

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

George Marschino,                                 :  
                     Petitioner                         :  
    :  
                     v.                                       : No. 2236 C.D. 2007  
    : Submitted: May 2, 2008  
 Pennsylvania Board of Probation           :  
 and Parole,                                       :  
   Respondent                 :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
            HONORABLE MARY HANNAH LEAVITT, Judge  
            HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE PELLEGRINI   FILED: May 23, 2008

George Marschino (Parolee) appeals an order of the Pennsylvania Board of Probation and Parole (Board) contending that he is entitled to 291 days credit on his parole violation maximum date and that the Board erred when it denied him credit for time spent in post-confinement facilities. Because the Board agrees that Parolee is entitled to 291 days credit for the period between July 6, 2006, and April 23, 2007, we will vacate the Board's order and remand to the Board to award that time. The only issue remaining is whether Parolee is also entitled to credit for time spent at post-confinement facilities.

In July 2005, Parolee was paroled to a halfway house, and in October of that year, he was detained at another post-confinement facility until January 2006. In January 2006, Parolee resided at another halfway house until he absconded in February 2006. In June 2006, Parolee was arrested on new criminal charges and detained before being returned to a state penal institution. After being convicted in April 2007, he was sentenced to 18 months to four years on criminal charges. In August 2007, a revocation hearing was held at which Parolee was represented by the Public Defender's Office. At the hearing, Parolee testified that he had spent time at various post-confinement facilities and that they had restricted his liberty; therefore, he was entitled to credit for the time he spent at those facilities. At that time, the hearing officer instructed Parolee that in order to receive credit for that time, he would have to request a separate evidentiary hearing. The hearing officer instructed Parolee to send a request to the Office of the Board Secretary to discover the exact dates of his residence at the post-confinement facilities. On September 13, 2007, in an apparent attempt to make a request for an evidentiary hearing on the issue of credit for time spent in post-confinement facilities, Parolee sent a letter to the Secretary stating that he believed that he should receive credit for the time that he spent at the post-confinement facilities and requested a timeline of credit he had received.

On September 18, 2007, the Board determined that Parolee would be recommitted as a convicted parole violator, setting a new maximum release date of December 19, 2008. Parolee filed a *pro se* petition for administrative appeal of the decision in October 2007, and his only contention in that administrative appeal was

that the Board had not included the 291 days credit. The Board Secretary affirmed the Board's decision, and this appeal followed.<sup>1</sup>

On appeal, Parolee contends that the Board erred when it denied him credit for time spent in post-confinement facilities because the "Board provided no fact specific analysis of [Parolee's] individual experience while a resident of the half-way houses." Ignoring whether that contention properly sets forth the correct burden, the issue of whether he was entitled to credit for time spent in the halfway houses was not before the Board because all that was involved in that hearing was whether his parole was properly revoked. As the hearing officer stated, to have that matter considered, Parolee had to request a separate evidentiary hearing to consider whether those post-confinement facilities so restricted Parolee's liberties to entitle him to credit. Because whether Parolee is entitled to such credit was not before the Board as it was not raised in his request for administrative relief, the matter is not presently before this Court. *See* Pa. R.A.P. 1551.

Accordingly, the order of the Board is vacated and remanded to the Board for the awarding of the 291 days it agrees that Parolee is entitled to be credited against his maximum date.

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DAN PELLEGRINI, JUDGE

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<sup>1</sup> Our scope of review when examining an order of the Board is limited to determining whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. *Morgan v. Pennsylvania Board of Probation and Parole*, 814 A.2d 300 (Pa. Cmwlth. 2003).

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**ORDER**

AND NOW, this 23<sup>rd</sup> day of May, 2008, the September 18, 2007 Order of the Board is vacated and remanded to the Board to award 291 days credit to Parolee, the period between July 6, 2006, and April 23, 2007, and recalculate Parolee's maximum release date.

Jurisdiction relinquished.

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DAN PELLEGRINI, JUDGE