

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Mr. Ronald Pierce
SBI 175967
Howard R. Young Correctional Institute
P.O. Box 9561
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Defendant

Re: State of Delaware v. Ronald Pierce
I.D. No. 9512013159

Submitted: March 28, 2011

Decided: March 31, 2011

On Defendant Ronald Pierce's Motion to Compel.

DENIED.

Dear Mr. Wallace and Mr. Pierce:

INTRODUCTION

Defendant Ronald Pierce's ("Defendant") Motion to Compel alleges that his rights under the Double Jeopardy Clause have been violated because the Probation and Parole Division has inappropriately placed him on conditional release, thereby subjecting him to both proceedings before this Court for violation of his probation and proceedings before the Board of Parole for violation of his conditional release. Consequently, Defendant requests that the Court order his release from incarceration and allow him to continue serving his Level III probation sentence.

Upon review of the facts, the law, and the parties' submissions, Defendant's Motion to Compel is **DENIED**.¹

FACTS AND PROCEDURAL HISTORY

In 1997, Defendant pled guilty to Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Burglary Third Degree; Defendant was sentenced to a total of 30 years at Level V incarceration.² Defendant was placed on conditional release, subject to Level IV supervision, on April 24, 2010.³ While on conditional release, Defendant incurred violations of his Level IV supervision; this Court executed an Administrative Warrant on October 14, 2010 based on Defendant's missed curfew calls and a urine screening which tested positive for cocaine.⁴ This Court entered a Violation of Probation Sentencing Order sentencing Defendant to two years at Level V incarceration, suspended for three months at Level IV supervision, followed by one year at Level III supervision.⁵

Defendant was arrested on December 28, 2010 for misdemeanor charges.⁶ Defendant's motion indicates that he was released on a \$4,000 secured bail on January 5, 2011.⁷ Defendant states that he informed his probation officer that he was released on bail and returned to work, but the following day, January 6, his probation officer arrested him, informing him

¹ Defendant submitted a handwritten letter to this Court, and there is no caption to this letter. Thus, for purposes of this opinion, Defendant's letter will be characterized as a "Mot. to Compel."

² Sentencing Order of Mar. 7, 1997. Defendant was sentenced to an additional two years for the Burglary conviction, but this sentence was suspended for two years at Level II. *Id.*

³ State's Resp. at 1. "Conditional release" is defined by statute; it is "the release of an offender from incarceration to the community by reason of diminution of the period of confinement through merit and good behavior credits. . . [a] person so released shall be known as a releasee." 11 Del. C. § 4302(5).

⁴ Administrative Warrant of Oct. 14, 2010.

⁵ Violation of Probation Sentence Order of Oct. 14, 2010. Defendant subsequently filed a motion for modification of this sentence, asserting that his employment, financial, and family difficulties warranted the modification of the remainder of his sentence be added to his Level III sentence. Def.'s Mot. for Modification of Nov. 12, 2010). This motion was denied by this Court. *State v. Pierce*, Del. Super., I.D. 9512013159, Cooch, R.J. (Nov. 22, 2010) (ORDER).

⁶ Def.'s Mot. to Compel at 2. Defendant asserts that these charges arose from a domestic dispute. *Id.*

⁷ *Id.*

that he should not have been released on bail because of his status as a conditional releasee.⁸

On January 12, Defendant filed a Petition for a Writ of Habeas Corpus, alleging that, because he was never notified of his conditional release status, he should not be presently incarcerated given his satisfaction of the \$4,000 secured bail requirement. This Court denied Defendant's Petition, noting that Defendant is legally detained and is now the subject of proceedings before the Board of Parole.⁹ In turn, Defendant has filed the instant motion. Although not clearly articulated, the sole basis for Defendant's Motion to Compel appears to be Defendant's allegation that he "was never informed about any conditional release" and that the Probation and Parole Division has violated his Sixth Amendment rights by placing him on conditional release.¹⁰ According to Defendant, the Double Jeopardy Clause has been violated because "[he has] to go in front of the Parole Board, and come in front of [this Court] for the same violation," and his probation was "supposed to be consecutive to the conditional release." Defendant moves this Court to "issue an immediate release" because the October 14 Violation of Probation Sentencing Order "discharged the sentence that [the Probation and Parole Division] say [Defendant] was on conditional release for."¹¹

DISCUSSION

Defendant's contentions are squarely controlled by precedent from the Supreme Court of Delaware. As the Supreme Court has very recently observed, "Double jeopardy is not implicated when an alleged violation of supervision triggers revocations of both conditional release and probation."¹² Thus, to the extent Defendant alleges that his constitutional rights have been violated by virtue of the fact that he must appear before this Court and the Board of Parole

⁸ *Id.*

⁹ *In the Matter of Ronald Pierce*, Del. Super., N11M-01-049, Cooch, R.J. (Jan. 14, 2011) (ORDER).

¹⁰ Def.'s Mot. to Compel at 3 ("P&P and DOC failed to adhere to your order and decided to put me on conditional release anyway. That is clearly a violation of my 6th Amended [sic] rights.").

¹¹ *Id.* at 4.

¹² *Brinkley v. State*, 2011 WL 664238 (Del. 2011) (citing *State v. Dorsey*, 1995 WL 862118 (Del. Super. Ct. 1995)).

(for violations of probation and conditional release, respectively), such arguments are wholly without merit.¹³

Similarly, regardless of whether Defendant was on conditional release or probation at the time of the instant violations, this Court had the authority to enter the October 14 Violation of Probation Sentence Order.¹⁴ Thus, even if taken as true, Defendant's allegation that he "was never informed about any conditional release"¹⁵ is of no consequence; this Court properly sentenced Defendant for the foregoing violations of probation, and Defendant is now "legally detained" and "the subject of proceedings before the Board of Parole" with respect to violations of his conditional release.¹⁶ As stated, this procedural posture is not a violation of the Double Jeopardy Clause.¹⁷

Defendant has failed to set forth any grounds on which he is entitled to relief. Accordingly, Defendant's Motion to Compel is **DENIED**.

Richard R. Cooch, R.J.

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oc: Prothonotary

¹³ Defendant's motion incorrectly states that the instant circumstances are "clearly a violation of [his] 6th Amended [sic] rights" based on the Double Jeopardy Clause; the Double Jeopardy Clause is contained in the Fifth Amendment. *See* U.S. CONST. amend. V ("[No person shall] be subject for the same offense to be twice put in jeopardy of life or limb. . . .").

¹⁴ *See id.* ("Also, whether [the defendant] was on conditional release or probation, the Superior Court had the authority to revoke his probation and impose sentence.") (citations omitted).

¹⁵ Def.'s Mot. to Compel at 3.

¹⁶ *In the Matter of Ronald Pierce*, Del. Super., N11M-01-049, Cooch, R.J. (Jan. 14, 2011) (ORDER).

¹⁷ *See supra* text accompanying note 12.