

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jaraye Sloan, :
Petitioner :
 :
v. : No. 1849 C.D. 2007
 : Submitted: April 25, 2008
Pennsylvania Board of 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 SMITH-RIBNER

FILED: August 5, 2008

Jaraye Sloan (Petitioner) petitions the Court for review of a decision by the Pennsylvania Board of Probation and Parole (Board) mailed September 7, 2007, which denied administrative review of the Board's decision and order mailed July 16, 2007 that recalculated Petitioner's new parole violation maximum date as February 18, 2009 based upon the Board's action recorded on July 13, 2007 to recommit Petitioner as a technical and convicted parole violator to serve eighteen months of backtime. Petitioner presented the following questions for review: 1) did the Board err by failing to award Petitioner credit against his original sentence for time when he was incarcerated in a state correctional institution due solely to the Board's detainer through the April 10, 2006 date of his arrest on new criminal charges; and 2) whether Petitioner is entitled to credit from the date of his arrest on the new criminal charges to his December 23, 2006 original maximum sentence date when the sentencing court for Petitioner's new charges only credited him with time served after the original maximum sentence date.

On January 29, 2001, Petitioner was sentenced by the Allegheny County Court of Common Pleas to a two-to-four-year prison term for robbery. Petitioner's original parole violation maximum date was calculated as August 25, 2004. Petitioner was released on parole on September 16, 2002 and became delinquent on December 6, 2002, causing the Board to issue a warrant to commit and detain Petitioner. Pursuant to the Board's warrant, Petitioner was arrested on April 4, 2005, had a hearing on April 13 and was recommitted on June 1 to serve twelve months of backtime. Because of the delinquency, Petitioner's new parole maximum date was recalculated to December 23, 2006.

On April 10, 2006, Lawrence County initiated proceedings against Petitioner relative to new criminal charges, listing April 10, 2006 as his arrest date. Bail was set at \$50,000, but Petitioner did not post bail. Although Petitioner's parole status for his Allegheny County sentence was reviewed April 27, 2006, he remained in custody with the decision pending due to the uncertainty regarding his Lawrence County charges. On December 23, 2006, Petitioner reached his parole maximum date, and as a result the Board removed its detainer. Petitioner remained in custody at that time pursuant to his Lawrence County charges.

On January 4, 2007, the Board closed its case relative to Petitioner's Allegheny County sentence as the parole maximum date had expired. On January 31, the Board rescinded its action because Petitioner's parole maximum date was subject to change if he was convicted of the pending charges. Thereafter, on March 7, 2007, Sloan pleaded guilty to a pending firearms charge in Lawrence County and received a sentence of six-to-twenty-three and one-half months. The Lawrence County court amended its sentencing order on March 15, 2007, giving the sentence a commencement date of December 24, 2006. In doing so, the court

gave Petitioner credit for all of the time he served after the December 23, 2006 parole maximum date but no credit for the time spent in prison from December 23, 2006 dating back to his Lawrence County arrest date of April 10, 2006.

The Board conducted a revocation hearing in May 2007 regarding Petitioner's parole status in light of his Lawrence County conviction. The Board decided to recommit Petitioner as a technical and convicted parole violator to serve eighteen months of backtime on his Allegheny County sentence, when available. On June 25, 2007, he was paroled in the Lawrence County matter. By decision mailed June 26, 2007, the Board recommitted Petitioner as a direct parole violator because of the Lawrence County conviction. On July 16, 2007, the Board mailed notice to Petitioner of his recalculated maximum date of February 18, 2009.

Neither the Board nor Lawrence County gave Petitioner credit for the days he spent in prison from April 4, 2005 to April 10, 2006 and from April 10, 2006 to December 23, 2006. As a result, Petitioner sought administrative relief seeking credit. The Board mailed its decision on September 7, 2007 upholding its July 16, 2007 recalculation order, explaining that when Petitioner was paroled in September 2002 he had 709 days remaining on his original sentence. He received no credit on his original sentence for the period April 13, 2006 to March 12, 2007 because he was not confined solely on a Board warrant, and credit for that period must be applied to the new sentence. The fact that the court did not apply proper credit did not mean that the Board was required to apply it to the original sentence. When Petitioner became available to begin serving his original sentence, 709 days were added to reach the recalculated parole maximum date of February 18, 2009.

Importantly, the Board now concedes before this Court that Petitioner was entitled to credit for the time he was incarcerated on the Board's detainer from

April 4, 2005 to April 10, 2006. Given the Board's concession and Petitioner's release on May 28, 2008, Petitioner filed a motion with the Court on June 12, 2008 to limit the Court's review to the remaining contested issue, *i.e.*, whether Petitioner is entitled to credit for the time he spent incarcerated on the Board's detainer for the period April 10, 2006 to December 23, 2006. (Although he has been released, he continues to seek a shortening of his sentence currently ongoing in the form of probation.) No response having been filed to the motion and finding that it is warranted under the circumstances, the Court grants Petitioner's request to limit review to the stated issue and will proceed accordingly to decide the merits.

The Court concludes that Petitioner's remaining issue already has been decided in *Melhorn v. Pennsylvania Board of Probation and Parole*, 883 A.2d 1123 (Pa. Cmwlth. 2005), *rev'd*, 589 Pa. 250, 908 A.2d 266 (2006). That case presented circumstances almost identical to those in the present case in all material respects. In *Melhorn* the petitioner had been confined for over five months because of a Board detainer and a new criminal charge for which he did not post bail. The sentencing judge did not credit the petitioner's time served to his new sentence, and just as in this case the petitioner petitioned to have his time served credited to backtime on his original sentence. The Board denied relief, and this Court reversed, citing *Martin v. Pennsylvania Board of Probation and Parole*, 576 Pa. 588, 605, 840 A.2d 299, 309 (2003), for the proposition that "where an offender is incarcerated on both a Board detainer and new criminal charges, all time spent in confinement must be credited to either the new sentence or the original sentence."

On appeal the Supreme Court reversed this Court without opinion and by per curiam order, citing *Gaito v. Pennsylvania Board of Probation and Parole*,

488 Pa. 397, 412 A.2d 568 (1980) and *McCray v. Pennsylvania Department of Corrections*, 582 Pa. 440, 872 A.2d 1127 (2005). In *Gaito* the Court held that where a defendant is incarcerated on a Board detainer for a parole violation and pending new charges, all time served shall be credited to the original sentence if the defendant meets bail requirements on the new charges and credited to the new sentence if the defendant does not meet bail requirements. In *McCray* the Court held that the appropriate remedy for the sentencing court's failure to apply credit for time served is to raise an objection before the sentencing court to preserve the issue for appellate review.

While trial courts hold a time-honored inherent power to correct patent sentencing errors despite the absence of traditional jurisdiction, this Court holds no such power. *Commonwealth v. Holmes*, 593 Pa. 601, 933 A.2d 57 (2007). The judicial remedy for a sentencing court's failure to credit time served lies with the sentencing court and on appeal to the Superior Court. Here, the time that Petitioner spent incarcerated after his Lawrence County arrest should have been credited by the sentencing court in Lawrence County. In accordance with Supreme Court mandate, the Board has no authority to order such credit and neither does this Court. Consequently, the Court must rule against Petitioner on the remaining issue for review for the reasons discussed, and it shall affirm the Board's order with respect to that issue.

DORIS A. SMITH-RIBNER, Judge

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ORDER

AND NOW, this 5th day of August, 2008, the Court hereby grants Petitioner's motion to limit the issue for review, and after consideration of the issue the Court affirms the order of the Pennsylvania Board of Probation and Parole to the extent that it denied Petitioner credit for time he spent incarcerated pending new criminal charges in Lawrence County from April 10, 2006 to December 23, 2006. The Board conceded that Petitioner was entitled to credit for the period from April 4, 2005 to April 10, 2006.

DORIS A. SMITH-RIBNER, Judge