

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kevin Anderson,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 372 M.D. 2010
	:	
Commonwealth of Pennsylvania	:	
	:	Submitted: January 28, 2011
v.	:	
	:	
PA. Board of Probation and Parole	:	
(P.B.P.P.)	:	
	:	
v.	:	
	:	
PA. Department of Corrections (D.O.C.),	:	
Respondents	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: September 28, 2011

Before the Court are the preliminary objections of the Pennsylvania Board of Probation and Parole (Board) to a petition for a writ of mandamus filed by Kevin Anderson, an inmate at the State Correctional Institution at Cresson.<sup>1</sup>

In 1991, following a conviction for burglary, Anderson was sentenced to a term of one year, nine months to five years, to be served consecutively to a sentence

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<sup>1</sup> The Board’s preliminary objections assert lack of original jurisdiction and a demurrer; however, the Board has withdrawn its demurrer and briefed only its preliminary objection asserting lack of jurisdiction.

of six to twelve months for possession of a controlled substance. On January 26, 1994, Anderson was paroled from the state sentence for burglary and began serving his county sentence. At that time, Anderson's maximum expiration date was March 5, 1997. Anderson was paroled from the county sentence on June 22, 1994, and remained at liberty until he was arrested on new charges on August 29, 1997. After his subsequent conviction, Anderson was sentenced to a term of twelve years, six months to twenty-five years and returned to a state correctional institution. By decision mailed March 5, 1999, the Board recommitted him as a convicted parole violator to serve eighteen months backtime when available. (Board's preliminary objections, Ex. D.)

On April 12, 2010, Anderson filed a pro se petition for a writ of mandamus, naming the Commonwealth of Pennsylvania, the Board and the Department of Corrections (DOC) as respondents.<sup>2</sup> Anderson asserts that the Board erred in recommitting him as a convicted parole violator because his maximum parole date had expired in March 1997, prior to his arrest on new charges. Citing Monroe v. Pennsylvania Board of Probation and Parole, 725 A.2d 223 (Pa. Cmwlth. 1999), Anderson also complains that, although his new sentence should be served after his backtime, he is required to serve time on his new sentence first. Anderson further claims that he was denied his right to a timely revocation hearing and that he has not received any form of due process since his return to custody in August 1997. Anderson's petition for a writ of mandamus requests an evidentiary hearing to more fully develop the record; according to Anderson, he sought relief through the inmate grievance process and other avenues but was told that his records have been destroyed and, thus, his issues cannot be properly investigated.

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<sup>2</sup> DOC has filed an answer and new matter.

The Board contends that, to the extent that Anderson challenges the Board's decision to recommit him as a convicted parole violator, a writ of mandamus in the Court's original jurisdiction is not a viable and proper means by which to challenge the Board's recommitment order. Rather, the proper procedure to challenge that action is to file an administrative appeal within thirty days of the Board's order, section 6113(d) of the Prisons and Parole Code, 61 Pa. C.S. §6113(d), and, if necessary, appeal a denial of administrative relief by filing a petition for review in this Court's appellate jurisdiction, 42 Pa. C.S. §763(a). We agree.

Anderson cites Mickens-Thomas v. Pennsylvania Board of Probation and Parole, 699 A.2d 792 (Pa. Cmwlth. 1997), for the proposition that “mandamus will lie if it is fairly alleged that the respondents have misapplied the law or failed to hold a mandatory hearing.” (Petition, ¶19.) However, that case involved the duty of the Board to consider and rule on a parole application and is distinguishable from the present matter. Here, the substance of Anderson's complaints concerns the authority of the Board to recommit him as a convicted parole violator and the procedure followed by the Board in reaching its decision. We conclude that, insofar as Anderson's allegations relate to the Board, he seeks a review of the Board's revocation decision, a matter properly addressed in this Court's appellate jurisdiction. McMahon v. Pennsylvania Board of Probation and Parole, 504 Pa. 240, 470 A.2d 1337 (1983) (writ of mandamus seeking credit for time served under a detainer sought review of the Board's denial of such credit and should have been brought as an appeal to Commonwealth Court after the exhaustion of available administrative remedies); Bronson v. Pennsylvania Board of Probation and Parole, 491 Pa. 549, 421 A.2d 1021 (1980) (complaints challenging the constitutionality of the parole revocation process did not constitute a mandamus action but, rather, sought review of

the revocation of the inmate's parole); St. Clair v. Pennsylvania Board of Probation and Parole, 493 A.2d 146 (Pa. Cmwlth. 1985) (claims by parolee for time credit are properly addressed to this Court's appellate jurisdiction).

Accordingly, we sustain the Board's preliminary objection asserting lack of original jurisdiction, and we dismiss Anderson's petition for review as to the Board.

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PATRICIA A. McCULLOUGH, Judge

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**ORDER**

AND NOW, this 28<sup>th</sup> day of September, 2011, upon consideration of the preliminary objections filed by the Pennsylvania Board of Probation and Parole (Board), the petition for review is dismissed as to the Board.

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PATRICIA A. McCULLOUGH, Judge