fence surrounding the whole facility and that he was not able to walk out at any time without being escorted. (Hr'g Tr. at 63, R. Item 10, R. at 107.) Ford also attempted to introduce photographs of the exterior of the Coleman Center into evidence. (Hr'g Tr. at 29, R. Item 10, R. at 73.) However, the Board's parole agent, participating from another location by video conference, objected to the admission of the photographs, which the Board sustained. (Hr'g Tr. at 30, R. Item 10, R. at 74.)

While housed at the Coleman Center, Ford was required to participate in the COR Program and was not allowed to leave the facility. (Hr'g Tr. at 26, R. Item 10, R. at 70.) However, Ford testified, that upon completion of the COR Program, residents were able to obtain passes to leave the facility. Ford explained that the front door of the Coleman Center had doors which required you to be "buzzed" in or out and that there was a staff member who served as security sitting inside a booth. (Hr'g Tr. at 34, R. Item 10, R. at 78.) Ford testified that the only time he left the facility unescorted was to report to the police station to register as a parolee as required by law and the conditions of his parole. (Hr'g Tr. at 46, 48, R. Item 10, R. at 90, 92.) Ford further testified that the only other time he was allowed to

leave the Coleman Center was when he was escorted by a staff member to see his parole officer. (Hr'g Tr. at 47, R. Item 10, R. at 91.) Upon release from the Coleman Center, Ford stated that he was handcuffed and taken to the Lycoming House.<sup>2</sup> (Hr'g Tr. at 75, R. Item 10, R. at 119.)

According to Ford's testimony, the Lycoming House was not a prison structure like the Coleman Center and its primary purpose was to serve as a drug and alcohol treatment facility. (Hr'g Tr. at 77, R. Item 10, R. at 121.) Ford further testified that residents of the Lycoming House remained there for 90 days and were only allowed to leave, without their departure being reported to the Board, when escorted to the local library by a staff member. (Hr'g Tr. at 79, R. Item 10, R. at 123.) Deborah Rider, a witness for the Board, also testified that residents at the Lycoming House were permitted to leave, when escorted, for various reasons such as going to the library, recreation, or medical appointments. (Hr'g Tr. at 84, R. Item 10, R. at 128.) Otherwise, unlike at the Coleman Center, Ford testified that parolees at the Lycoming House could choose to leave at will without being prevented by staff. (Hr'g Tr. at 82, R. Item 10, R. at 126.) Ford absconded from the Lycoming House on March 30, 2003.

By Decision mailed July 15, 2010, the Board concluded that Ford was not entitled to credit for the time he spent in either of the CCCs. (Notice of Board

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<sup>2</sup> At the evidentiary hearing, the Board attempted to introduce the testimony of Emmanuel Ehirin concerning the nature of the Coleman Center. Ford objected to the admission of Mr. Ehirin's testimony on the grounds that Mr. Ehirin was not employed as a staff person at the Coleman Center during the period for which Ford was seeking credit. Ford's objection was sustained and the testimony was disallowed. (Hr'g Tr. at 51, 54, 58, R. Item 10, R. at 95, 98, 102.)

Decision, July 15, 2010, at 3, R. Item 11, R. at 149.) The Board found as fact, *inter alia*, that residents of the Coleman Center were allowed to leave the facility with an approved pass from staff, that Ford was removed from the Coleman Center after being found in possession of a cell phone, that residents of the Lycoming House were allowed to leave the facility upon obtaining an approved pass from staff, and that Ford absconded from the Lycoming House without completing the program. (Notice of Board Decision, July 15, 2010, FOF ¶¶ 1-8, R. Item 11, R. at 148.) Based on these findings, the Board found that Ford did not meet his burden to show that the specific characteristics of the CCCs placed restrictions on his liberty sufficient to warrant credit on his recomputed backtime. (Notice of Board Decision, R. Item 11, R. at 149.)

Following this Decision, Ford's attorney requested administrative review and relief, contending that the Board violated Ford's rights by not allowing him to introduce photographs of the exterior grounds of the Coleman Center and that the Board erred by determining that the Coleman Center was not sufficiently restrictive of Ford's liberty as residents were not allowed to obtain passes until after completion of the COR Program. Ford's attorney further contended that Ford met his burden of proving that, while residing at the Lycoming House, his liberty was sufficiently restricted to constitute custody. (Letter from Richard C. Shiptoski, Esq., Ass't. Public Defender (Counsel), to Kimberly A. Barkley, Acting Board Secretary (Secretary), (August 10, 2010), R. Item 12, R. at 150-52.) In response, the Secretary affirmed the Board's Decision, stating that the record supports the

Board's determination. (Letter from Secretary to Counsel, (Sept. 24, 2010), R. Item 12, R. at 157.) Ford now appeals to this Court.<sup>3</sup>

Ford argues that: (1) he was sufficiently restrained during his residence at the CCCs as to merit credit for the time housed in these facilities against his original sentence; and (2) the Board committed an error of law and abuse of discretion by denying Ford the opportunity to present photographic evidence of the physical structure and surroundings of the Coleman Center.

We first address Ford's argument that he was sufficiently restrained during his residence at the CCCs so as to merit credit for the time housed in these facilities against his original sentence. At the time of Ford's arrest on the new criminal charge, and at the time his parole was revoked by the Board, former Section 21.1(a) of the act commonly known as the Parole Act was the governing law.<sup>4</sup> Former Section 21.1(a) of the Parole Act provided, in pertinent part, that the

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<sup>3</sup> Our scope of review is limited to determining whether the Board violated constitutional rights, committed an error of law, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704; McKenna v. Pennsylvania Board of Probation and Parole, 782 A.2d 1105, 1106 (Pa. Cmwlth. 2001).

<sup>4</sup> Former Act of August 6, 1941, P.L. 861, added by Section 5 of the Act of August 24, 1951, P.L. 1401, as amended, 61 P.S. § 331.21a(a). The Parole Act was repealed by the Act of August 11, 2009, P.L. 147. Similar language is now codified as 61 Pa. C.S. § 6138(a)(1) and (2), which provides:

(1) A parolee under the jurisdiction of the board released from a correctional facility who, during the period of parole or while delinquent on parole, commits a crime punishable by imprisonment, for which the parolee is convicted or found guilty by a judge or jury or to which the parolee pleads guilty

*(Continued...)*

Board has authority to recommit a parolee who “during the period of parole . . . commits any crime punishable by imprisonment, from which he is convicted or found guilty by a judge or jury or to which he pleads guilty or nolo contendere.” 61 P.S. § 331.21a(a). Where a parolee is recommitted to prison under this section of the act, he must serve the remainder of the term he would have had to serve had he not been paroled, and “shall be given no credit for the time spent at liberty on parole.” Id.

The Parole Act did not define the phrase “at liberty on parole.” However, the Pennsylvania Supreme Court explained that “at liberty on parole” does not mean freedom from any type of confinement, but “*at liberty from confinement on the particular sentence for which the convict is being reentered as a parole violator.*” Cox v. Pennsylvania Board of Probation and Parole, 507 Pa. 614, 619, 493 A.2d 680, 683 (1985) (emphasis in original). Furthermore, courts look at whether the nature of the program and the restrictions on the resident’s liberty in the program were the equivalent of incarceration, thus, entitling him to credit for the time spent in the program. Id. at 619, 493 A.2d at 683 (stating that the “majority of jurisdictions which allow credit on backtime for time spent in rehabilitation programs examine the specifics of the program to make this

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or nolo contendere at any time thereafter in a court of record, may at the discretion of the board be recommitted as a parole violator.

(2) If the parolee’s recommitment is so ordered, the parolee shall be reentered 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.



determination”). Parole naturally involves some restraints on the parolee’s liberty and so the burden is on the parolee to show that “the specific characteristics of the . . . program that constituted restrictions on his liberty [were] sufficient to warrant credit on his recomputed backtime, and persuade the Board of that fact.” Id. at 620, 493 A.2d at 683. Entitlement to credit based on the restrictions placed on a parolee is very fact-specific. Weigle v. Pennsylvania Board of Probation and Parole, 886 A.2d 1183, 1187 (Pa. Cmwlth. 2005). When the Board determines that the restrictions on a parolee’s liberty are not sufficiently restrictive to warrant credit, this Court “will not interfere with the Board’s determination . . . unless it acts arbitrarily or plainly abuses its discretion.” Wagner v. Pennsylvania Board of Probation and Parole, 846 A.2d 187, 189 n.2 (Pa. Cmwlth. 2004).

We will first address whether Ford was at “liberty on parole” during the 57 days he resided at the Coleman Center. The Board cites Meleski v. Pennsylvania Board of Probation and Parole, 931 A.2d 68 (Pa. Cmwlth. 2007), arguing that a parolee is at liberty on parole unless he is subject to a rule forbidding him to leave without a mandatory, coercive security escort. However, in Meleski we held that the parolee was not at liberty on parole and was, thus, entitled to credit for the initial 90 day “black out” period he resided at Gaudenzia because he was not permitted to leave the building and was restricted to the floor where he resided except for meals and medication. Id. at 74. Similarly, in Weigle, Weigle testified that, upon being paroled to a community corrections center, he was subjected to a seven day “black out” period during which he was not allowed to leave the facility for any reason. Weigle, 886 A.2d at 1185. After the “black out” period was over, Weigle was able to leave the facility with administrative approval to look for a job.

Id. at 1186. This Court held that Weigle was entitled to credit against his sentence for time spent in the facility during the seven day “black out” period, during which Weigle was sufficiently restrained, physically and constructively, as to be considered “in custody.” Id. at 1192. See also Torres v. Pennsylvania Board of Probation and Parole, 861 A.2d 394, 400-01 (Pa. Cmwlth. 2004) (holding that a parolee who has been forbidden generally to leave the facility, is under 24-hour supervision, and is not permitted to leave without an escort, “cannot reasonably be described as being at ‘liberty on parole’”).

Here, the conditions under which Ford was placed while enrolled in the COR Program are very similar to those Weigle, Meleski, and Torres experienced during the “black out” period. While enrolled in the COR Program, Ford was not allowed to leave the facility. (Hr’g Tr. at 26, R. Item 10, R. at 70.) As Ford testified, residents were not able to obtain passes to leave the facility until *after* completion of the COR Program. The Board ignored this unrebutted testimony in its Decision, finding only that “[r]esidents of Coleman Center were allowed to leave the facility with an approved pass from staff,” and based its determination as to the Coleman Center’s restrictiveness on this fact. (Notice of Board Decision at 2, FOF ¶ 3, R. Item 11, R. at 148.) The Board did not consider the circumstances of the Coleman Center while Ford was in the COR Program and before such passes were available. Ford’s unrebutted testimony indicated that, while he was in the COR Program, he was not allowed to leave the Coleman Center without an escort, with the only exception being when he reported to the police station to register as a

parolee as required by law and the conditions of his parole.<sup>5</sup> (Hr’g Tr. at 26, 46, 48, R. Item 10, R. at 70, 90, 92.) The only other time Ford left the facility was to see his parole officer, and he was escorted by a staff member. (Hr’g Tr. at 47, R. Item 10, R. at 91.) Moreover, Ford testified that he resided in a “unit,” the “unit” doors were locked, and those doors could only be unlocked by staff members, usually to allow the residents to go to the chow hall or spend time in the recreation area. (Hr’g Tr. at 23-25, R. Item 10, R. at 67-69.) Additionally, Ford testified that the Coleman Center’s exterior doors were locked and required a staff member to push a button to allow the residents to leave the facility. (Hr’g Tr. at 34, R. Item 10, R. at 78.) Because these facts are so similar to those in Weigle, Meleski, and Torres, we determine that Ford was not at liberty on parole during the time he was enrolled in the COR Program at the Coleman Center and that, therefore, the Board erred by denying Ford credit for the time served in the program.

There is some conflict in the record regarding whether Ford completed the COR Program while residing at the Coleman Center. During the evidentiary hearing, Ford testified that he did not complete the COR Program during the time he resided at the Coleman Center, i.e., that he remained in the COR Program for the entire 57 days he was at the Coleman Center. (Hr’g Tr. at 82, R. Item 10, R. at 126.) However, Ford’s testimony conflicts with another part of the record, which indicates that Ford was only scheduled to be enrolled in the COR Program until

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<sup>5</sup> It does not appear to be common practice for a CCC to allow a resident to leave the facility unescorted to meet with his parole officer. Therefore, this instance where Ford was allowed to leave the facility without an escort appears to be an aberration from the normal prohibition.

February 10, 2003, almost a full month before he was transferred to the Lycoming House. (Conditions Governing Parole/Reparole ¶ 2, R. Item 3, R. at 16.) The Board will need to resolve this conflict, and determine the amount of time spent in the COR Program, for which Ford should receive credit.

Next, we will address whether Ford was at “liberty on parole” during the 25 days he resided at the Lycoming House. Ford testified that the Lycoming House was not a prison structure like the Coleman Center. (Hr’g Tr. at 77, R. Item 10, R. at 121.) Most importantly, Ford testified that if he wanted to leave the Lycoming House, he could just walk out. (Hr’g Tr. at 82, R. Item 10, R. at 126.) Because Ford could leave the Lycoming House whenever he wanted, as he did before the completion of the 90-day drug and alcohol treatment program, this period of time was not similar to the “black out” period in Weigle. Therefore, the conditions Ford experienced at the Lycoming House were not sufficiently restrictive in nature, physically or constructively, as to be considered “custodial” for the purpose of awarding credit. Wagner, 846 A.2d at 191 (affirming the Board’s denial of credit because conditions were not so restrictive as to constitute custodial confinement and entitle parolee to credit where doors were not locked, allowing residents to leave at will, and residents were able to leave unescorted with passes). We, therefore, hold that the Board did not abuse its discretion by finding that Ford is not entitled to credit for the period of time he resided at the Lycoming House.

We now address Ford’s second argument that the Board committed an error of law and abused its discretion by denying Ford the opportunity to present photographic evidence of the physical structure and surroundings of the Coleman

Center. The admission or exclusion of evidence is subject to the abuse of discretion standard and will not be overturned absent a clear indication of an abuse of discretion. Cheng v. Southeastern Pennsylvania Transportation Authority, 981 A.2d 371, 381 (Pa. Cmwlth. 2009). The Pennsylvania Supreme Court defined “abuse of discretion” as not simply an error of judgment, but an overriding or misapplication of the law, or when “the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias, or ill-will as shown by the evidence or the record.” Commonwealth v. Kocher, 529 Pa. 303, 306, 602 A.2d 1308, 1310 (1992). During the evidentiary hearing, Ford and his witness, Darrin Mouzon, testified concerning the external appearance of the Coleman Center. (Hr’g Tr. at 19, 63, R. at 63, 107.) Ford and Mouzon adequately described the imposing nature of the Coleman Center, and Ford never specified what the photographs would show that was not included in his testimony. Moreover, the accuracy of Ford’s and Mouzon’s descriptions of the Coleman Center were not challenged or rebutted at the hearing. Because the photographs are merely corroborative evidence of unchallenged and unrebutted evidence, we hold that the Board exercised reasonable judgment and, thus, did not abuse its discretion by denying admission of the photographic evidence.

Accordingly, we affirm in part, and we reverse and remand in part the Board’s Decision. This Court affirms the denial of credit for the period of time Ford resided at the Lycoming House. We reverse with respect to the period of time Ford was enrolled in the COR Program while residing at the Coleman Center, remand to the Board for a factual determination as to the amount of time Ford spent enrolled in the COR Program, and instruct the Board to credit Ford’s

recalculated sentence with the time spent in custodial restriction in the COR Program.

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**RENÉE COHN JUBELIRER, Judge**

Judge Simpson concurs in the result only.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Hassan Ford,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2230 C.D. 2010
	:	
Pennsylvania Board of Probation and	:	
Parole,	:	
	:	
Respondent	:	

**ORDER**

**NOW**, May 10, 2011, the Order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is hereby **AFFIRMED** in part and **REVERSED** in part, and **REMANDED** for a determination of the amount of time Hassan Ford (Ford) spent enrolled in the COR Program while residing at the Coleman Center, and to credit Ford's sentence with the time determined to have been spent in the COR Program.

Jurisdiction relinquished.

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**RENÉE COHN JUBELIRER, Judge**