

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Renaldo Robichaw,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2410 C.D. 2010
	:	
Pennsylvania Board of Probation	:	Submitted: March 18, 2011
and 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: June 14, 2011**

Renaldo Robichaw (Robichaw) petitions for review of the Pennsylvania Board of Probation and Parole's (Board) October 25, 2010, Order that affirmed the Board's combined revocation decision and recalculation order mailed March 23, 2010. For the following reasons, we affirm the Board's Order.

On February 28, 2005, the Board paroled Robichaw from his original, aggregated 18-year prison sentence for robbery, which had an original maximum date of December 14, 2012. (Order to Release on Parole/Reparole, R.10.) The Philadelphia police arrested Robichaw on November 1, 2005, and the Board

recommitted Robichaw as a technical parole violator by revocation decision mailed February 14, 2006. (Notice of Board Decision, February 14, 2006, R. 15-16.) The Board recalculated Robichaw's maximum date on his original sentence as July 16, 2013. (Notice of Board Decision, July 19, 2006, R. 18.) Robichaw was reparaoled from his original sentence on January 28, 2008, (Order to Release on Parole/Reparole, R. 26), and he was arrested in Philadelphia County on May 23, 2009, on new criminal charges, (Criminal Arrest and Disposition Report, R. 32). Robichaw did not post bail on the new criminal charges but, on August 26, 2009, was released on his own recognizance and was confined pursuant to a May 24, 2009, Board detainer. (Warrant to Commit/Detain, R. 31; Criminal Docket of the Court of Common Pleas of Philadelphia County, R. 70.) On November 9, 2009, the Philadelphia Court of Common Pleas (trial court) found Robichaw guilty of numerous charges, including simple assault, resisting arrest and fleeing or attempting to elude an officer. (Trial Ct. Order, November 9, 2009, R. 62-63.) On that same day, the trial court sentenced Robichaw to one to two years of confinement in a state prison and one year probation with credit given for time served. (Trial Ct. Order, R. 62-63.)

The Board scheduled a revocation hearing based on Robichaw's new guilty verdicts for February 26, 2010, to determine whether to recommit Robichaw as a convicted parole violator (CPV). (Notice of Charges and Hearings, R. 79.) However, on February 2, 2010, Robichaw waived his right to a revocation hearing and admitted that he had been found guilty of new criminal charges. (Waiver of Revocation Hearing and Admission Form, R. 81.) A second member of the Board voted to recommit Robichaw as a CPV on March 9, 2010. (Hearing Report at 6, R.

89.) The Board mailed a combined revocation and recalculation order to Robichaw on March 23, 2010, in which the Board recommitted him as a CPV to serve eighteen months' backtime and indicated that Robichaw's new maximum date for his original sentence was July 14, 2015. (Notice of Board Decision, March 23, 2010, R. 94.) In recalculating Robichaw's maximum date for the original sentence, the Board acknowledges that it did not credit the time Robichaw was confined between November 9, 2009, the date he was convicted on the new criminal charges, and March 9, 2010, the date the second Board member voted to recommit Robichaw as a CPV. (Order to Recommit, R. 92; Board's Br. at 3.) The Board also did not include any time which Robichaw now alleges he spent living at a group home at an unspecified time in the past. (Order to Recommit, R. 92; Board's Br. at 3.) It appears from the record that, on November 9, 2009, the trial court filed a detainer with the Department of Corrections (Department) to hold Robichaw to serve his new two-year sentence once he is released from his original 18-year sentence. (Sentence Status Summary at 4, January 27, 2010, R. 4.)

On April 7, 2010, Robichaw filed, pro se, a petition for administrative review (Administrative Petition), alleging that the Department was not permitting him to participate in certain programs because of a detainer that appeared on his record. (Administrative Petition, R. 95-97.) Robichaw also indicated that he did not understand how the Board recalculated his maximum date and his parole date. (Administrative Petition, R. 96-97.) Finally, Robichaw questioned whether the Board was starting his new sentence on March 9, 2010. (Administrative Petition, R. 97.) By determination mailed October 25, 2010, the Board affirmed its prior order and explained how the new maximum and parole dates were calculated and

that Robichaw would have to finish his original sentence before he began his new sentence. (Letter from Board to Robichaw, R. 101-02.) Thereafter, Robichaw filed a notice of appeal with this Court, which appointed a public defender. Robichaw, through his counsel, filed a Petition for Review with this Court (Appellate Petition).

On appeal,<sup>1</sup> Robichaw presents, as he did in his Appellate Petition, the following issues in the Statement of Questions Involved portion of his brief to this Court:

**Issue No. 1** Did the Board . . . abuse its discretion in the following ways:

- a. The Board did not give [Robichaw] credit for the four months he was in custody.
- b. The Board did not give [Robichaw] credit for the thirty two days he served in a community correction center.
- c. It was an abuse of power to give [Robichaw] an additional five years and 115 days which is his maximum day.

(Robichaw’s Br. at 7.) In the argument section of his brief, Robichaw separately raises the issues included in the Administrative Petition, as well as asserts that he was entitled to credit for time at liberty on parole.<sup>2</sup> (Robichaw’s Br. at 10-11.)

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<sup>1</sup> In reviewing the Board’s Order, our review “is limited to determining whether the Board’s findings are supported by substantial evidence, an error of law [was] committed, or whether any of the parolee’s constitutional rights were violated.” Andrews v. Pennsylvania Board of Probation and Parole, 516 A.2d 838, 841 n.10 (Pa. Cmwlth. 1986).

<sup>2</sup> It appears that the heading of the argument section, which asserts that Robichaw’s technical hearing was untimely, was mistakenly added to Robichaw’s brief since there is nothing in the record or elsewhere in the brief to indicate that this was ever an issue in this matter. As  
(Continued...)

Robichaw first argues that he is entitled to credit against his original 18-year sentence for: the 120-days (four months) between his conviction on November 9, 2009, and the date a second Board member voted to recommit Robichaw as a CPV, March 9, 2010; the thirty-two days he alleges to have spent in a community corrections center; and his time at liberty on parole. However, as the Board observes in its brief, an examination of Robichaw's Administrative Petition reveals that he did not include any of these claims for credit therein. Credit issues that are not raised in a petition for administrative review from a recalculation order are waived. White v. Pennsylvania Board of Probation and Parole, 833 A.2d 819, 821 (Pa. Cmwlth. 2003). Even if these claims were preserved for appellate review, Robichaw would not be entitled to credit for the periods claimed.

In Hill v. Pennsylvania Board of Probation and Parole, 683 A.2d 699, 701-02 (Pa. Cmwlth. 1996), this Court held that the time a CPV is detained between the date he is sentenced to serve a new term of confinement and the date the Board revokes his parole and recommits him as a CPV is credited to the CPV's *new* sentence. Thus, in accordance with Hill, the Board did not err in not crediting his original sentence with the 120 days Robichaw was confined between his sentencing date and the date the Board revoked his parole and recommitted him on the original sentence. Moreover, in Reavis v. Pennsylvania Board of Probation and Parole, 909 A.2d 28, 36 (Pa. Cmwlth. 2006), this Court held that if a recommitted

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acknowledged in his statement of the case, on February 2, 2010, Robichaw waived his rights to the revocation hearing, which had been scheduled to be held within the 120-day period required by 37 Pa. Code § 71.4, and admitted that he had been convicted of new criminal charges. (Robichaw's Br. at 8; Waiver of Revocation Hearing and Admission Form, R. 81.) Accordingly, we will not discuss this issue further.

CPV does not raise a claim for credit for time residing in a group home and offer proof of the constrictive nature of that facility in his petition for administrative review, that issue is waived. Here, Robichaw's Administrative Petition does not allege that he lived in any group home as a condition of parole, describe the nature and restrictiveness of that group home, or ask for a hearing to present facts regarding the nature of the group home. (Administrative Petition, R. at 95-97.) Consequently, this issue is waived pursuant to Reavis. Finally, the Board did not err in not crediting Robichaw's original sentence for his time at liberty on parole because Section 6138(a)(2) of the Parole Act, 61 Pa. C.S. § 6138(a)(2)<sup>3</sup> mandates that a CPV forfeits credit for time at liberty on parole upon being recommitted. See also Andrews v. Pennsylvania Board of Probation and Parole, 516 A.2d 838, 842 (Pa. Cmwlth. 1986) (holding that Section 21.1a(a) of the former act commonly known as the Parole Act (former Parole Act), Act of August 6, 1941, P.L. 861, as amended, 61 P.S. § 331.21a(a), repealed by Section 11(b) of the Act of August 11, 2009, P.L. 147, which contains substantially similar language as Section 6138(a)(2), mandated the forfeiture of time at liberty on parole for CPVs).

Robichaw also asserts that the Board incorrectly began his new 2-year sentence on March 9, 2010. However, as the Board asserts in its brief, this issue was not preserved for appellate review because it was not raised in Robichaw's Appellate Petition, North Hills Passavant Hospital v. Department of Health, 674 A.2d 742, 745 (Pa. Cmwlth. 1996), and it was not included in the Statement of

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<sup>3</sup> Section 6138(a)(2) of the Parole Act states that, "[i]f 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.*" 61 Pa. C.S. § 6138(a)(2) (emphasis added).

Questions Involved part of his brief, Dunn v. Board of Property Assessment Appeals and Review of Allegheny County, 877 A.2d 504, 510 n.13 (Pa. Cmwlth. 2005) (stating that issues not included in a brief's statement of questions involved are waived pursuant to Pa. R.A.P. 2116(a) (indicating that no question will be considered unless it is stated within the statement of questions involved)). Moreover, the record does not support Robichaw's contention that the Board began his two-year sentence on March 9, 2010. It is apparent from the record and the Board's calculations that, on March 9, 2010, Robichaw began serving the back time on his original sentence. Additionally, as the Board notes in its brief, Robichaw would be required to serve the balance of his original 18-year sentence before beginning to serve his new two-year sentence. Section 6138(a)(5) of the Parole Act, 61 Pa. C.S. § 6138(a)(5); Gustis v. Pennsylvania Board of Probation and Parole, 737 A.2d 822, 825 (Pa. Cmwlth. 1999).

We will consider Robichaw's next argument that the Board abused its discretion by "giv[ing] [Robichaw] an additional five years and 115 days which is his maximum day," (Robichaw's Br. at 7), as a challenge to the Board's recalculation of his new maximum date as July 14, 2015. Robichaw was paroled from his original 18-year sentence with a maximum date of December 14, 2012, on February 28, 2005. This meant Robichaw had 2846 days remaining on his original sentence when he was paroled in February 2005. From his arrest on November 1, 2005, until his reparole on January 28, 2008, Robichaw served an additional 818 days on his original sentence, leaving 2028 days remaining on that sentence. Robichaw served, and received credit against his original sentence for, the 75 days between August 26, 2009, the date he was released on his own recognizance and

was confined solely on the Board's detainer, Gaito v. Pennsylvania Board of Probation and Parole, 488 Pa. 397, 403-04, 412 A.2d 568, 571 (1980), to November 9, 2009, when the trial court sentenced him on the new criminal charges and he began serving that sentence pursuant to Hill. Thus, when Robichaw was recommitted on March 9, 2010, he had 1953 days remaining on the original 18-year sentence. Adding 1953 days to March 9, 2010, the Board properly calculated Robichaw's new maximum date on his original sentence as July 14, 2015.

Finally, Robichaw contends that he is being prevented from participating in certain programs necessary for him to be eligible for parole because there is a detainer based on his new, two-year sentence filed by the trial court. As the Board notes in its brief, this issue was not raised in Robichaw's Appellate Petition and was not included in Robichaw's brief's Statement of Questions Involved. Accordingly, this issue is waived. North Hills Passavant Hospital, 674 A.2d at 745; Dunn, 877 A.2d at 510 n.13. However, even if it were not waived, "[t]he Board does not control the internal workings of the State Correctional Institution[s]," Shain v. Pennsylvania Board of Probation and Parole, 558 A.2d 630, 631 (Pa. Cmwlth. 1989), and the Board does not have control over the trial court's decision to issue a detainer on the new two-year sentence.

Accordingly, the Board's Order recommitting Robichaw as a CPV and recalculating Robichaw's maximum date as July 14, 2015, is affirmed.

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**RENÉE COHN JUBELIRER, Judge**



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Pennsylvania Board of Probation	:	
and Parole,	:	
	:	
Respondent	:	

**ORDER**

**NOW**, June 14, 2011, the Order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is hereby **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**