

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard C. Baney, :
 :
 : Petitioner :
 : :
 : No. 2424 CD 2009 :
 :
 : v. :
 : :
 : Submitted: May 21, 2010 :
 :
 : Pennsylvania Board of Probation :
 : and Parole, :
 : :
 : Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: August 4, 2010

Richard C. Baney (Petitioner) petitions for review of the December 1, 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. We affirm.

Petitioner was originally sentenced to a term of incarceration of one year, eight months to eleven years, six months following his convictions on numerous charges of theft and receiving stolen property. Petitioner's maximum term expiration date was June 30, 2009. Petitioner was paroled to a community corrections center on April 26, 2004. However, Petitioner violated the conditions of his parole and the Board issued a warrant to commit and detain Petitioner on June 10, 2005. The Board

subsequently recommitted Petitioner as a technical parole violator to serve nine months backtime. Petitioner was paroled a second time on June 12, 2006.

On May 11, 2008, Petitioner was arrested and charged with DUI and related offenses. On May 15, 2008, the Board issued a warrant to commit and detain Petitioner.¹ Petitioner was convicted of DUI and the related offenses on January 9, 2009, and was sentenced to a term of incarceration of seventy-two hours to six months. Petitioner was paroled from this sentence on April 24, 2009, at which time he was returned to the Board's custody.

On April 29, 2009, the Board provided Petitioner with a notice of charges which included his new conviction and two technical parole violations.² This notice also advised Petitioner that a revocation hearing would be held on May 8, 2009. At this hearing, Petitioner admitted to the technical parole violations, and an agent for the Board presented documentary evidence, without objection, regarding Petitioner's January 9, 2009, conviction. Following this hearing, on June 11, 2009, the Board issued an order recommitting Petitioner as a technical parole violator to serve nine months backtime and as a convicted parole violator to serve six months backtime concurrently. This order further recalculated Petitioner's maximum term expiration date as October 30, 2012.³

¹ Petitioner was released on his own recognizance in lieu of bail with respect to these new criminal charges, but he remained incarcerated as a result of the Board's warrant.

² The alleged technical parole violations included relocating residence without permission and violating a curfew restriction.

³ The Board explained the recalculation as follows: upon his release on parole on June 12, 2006, Petitioner still owed 1,114 days on his original sentence. As a convicted parole violator, Petitioner also forfeited 410 days of a previous parole, thus owing 1,524 days. After subtracting credit for 239 days during which he was held solely on the Board's warrant, Petitioner owed 1,285 days. Petitioner returned to the Board's custody on April 24, 2009, and adding the 1,285 days to **(Footnote continued on next page...)**

Petitioner thereafter filed a petition for administrative relief with the Board challenging this recalculation. Specifically, Petitioner alleged that he only forfeited five months and fourteen days of his parole, resulting in a maximum term expiration date of December 14, 2009. By letter mailed December 1, 2009, the Board denied Petitioner's petition and affirmed the recalculation.⁴

On appeal to this Court,⁵ Petitioner raises arguments concerning the timing of his revocation hearing, the application of Santiago v. Pennsylvania Board of Probation and Parole, 937 A.2d 610 (Pa. Cmwlth. 2007), appeal denied, 598 Pa. 771, 956 A.2d 437 (2008) (relating to credit for time served under an order from a foreign jurisdiction), to the present matter, and the appeal of his January 9, 2009, conviction. However, as the Board aptly notes in its brief to this Court, Petitioner failed to raise these issues at his revocation hearing or in his administrative appeal; hence, these issues are waived.⁶ DeMarco v. Pennsylvania Board of Probation and Parole, 758

(continued...)

this date resulted in the recalculated maximum term expiration date of October 30, 2012. We discern no error in the Board's calculations.

⁴ We note that, while Petitioner's first administrative appeal was pending, Petitioner was denied parole by order of the Board dated October 15, 2009. Petitioner filed a second administrative appeal in which he again challenged his recalculated maximum term expiration date. By letter dated and mailed December 1, 2009, the Board denied this appeal, noting that second or subsequent requests for administrative relief are not permissible under its regulations. See 37 Pa. Code §73.1(4) (second or subsequent appeal will not be received by the Board).

⁵ Our scope of review is limited to determining whether the Board's findings are supported by substantial evidence, whether an error of law was committed, or whether any of the parolee's constitutional rights were violated. Harden v. Pennsylvania Board of Probation and Parole, 980 A.2d 691 (Pa. Cmwlth. 2009).

⁶ Nevertheless, we take this opportunity to note the substantial deficiencies in the brief filed on Petitioner's behalf. For example, the argument section of the brief, which amounts to slightly more than one page, contains little, if any, discussion of the arguments, the relevant law and the **(Footnote continued on next page...)**

A.2d 746 (Pa. Cmwlt. 2000); Dear v. Pennsylvania Board of Probation and Parole, 686 A.2d 423 (Pa. Cmwlt. 1996).⁷

Accordingly, the Board's order is affirmed.

PATRICIA A. McCULLOUGH, Judge

(continued...)

application of said law to the present matter. Had Petitioner's arguments not been waived for the reasons stated above, we may well have sua sponte quashed Petitioner's appeal for failure to comply with Pa. R.A.P. 2117 (statement of the case), 2118 (summary of the argument) and 2119 (argument).

⁷ The Board also argues that we should dismiss Petitioner's appeal because Petitioner is appealing the wrong order, i.e., the denial of his second administrative appeal which involved his parole refusal. While the Board is correct that Petitioner's brief and docketing statement reference this denial, Petitioner did in fact reference both December 1, 2009, denials in his petition for review, and we decline to dismiss Petitioner's appeal on this basis.

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

ORDER

AND NOW, this 4th day of August, 2010, the December 1, 2009, order of the Pennsylvania Board of Probation and Parole is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge