

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shawn Vincent Duguay,	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Board	:	
of Probation and Parole,	:	No. 384 C.D. 2010
Respondent	:	Submitted: October 29, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: December 6, 2010

Shawn Vincent Duguay (Duguay) petitions this Court for review of the March 8, 2010 order of the Pennsylvania Board of Probation and Parole (Board) dismissing his petition for administrative review. The issue before this Court is whether the Board properly concluded that Duguay’s petition for administrative review was untimely. For the reasons that follow, we affirm the Board’s order.

Duguay was arrested in July of 2005 and sentenced to 1½ to 4 years in prison. His original maximum sentence date was July 5, 2009. He was released on parole on July 25, 2007. While on parole, Duguay was charged with and convicted of several crimes. As a result, on June 23, 2008, he was recommitted as a technical parole violator and thereafter, on December 11, 2008, as a convicted parole violator. In the notice of the decision in question, mailed March 3, 2009, Duguay was again recommitted as a convicted parole violator for driving under the influence and driving

under suspension. His parole violation maximum date was recalculated to be August 19, 2010. Duguay later received an undated recommitment order on or about August 13, 2009. On August 21, 2009, Duguay, through counsel, filed a petition for administrative review challenging his new parole violation maximum date. On March 8, 2010, the Board issued an order dismissing Duguay's appeal as untimely. Duguay appealed to this Court, which, by a May 25, 2010 order, limited the issue on appeal to the timeliness of the petition for administrative relief.<sup>1</sup>

Duguay argues that since he filed his petition for administrative relief after receiving the recommitment order setting forth the relevant facts used by the Board to recalculate his sentence date, his petition was timely. We disagree.

Section 4(d) of the Parole Act (Act)<sup>2</sup> provides: "An interested party may appeal a revocation decision within 30 days of the board's order. . . ." Section 73.1(a)(1) of the Board's regulations also provides, in pertinent part: "An interested party, by counsel unless unrepresented, may appeal a revocation decision. Appeals shall be received at the Board's Central Office within 30 days of the mailing date of the Board's order." 37 Pa. Code § 73.1(a)(1). Finally, the Board's notice of decision mailed March 3, 2009 clearly stated:

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST FILE A REQUEST FOR ADMINISTRATIVE RELIEF WITH THE BOARD WITHIN THIRTY DAYS OF THIS ORDER. THIS REQUEST SHALL SET FORTH SPECIFICALLY THE FACTUAL AND LEGAL BASIS FOR THE ALLEGATIONS. SEE 37 PA CODE SEC. 73. YOU HAVE THE RIGHT TO AN ATTORNEY IN THIS

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<sup>1</sup> "This Court's scope of review is limited to determining whether a violation of constitutional rights occurred, whether an error of law was committed or whether necessary findings of fact are supported by substantial evidence." *Sweesy v. Pennsylvania Bd. of Prob. and Parole*, 955 A.2d 501, 502 n.6 (Pa. Cmwlth. 2008).

<sup>2</sup> Act of August 6, 1941, P.L. 861, *as amended*, 61 P.S. § 331.4(d). This section of the Act was codified on August 11, 2009 and effective October 13, 2009 as 61 Pa.C.S. § 6113(d)(1).

APPEAL AND IN ANY SUBSEQUENT APPEAL TO  
THE COMMONWEALTH COURT.

Duguay admits that he received the Board's notice of decision mailed March 3, 2009. Duguay's Br. at 7-8. He received clear notice that he was to appeal that decision within thirty days. He did not do so. There is no exception in the Parole Act, or the Board's regulations allowing a later-filed appeal under circumstances in which an individual did not receive a detailed order to recommit, or where a subsequent order did not have a mailing date on it. Therefore, the Board properly concluded that Duguay's petition for administrative review was untimely.

For the reasons stated above, we affirm the Board's order.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 6<sup>th</sup> day of December, 2010, the March 8, 2010 order of the Pennsylvania Board of Probation and Parole is affirmed.

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JOHNNY J. BUTLER, Judge