

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel Joseph Turissini,	:	
Petitioner	:	
	:	
v.	:	No. 2544 C.D. 2009
	:	Submitted: April 30, 2010
Pennsylvania Board of Probation	:	
and Parole,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: June 10, 2010

Daniel Joseph Turissini (Turissini) petitions for review from an order of the Pennsylvania Board of Probation and Parole (Board) that denied his request for administrative relief. Turissini sought credit toward his maximum state sentence for a 22-day period in which he resided at Keenan House, a community corrections center that provides in-patient drug and alcohol treatment. After an evidentiary hearing, the Board determined Turissini did not prove the characteristics of the facility constituted restrictions on his liberty sufficient to warrant credit against his state sentence. Turissini further asserted the Board incorrectly calculated his maximum sentence date, a claim also rejected by the Board. Discerning no error in the Board’s decision, we affirm.

In July 2001, Turissini began serving a two- to seven-year state sentence, which had a minimum expiration date of September 18, 2002, and a

maximum expiration date of September 18, 2007. The Board subsequently released Turissini on parole to Keenan House, where he resided from September 23 through October 14, 2002.

Thereafter, the Board recommitted Turissini to serve 12 months' backtime as a technical parole violator. In addition, Turissini was later sentenced on new charges to a term of eight months to two years. Shortly after that, the Board recommitted Turissini to serve 12 months' backtime as a convicted parole violator to run concurrent to the backtime on his technical parole violation.¹

On March 16, 2005, the Board released Turissini on constructive parole to begin serving his new two-year sentence. On March 1, 2006, however, the Board issued an order to detain him for a violation of his re-parole. The Board subsequently recommitted Turissini as a technical parole violator to serve six months' backtime.

In March 2007, the Board again released Turissini on parole. About a year later, however, the Board detained Turissini pending disposition of new criminal charges. The Board later recommitted Turissini to serve 24 months' backtime as a convicted parole violator. The Board also recalculated Turissini's maximum sentence date as February 20, 2011.

Later in 2007, Turissini sought an evidentiary hearing to determine the custodial nature of the in-patient program in which he participated several

¹ The Board also recalculated Turissini's maximum sentence as July 16, 2008.

years earlier, from September 23 through October 14, 2002. The Board afforded Turissini a “Cox² hearing” to determine the custodial nature of the inpatient program at Keenan House.

At hearing, Turissini testified as to the general restrictions placed on his liberty while at Keenan House. However, Turissini explained he only sought credit for the initial 22-day period he participated in the CORE Re-entry program at Keenan House, a period in which he “was not allowed to go out of the house for a job search.” Certified Record (C.R.) at 60.

In response, Turissini’s parole agent offered the testimony of Keenan House’s admissions director (Director). Director testified generally concerning the conditions at Keenan House as well as the requirements of the CORE Re-entry program. Director explained that during Turissini’s participation in the CORE program he could not leave the facility for work or to seek employment.

After hearing, the Board issued a decision denying Turissini’s request for credit against his state sentence. The Board ruled that Turissini failed to rebut the presumption that he was at liberty on parole while at the in-patient treatment facility and failed to produce evidence or persuade the Board that the specific

² See Cox v. Pa. Bd. of Prob. & Parole, 507 Pa. 614, 493 A.2d 680 (1985) (where recommitted parole violator alleges an inpatient drug treatment program in which he resided as a condition of parole constituted the equivalent of prison incarceration, Board must hold an evidentiary hearing to provide parole violator an opportunity to show restrictions on his liberties were sufficient to warrant backtime credit for time spent in the program).

characteristics of the treatment facility constituted restrictions on his liberty sufficient to warrant a credit on his state sentence.

Turissini filed a request for administrative relief, which the Board denied. This appeal followed.³

After Turissini filed his brief to this Court, the Board filed a supplemental record. As a result, this Court issued an order permitting Turissini to file a supplemental brief. In his supplemental brief, Turissini concedes that the Board “gave [him] credit for all time to which he was entitled.” Petitioner’s Supplemental Br. at 3. In response, the Board asserts this Court should affirm its order based on Turissini’s concession. Despite the concession in Turissini’s supplemental brief, we review the claims raised in his initial brief.

Turissini first asserts the Board erred in failing to afford him credit for the initial 22-day period in which he participated in the CORE Re-entry program at Keenan House. We reject this argument because Turissini did not raise this issue in his petition for review. Therefore, it is waived. Siers v. Pa. Bd. of Prob. & Parole, 725 A.2d 220 (Pa. Cmwlth. 1999).

Of further note, in Meehan v. Pennsylvania Board of Probation and Parole, 808 A.2d 313 (Pa. Cmwlth. 2002), we held the program at Keenan House is

³ Our review is limited to determining whether necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Reavis v. Pa. Bd. of Prob. & Parole, 909 A.2d 28 (Pa. Cmwlth. 2006).

not sufficiently custodial to entitle a parolee to credit for time spent in the program. Here, Turissini presented no evidence that the program at Keenan House has become more restrictive since Meehan was decided. Indeed, Turissini's testimony confirms the conditions at Keenan House remain the same. Consistent with Meehan, Turissini is not entitled to credit for any time he spent at Keenan House.

Turissini also contends the Board incorrectly recalculated his maximum sentence. In particular, he asserts the Board did not explain its failure to credit his maximum sentence date for the 350-day period from March 16, 2005 through March 1, 2006.

As noted above, however, after Turissini filed his brief with this Court, the Board filed a supplemental record. The supplemental record includes a recommitment order, which shows that, in recalculating Turissini's maximum sentence date, the Board added the 350-day period from March 16, 2005 through March 1, 2006 to the time remaining on his maximum sentence because Turissini was on "constructive parole" during this period. Supplemental Certified Record (S.C.R.) at 4. In his supplemental brief, Turissini states, based on a review of the supplemental certified record, the Board afforded him all credit to which he is entitled. Our review of the supplemental record confirms Turissini's concession.

A prisoner on constructive parole is not released from prison but is paroled from his original sentence to immediately begin serving a new sentence. See Merritt v. Pa. Bd. of Prob. & Parole, 524 Pa. 577, 574 A.2d 597 (1990); Hines v. Pa. Bd. of Prob. & Parole, 491 Pa. 142, 420 A.2d 381 (1980).

Where a parolee is recommitted as a convicted parole violator, he is not entitled to credit against his original sentence for any period of time at liberty on parole. Id.; Houser v. Pa. Bd. of Prob. & Parole, 682 A.2d 1365 (Pa. Cmwlth. 1996). Pursuant to Pennsylvania law:

(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 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.

61 Pa. C.S. §6138(1), (2) (emphasis added).

Constructive parole is considered "time at liberty" for purposes of determining to what credit an offender is due against a maximum sentence upon recommitment as a parole violator. Merritt; Bowman v. Pa. Bd. of Prob. & Parole, 709 A.2d 945 (Pa. Cmwlth. 1998). Periods of constructive parole are forfeited upon an offender's recommitment as a convicted parole violator. Bowman.

Here, the record reveals on March 16, 2005, the Board released Turissini on constructive parole from his original seven-year sentence to begin serving his new two-year sentence. S.C.R. at 1. The period during which Turissini

was on constructive parole from his original seven-year sentence from March 16 through September 26, 2005, was a period of 194 days.

On September 26, 2005, the Board released Turissini on parole from his new two-year sentence, from which point he was on actual, rather than constructive parole from his original seven-year sentence. C.R. at 25. The period during which Turissini was on actual reparole from his seven-year sentence, from September 26, 2005 to March 1, 2006, was a period of 156 days.

On March 1, 2006, the Board filed a detainer to hold Turissini for a violation of his parole from his original seven-year sentence. This ended the period of actual parole from that sentence. C.R. at 29. As discussed above, he was later convicted of charges arising during his reparole.

Adding the two periods together yields a total period of reparole from March 16, 2005 to March 1, 2006, a period of 350 days ($194 + 156 = 350$). Because the record reveals Turissini was on reparole from his original seven-year sentence for the 350-day period from March 16, 2005 to March 1, 2006, the recalculation order correctly denied him credit for this period as a convicted parole violator. Merritt.

Based on the foregoing, we affirm.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 10th day of June, 2010, the order of the Pennsylvania Board of Probation and Parole is **AFFIRMED**.

ROBERT SIMPSON, Judge