

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Reginald Brown, :
Petitioner :
 :
v. : No. 1916 C.D. 2007
 : Submitted: February 8, 2008
 :
Pennsylvania Board of Probation :
and Parole, :
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: March 11, 2008

Reginald Brown (Petitioner) petitions pro se for review of a decision of the Pennsylvania Board of Probation and Parole (Board), denying his request for administrative relief from an order of the Board recommitting him as a convicted parole violator and concluding that Petitioner's revocation hearing was timely. We now affirm.

Petitioner was originally convicted of several counts of robbery and aggravated assault and sentenced in March of 1993 to a total term of incarceration of five to fifteen years. On December 13, 1999, Petitioner was released on parole to a community corrections center for a minimum period of three months. On April 11, 2000, Petitioner was released from the community corrections center. Petitioner thereafter moved to a residence in Philadelphia. On August 24, 2004, Petitioner was arrested by a task force consisting of federal ATF agents and officers of the Philadelphia police department and charged with possession of cocaine with intent to deliver, possession of

drug paraphernalia and possession of bulletproof vests. On the same day, the Board issued a warrant to commit and detain Petitioner.

On September 8, 2004, Petitioner was returned to the State Correctional Institution (SCI)-Graterford. Pursuant to a writ, on February 9, 2005, Petitioner was removed from SCI-Graterford and transferred to the Federal Detention Center in Philadelphia. On September 28, 2006, the United States District Court for the Eastern District of Pennsylvania found Petitioner guilty of two counts of possession of cocaine with intent to deliver and sentenced him to a term of incarceration of six years followed by six years of supervised release. Subsequently, on October 4, 2006, Petitioner was returned to SCI-Graterford.

Petitioner's parole agent did not, however, receive official verification of Petitioner's guilty verdict until April 13, 2007. On April 27, 2007, Petitioner received a notice of charges and revocation hearing as a result of his new conviction on September 28, 2006. A revocation hearing was then held at SCI-Graterford on May 1, 2007. At this hearing, Petitioner's parole agent introduced a certified copy of Petitioner's conviction in federal court dated April 13, 2007. Upon recommendation of the hearing examiner, the Board mailed Petitioner a decision on June 19, 2007, recommitting him as a convicted parole violator to serve eighteen months backtime, when available.

On June 23, 2007, Petitioner filed a petition for administrative review with the Board alleging that his revocation hearing was untimely. Specifically, Petitioner alleges that since he was returned from the federal detention center to SCI-Graterford on October 4, 2006, the Board was required to provide him with a revocation hearing within 120 days of this date in accordance with the Board's own regulations. See 37 Pa. Code §71.4(1) (revocation hearing shall be held within 120 days). By letter mailed on September 25, 2007, the Board denied Petitioner's request for administrative relief.

Citing 37 Pa. Code §71.4(1), the Board indicated that Petitioner’s revocation hearing was timely since it was held within 120 days of the date it received official verification of Petitioner’s federal conviction, i.e., official verification received on April 13, 2007, and hearing held on May 1, 2007. Petitioner thereafter filed a petition for review with this Court.

On appeal,¹ Petitioner reiterates his allegation before the Board that his revocation hearing was untimely. We disagree.

The general rule, as set forth in the Board’s regulations, requires the Board to hold a revocation hearing “within 120 days from the date the Board received official verification of the plea of guilty...or of the guilty verdict” before a parolee is recommitted as a convicted parole violator. 37 Pa. Code §71.4(1). “Official verification” of the plea of guilty is defined as the “actual receipt by a parolee’s supervising parole agent of a direct written communication from a court in which a parolee was convicted of a new criminal charge attesting that the parolee was so convicted.” 37 Pa. Code §61.1.

Subsection (i) of this regulation provides an exception to the general rule, stating as follows:

If a parolee is confined outside the jurisdiction of the Department of Corrections, such as confinement out-of-State, confinement in a Federal correctional institution or confinement in a county correctional institution where the parolee has not waived the right to a revocation hearing by a panel in accordance with Commonwealth ex. rel.

¹ Our scope of review of a Board’s recommitment order is limited to determining whether necessary findings of fact are supported by substantial evidence and are in accordance with law and whether any constitutional rights of the parolee have been violated. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Cromartie v. Pennsylvania Board of Probation and Parole, 680 A.2d 1191 (Pa. Cmwlth. 1996).

Rambeau v. Rundle, 455 Pa. 8, 314 A.2d 842 (1973), the revocation hearing shall be held within 120 days of the official verification of the return of the parolee to a State correctional facility.

37 Pa. Code §71.4(1)(i). When a parolee alleges that the Board held a hearing beyond the 120-day period, the Board bears the burden of proving, by a preponderance of the evidence, that the hearing was timely. Morgan v. Pennsylvania Board of Probation and Parole, 814 A.2d 300 (Pa. Cmwlth. 2003).

In the present case, Petitioner argues that the 120-day time period for his revocation hearing should have been calculated from October 4, 2006, the date that he was returned to SCI-Graterford following his convictions in federal court. In other words, Petitioner attempts to invoke the exception stated above requiring a revocation hearing to be held within 120 days of his return to a state correctional facility. However, this exception only applies when an inmate is confined outside the jurisdiction of the Board/Department of Corrections, such as confinement out of state or in a federal institution. Petitioner does not fall into either category. Rather, Petitioner remained in the custody of the Department of Corrections even during his temporary transfer to the Federal Detention Center to await trial on his new, federal charges.

This identical argument has been previously considered and rejected by this Court in Morgan. In Morgan, the inmate was arrested on new criminal charges. A detainer was lodged against him by the Board and he was subsequently transferred from a county prison to a state correctional institution. Similar to Petitioner herein, the inmate in Morgan was then transferred to the Federal Detention Center in Philadelphia to face new federal charges. Following his guilty plea on these federal charges, the inmate was returned to the state correctional institution. The inmate thereafter argued that the 120-day time period for his revocation hearing began to run upon his return to the state correctional institution.

Ultimately, we rejected this argument in Morgan, holding that 120-day time period begins to run upon the Board's receipt of official verification of the inmate's federal guilty plea. With respect to the inmate's temporary transfer to the Federal Detention Center, we stated as follows:

Similarly, in this case, Morgan, while serving his sentence in a state correctional facility, was transferred to a Federal Detention Center to enter his plea to the federal charges pursuant to a writ issued by the federal court. A judicial writ has been defined as 'requiring a person to appear at a specified time and place....' In re Simon, 297 F. 942, 944 (2nd Cir. 1924) (citations omitted). When a prisoner is detained pursuant to a writ for the purposes of presenting him to the court on new criminal charges, the prisoner is 'considered to remain in the primary custody of the first jurisdiction unless and until the first sovereign relinquishes jurisdiction over the person. The receiving sovereign...is, therefore, considered simply to be 'borrowing' the prisoner from the sending sovereign for the purposes of indicting, arraigning, trying, and sentencing him.' Ruggiano v. Reish, 307 F.3d 121, 125 n. 1 (3rd Cir. 2002).

Morgan, 814 A.2d at 303.

In the present case, while Petitioner was returned from the Federal Detention Center in Philadelphia to SCI-Graterford on October 4, 2006, the Board did not receive official verification of Petitioner's new federal conviction until April 13, 2007. Pursuant to our holding in Morgan, Petitioner's revocation hearing, held on May 1, 2007, was, therefore, timely.

Accordingly, the order of the Board is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

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and Parole,	:	
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ORDER

AND NOW, this 11th day of March, 2008, the order of the Pennsylvania Board of Probation and Parole is hereby affirmed.

JOSEPH F. McCLOSKEY, Senior Judge