

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Yusef Mitchell,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1628 C.D. 2007
	:	
Pennsylvania Board of	:	Submitted: January 25, 2008
Probation and Parole,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: March 12, 2008

Yusef Mitchell petitions for review of an order of the Pennsylvania Board of Probation and Parole (Board) recommitting him to serve 12 months' backtime as a convicted parole violator. He asserts the Board miscalculated his original state sentence maximum expiration date and failed to credit that sentence with time served under a Board detainer. For its part, the Board requests that we affirm the Board's order except to the extent it erroneously applied 17 days' credit to Mitchell's sentence. We affirm.

In 2000, Mitchell began serving a six year state sentence for drug-related offenses (original state sentence). Certified Record (C.R.) at 1-2. The original state sentence had a minimum expiration date of July 31, 2003 and a maximum date of July 31, 2006. Id. After expiration of the minimum state sentence in November, 2003, the Board paroled Mitchell to a New Jersey detainer.

Id. at 4-10. At the time of parole, almost three years remained on the original state sentence. Id. at 1-2. In particular, 994 days remained. See id.

Thereafter, Mitchell returned to Pennsylvania, and Philadelphia police arrested him in August 2004 for drug-related offenses. Id. at 12. In September 2004, the Board detained Mitchell for the first time pending disposition of the charges. Id. at 11. The charges were ultimately dismissed, and the Board cancelled its first detainer on April 29, 2005. Id. at 11, 74. Nevertheless, and of particular import here, the Board held Mitchell pursuant to a second New Jersey detainer. Id. at 74. On May 16, 2005, Mitchell returned to New Jersey, where he remained until February 2006.

In early April 2006, while Mitchell was still on parole from his original state sentence, Philadelphia police again arrested him for drug-related offenses. Id. at 14. Mitchell posted bail for the new criminal charges on April 19, 2006. Id. at 53. The new charges resulted in a second Board detainer. Pursuant to this second Board detainer, Mitchell remained incarcerated until expiration of his original state sentence maximum on July 31, 2006. Id. at 13, 22. Since Mitchell previously posted bail on these new charges, and his original state sentence expired, he was released at that time. Id.

In March 2007, however, the Philadelphia Municipal Court found Mitchell guilty of the April 2006 drug offenses and imposed a new state sentence of consecutive terms of one and a half to three years, and six to twelve months. Id. at 39, 42, 43. As a result of the new conviction for offenses occurring while

Mitchell was on parole, the Board lodged a third detainer against him on March 14, 2007. Id. at 23.

After notice and hearing, the Board issued an order essentially revoking Mitchell's parole and recommitting him to serve twelve months' backtime on his original state sentence as a convicted parole violator. Id. at 68, 70. In recalculating Mitchell's original state sentence maximum date, the Board credited Mitchell with 387 days. Id. at 68.

The credit of 387 days was calculated as follows. The Board credited Mitchell's original state sentence with time served from August 5, 2004, through May 16, 2005, a period of 284 days. This credit period included time Mitchell served after the Board cancelled its first detainer on April 29, 2005, and before it transferred Mitchell to New Jersey on May 16, 2005. The Board also credited Mitchell's original state sentence with time served from April 19 through July 31, 2006, a period of 103 days during which Mitchell was held as a result of the Board's second detainer. Id.

As discussed above, at time of parole, 994 days remained on Mitchell's original state sentence. Subtracting the periods of credit, the Board calculated the time remaining on the state sentence as 607 days (994 days less 387 days' credit). Mitchell became available to serve the backtime on June 6, 2007, resulting in a new maximum sentence date 607 days later, on February 2, 2009. Id.

Mitchell filed a timely request for administrative relief. In denying the petition, the Board set forth the above calculation. Mitchell petitions for review.¹

Without identifying the additional credit he seeks, Mitchell vaguely claims the Board miscalculated his new maximum date and failed to properly credit his original state sentence. In its entirety, Mitchell's argument is as follows:

[Mitchell] was paroled to New Jersey on May 16, 2005. He only received street time of one year, two months and fifteen days, from the Board. As a result of the Board's action this should have made [Mitchell's] parole maximum date September 3, 2007.² The Board erred in failing to give [Mitchell] credit for the time he served in New Jersey which was a result of the [B]oard's warrant and detainer. [Mitchell] was not able to post bond as a result of the Board's detainer.

[Mitchell's] Constitutional Rights were violated to Due Process [sic] protection since he was detained by the Board because of a detainer by New Jersey. [Mitchell] was entitled to credit against [his state sentence] for time he spent in custody on both a detainer by New Jersey and the Board's detainer. A denial of credit would mean that he would end up serving a longer period of incarceration

¹ Our review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether the necessary findings of fact were supported by substantial evidence. 2 Pa. C.S. §704; Reavis v. Pa. Bd. of Prob. & Parole, 909 A.2d 28 (Pa. Cmwlth. 2006).

² It is unclear how Mitchell arrives at this date. Assuming Mitchell added one year, two months and fifteen days to the original maximum date of July 31, 2006, the computation results in a new maximum date in mid-October 2007. Similarly, adding this time to June 6, 2007, the date Mitchell became available to serve backtime, would yield a new maximum date in August 2008.

solely due to his failure to post bail. [Melhorn v. Pa. Bd. of Prob. & Parole, 883 A.2d 1123 (Pa. Cmwlth. 2005), rev'd 589 Pa. 250, 908 A.2d 266 (2006)³].

Pet'r Br. at 9.

Reading the above argument in conjunction with Mitchell's petition for administrative relief and petition for review, we discern two arguments. First, Mitchell claims that when the Board released him to his second New Jersey detainer on May 16, 2005, only one year, two months and fifteen days remained until expiration of the original state sentence maximum date of July 31, 2006. Implicit in this argument is Mitchell's apparent belief that he should receive credit toward his original state sentence for time after his parole when he was out of the Board's custody.

³ Mitchell's reliance on our decision in Melhorn is misplaced. In that case, Melhorn was arrested on new criminal charges while being detained for parole violations. He was unable to post bail on the new charges, and upon conviction, the sentencing court failed to credit his new sentence with time served after his arrest and failure to post bail on the new charges. Recommitting Melhorn as a parole violator, the Board did not credit Melhorn's original sentence with time served after his arrest on the new charges. This Court, relying on Martin v. Pennsylvania Board of Probation and Parole, 576 Pa. 588, 840 A.2d 299 (2003), reversed the Board's denial of credit against Melhorn's original sentence. We concluded the sentencing court's failure to credit Melhorn's new sentence required Melhorn to serve a longer period of incarceration on the new sentence than he would have served had he posted bail. Since Melhorn was on parole from the new sentence, equity required the time be credited to his original sentence. Our Supreme Court reversed on appeal, citing its decisions in McCray v. Pennsylvania Department of Corrections, 582 Pa. 440, 872 A.2d 1127 (2005) and Gaito v. Pennsylvania Board of Probation and Parole, 488 Pa. 397, 412 A.2d 568 (1980).

As explained above, the Board here removed its first detainer prior to Mitchell's transfer to New Jersey. Therefore, the detainer could not impact Mitchell's ability to post bail there.

Mitchell's argument, however, is based on a misunderstanding of parole and subsequent revocation proceedings. When a parolee is recommitted as a convicted parole violator, Section 21.1(a) of the act commonly known as the Parole Act⁴ requires the Board to recommit the parolee for "the remainder of the term which said parolee would have been compelled to serve had he not been paroled" See Young v. Pa. Bd. of Prob. & Parole, 487 Pa. 428, 409 A.2d 843 (1979); Sherrell v. Pa. Bd. of Prob. & Parole, 533 A.2d 1089 (Pa. Cmwlth. 1987). In other words, in the absence of a sentencing order granting credit, the Board may recommit a parolee for the balance of his sentence without credit for time away from the Board's custody.

In this case, 994 days remained on Mitchell's original state sentence when the Board paroled him in November 2003. Once the Board recommitted Mitchell as a convicted parole violator and he became available to serve backtime, the Board calculated his new maximum date by adding the remainder of his original state sentence, less credit for time served against that sentence, to the date of availability. Thus, the Board added 607 days (994 days less 387 days credit) to June 6, 2007, resulting in a new maximum date of February 2, 2009. No error is apparent in this regard.

The second argument concerns Mitchell's May 16, 2005 transfer to New Jersey pursuant to the second New Jersey detainer. Mitchell contends that New Jersey authorities held him pursuant to the Board's first detainer which

⁴ Act of August 6, 1941, P.L. 861, as amended, added by the Act of August 24, 1951, P.L. 1401, 61 P.S. §331.21a(a).

prevented him from posting bail in New Jersey. Pet'r Br. at 9. Similarly, Mitchell claims entitlement to credit against his original state sentence because he was held pursuant to the Board's first detainer and the second New Jersey detainer. Id. His argument is unavailing for several reasons.

First, the record reveals the Board cancelled its first detainer on April 29, 2005, before Mitchell's transfer to New Jersey. C.R. at 74. Normally, the Board would release Mitchell only after cancellation of its detainer. See Timothy P. Wile, Pennsylvania Law of Probation and Parole, §11:10 (2d ed. 2003) (upon expiration of maximum sentence, a detainer must be removed and the parolee released if criminal charges have not been disposed or parolee has not been given a technical violation revocation hearing). The second New Jersey detainer, however, required the Board to hold Mitchell until transfer to that state could occur. See Commonwealth v. McNear, 852 A.2d 401 (Pa. Super. 2004) (a detainer is a means of informing the custodial jurisdiction of outstanding charges pending in another jurisdiction and a request to hold the prisoner or notify the requesting state of the prisoner's imminent release). Thus, Mitchell was detained solely as a result of the second New Jersey detainer as of April 29, 2005.

More importantly, Mitchell does not explain how the Board's first detainer affected his eligibility for bail in New Jersey. There is no record evidence Mitchell posted bail in New Jersey but remained incarcerated solely due to the

Board's first detainer. In addition, Mitchell does not explain why the Board would have transferred him to New Jersey if its detainer was still in force.⁵

Turning to the Board's response, it requests this Court affirm its recalculation order except to the extent it erroneously credited Mitchell's original state sentence. In particular, the Board credited Mitchell's state sentence with 17 days from April 29 through May 16, 2005, the time the Board held Mitchell solely pursuant to the second New Jersey detainer.

We decline the Board's invitation to correct its error. The Board did not appeal. Moreover, an administrative agency may on its own motion, after proper notice and explanation, correct typographical, clerical and mechanical errors obviated and supported by the record. Armbruster v. Pa. Bd. of Prob. & Parole, 919 A.2d 348 (Pa. Cmwlth. 2007); Lord v. Pa. Bd. of Prob. & Parole, 580 A.2d 463 (Pa. Cmwlth. 1990). Here, the Board must correct Mitchell's recommitment order by way of a new order. Mitchell may then pursue available remedies to challenge the Board's order and the accuracy of the evidence upon which it is based.

Accordingly, we affirm.

ROBERT SIMPSON, Judge

⁵ For example, the record does not demonstrate New Jersey requested temporary custody or extradition of Mitchell. See 42 Pa. C.S. §§9101-9108 (Agreement on Detainers) and 42 Pa. C.S. §§9121-9148 (Uniform Criminal Extradition Act).

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ORDER

AND NOW, this 12th day of March, 2008, the order of the Pennsylvania Board of Probation and Parole is **AFFIRMED**.

ROBERT SIMPSON, Judge