

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Curt D. Fields, :
 :
 Petitioner :
 :
 :
 v. : No. 1374 C.D. 2008
 : Submitted: November 26, 2008
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 Pennsylvania Board of Probation and :
 Parole, :
 :
 Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE FRIEDMAN

FILED: December 24, 2008

Curt D. Fields (Fields) petitions for review of the June 24, 2008, order of the Pennsylvania Board of Probation and Parole (Board), which denied Fields' petition for administrative review of his maximum date. We affirm.

Fields was on parole when he was arrested and charged with new criminal offenses. Fields pled guilty to the new offenses on December 11, 2007, and received a new sentence. The Board held a revocation hearing, and, in a subsequent decision, recommitted Fields as a convicted parole violator (CPV) to serve the remainder of his original sentence. The Board calculated Fields' new maximum date as March 9, 2009, using April 29, 2008, as the date Fields became available to begin serving the remainder of his original sentence. Thus, the Board did not give Fields credit on his original sentence for the time he served from December 11, 2007, to April 29, 2008.

Fields filed a petition for administrative review, claiming that he was available to begin serving the remainder of his original sentence on December 11, 2007, and, thus, entitling him to credit on his original sentence for the time he served from December 11, 2007, to April 29, 2008. The Board denied the petition based on *Campbell v. Pennsylvania Board of Probation and Parole*, 409 A.2d 980 (Pa. Cmwlth. 1980), in which this court stated that a CPV is not available to begin serving time on an original sentence until the Board actually has revoked parole and ordered that the CPV serve such time. Based on *Campbell*, the Board stated that Fields “became available to begin serving his back time on April 29, 2008, when the Board obtained the necessary signatures to recommit him as a parole violator.” (Board op. at 1.) Fields now petitions this court for review of the Board’s decision.¹

Fields’ first argument is as follows:

Because credit for the period of incarceration between December 11, 2007 and April 29, 2008 will be applied to his new sentence, it may appear, at first, that Fields’ complaint is petty. To the contrary, it cannot be known whether Fields will ever receive the credit he is due because **there exists the possibility** that the new conviction may [be] disposed of on appeal or through a successful P.C.R.A. [post-conviction relief action].

¹ Our scope of review is limited to determining whether constitutional rights have been violated, whether an error of law has been committed or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

(Fields' brief at 5) (emphasis added). However, if Fields prevails in an appeal or post-conviction proceeding, he can seek an adjustment to his credit allocation. Now, it is only a possibility that Fields might prevail. Because that possibility may never ripen into a case or controversy, we decline to address the matter further. *See Commonwealth v. Locust Township*, 915 A.2d 738 (Pa. Cmwlth. 2007) (declining to address a matter because there was no case or controversy).

Fields also argues that the Board abused its discretion in selecting April 29, 2008, as the date when Fields could begin serving his original sentence. Fields maintains that choosing the date based on when the Board obtained the necessary signatures to recommit Fields was arbitrary. However, the Board was required by law to obtain a certain number of signatures before revoking Fields' parole. *See* section 4 of the Act known as the Parole Act, Act of August 6, 1941, P.L. 861, *as amended*, 61 P.S. §331.4 (stating that the parole of any person shall not be revoked, except by agreement of the requisite number of Board members). Thus, the Board's use of the necessary signature date as the date of Fields' availability was not an arbitrary act.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Judge

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Petitioner	:	
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v.	:	No. 1374 C.D. 2008
	:	
Pennsylvania Board of Probation and	:	
Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 24th day of December, 2008, the order of the Pennsylvania Board of Probation and Parole, dated June 24, 2008, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Judge