

at that time inform the Board that Class-Figueroa had pleaded guilty to burglary. (C.R. at 73.) After the Board requested updates on Class-Figueroa's status, (C.R. at 20), Puerto Rico sent the Board an offender violation report on November 3, 2009, which stated that Class-Figueroa had been sentenced to serve fourteen days in prison for burglary. (C.R. at 81.) Furthermore, Puerto Rico informed the Board that Class-Figueroa's whereabouts had been unknown since August 14, 2009. (C.R. at 79.) On November 14, 2009, the Board received official verification of the conviction, (C.R. at 48-49), and the Board issued a warrant for Class-Figueroa's arrest on November 24, 2009. (C.R. at 14.)

After being at large for almost six months, Class-Figueroa was arrested in Puerto Rico on new criminal charges on February 3, 2010. (C.R. at 21.) The new criminal charges were dismissed, and, on May 13, 2010, Puerto Rico notified the Board that Class-Figueroa had waived extradition and was available for return to Pennsylvania. (Id.) He was returned to Pennsylvania on May 23, 2010, and incarcerated at SCI-Graterford. (Id.)

The Board filed a notice of charges alleging that Class-Figueroa violated his parole because he was convicted on May 13, 2009, for aggravated burglary, and because he committed technical violations of his parole by, among other things, failing to maintain regular contact with parole staff. (C.R. at 22.) The Board conducted a violation hearing on August 4, 2010. Although Class-Figueroa objected to the hearing on the ground that it was not held within 120 days of either the date of his conviction or the date the Board received official verification of the conviction, (C.R. at 51), the Board overruled the objection. (C.R. at 52.) On August 13, 2010, the Board issued a decision recommitting Class-Figueroa as a convicted and technical parole violator to serve a total of twelve months backtime. (C.R. at 95-96.)

Class-Figueroa filed an administrative appeal, which the Board denied. Rejecting the timeliness challenge, the Board explained that the revocation hearing was held “only 73 days after ... [Class-Figueroa's] return from Puerto Rico to a Pennsylvania State Correctional Institution on May 23, 2010, and was manifestly held within the 120 day period.” (C.R. at 108.) This appeal ensued.

On appeal to this Court, Class-Figueroa contends that the Board failed to conduct a timely revocation hearing. Class-Figueroa asserts that the hearing was held more than 120 days after the Board received official verification of his conviction on November 14, 2009.¹

When a parolee is convicted of a new crime, the timeliness of the parole revocation hearing is governed by the following:

§ 71.4. Conviction for a new criminal offense

The following procedures shall be followed before a parolee is recommitted as a convicted violator:

(1) A revocation hearing shall be held within 120 days from the date the Board received official verification^[2] of the plea of guilty or nolo contendere or of the guilty verdict at the highest trial court level except as follows:

(i) If a parolee is confined outside the jurisdiction of the Department of Corrections, such as confinement out-of-State, confinement in a Federal correctional institution or confinement in a county correctional institution where the parolee has not waived the right to a revocation hearing by

¹ Although Class-Figueroa uses the terms conviction and sentence interchangeably, he always refers to the same date, November 14, 2009.

² The term “official verification” is defined as “[a]ctual receipt by a parolee’s supervising parole agent of a direct written communication from a court in which a parolee was convicted of a new criminal charge attesting that the parolee was so convicted.” 37 Pa. Code §61.1.

a panel in accordance with Commonwealth ex rel. Rambeau v. Rundle, 455 Pa. 8, 314 A.2d 842 (1973), *the revocation hearing shall be held within 120 days of the official verification of the return of the parolee to a State correctional facility.*

37 Pa. Code §71.4 (emphasis added). The Board bears the burden of proving by a preponderance of the evidence that it conducted a timely revocation hearing. Johnson v. Pennsylvania Board of Probation and Parole, 19 A.3d 1178 (Pa. Cmwlth. 2011).

In this case Class-Figueroa was being held in Puerto Rico, which is, of course, outside of the Commonwealth and the jurisdiction of the Department of Corrections. Because he was in Puerto Rico, 37 Pa. Code §71.4 required Class-Figueroa's hearing to be held within 120 days of the official verification of his return to a state correctional facility. The record shows that Class-Figueroa returned to Pennsylvania and was incarcerated at SCI-Graterford on May 23, 2010. Because the Board held Class-Figueroa's parole revocation hearing on August 4, 2010, seventy-three days after his return to SCI-Graterford, we conclude that the Board provided Class-Figueroa with a timely revocation hearing.³

Class-Figueroa also argues that the facts here are distinguishable from other cases addressing this issue because the Board was aware of his criminal charges

³ Although the precise date on which the Board received official verification of Class-Figueroa's return to state custody is not in the record, the general rule is that the Board is required to hold a revocation hearing within 120 days of the date the parolee is returned to state prison. Johnson (holding that the Board was required to hold a hearing within 120 days of the date the parolee returned to SCI-Graterford); Brooks v. Pennsylvania Board of Probation and Parole, 704 A.2d 721 (Pa. Cmwlth. 1997) (stating that the general rule is that the 120 day period begins to run on the date that the parolee is actually returned to a state correctional facility). Class-Figueroa's hearing was clearly held within 120 days of his return to SCI Graterford on May 23, 2010, and his return to state custody marks the earliest date on which the Board could have received official verification.

on May 13, 2009, but did take any action until after he was arrested many months later. However, where, as here, the exception in 37 Pa. Code §71.4(1)(i) applies, the only relevant date is the date on which the Board received official verification of the parolee's return to a state correctional facility. Therefore, this argument is without merit.⁴

Accordingly, the Board's order is affirmed.

PATRICIA A. McCULLOUGH, Judge

⁴ We also note that Class-Figueroa did not specifically contend at the revocation hearing (C.R. at 51), in his administrative appeal (C.R. at 99-100), or in his petition for review to this Court that the Board unreasonably delayed his return to Pennsylvania.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carlos Hiram Class-Figueroa,	:	
Petitioner	:	
	:	No. 2724 C.D. 2010
v.	:	
	:	
Pennsylvania Board of Probation	:	
and Parole,	:	
Respondent	:	

ORDER

AND NOW, this 12th day of August, 2011, the December 3, 2010, order of the Pennsylvania Board of Probation and Parole is affirmed.

PATRICIA A. McCULLOUGH, Judge