

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Keith Devine,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Board	:	
of Probation and Parole,	:	
	:	No. 343 C.D. 2011
Respondent	:	Submitted: August 19, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: September 30, 2011

Keith Devine (Petitioner), an inmate at the State Correctional Institution (SCI) at Graterford, petitions this Court for review of the February 7, 2011 order of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief. Petitioner presents one issue for this Court’s review: whether the Board erred when it failed to credit Petitioner’s original sentence with the time he served on the Board’s detainer from August 13, 2007 through June 2, 2010. For reasons that follow, we affirm the Board’s order.

Petitioner was paroled on August 21, 2006. His maximum sentence date at that time was January 24, 2013. On August 13, 2007, Petitioner was arrested for parole violations. On August 16, 2007, Petitioner was arrested on an outstanding warrant. He was convicted of those charges on April 29, 2010, and sentenced to a new term of incarceration on June 2, 2010. On June 28, 2010, the Board mailed a

decision establishing Petitioner's new maximum sentence date to be November 2, 2016, essentially crediting his original sentence for three days. Petitioner filed a Petition for Administrative Review. On February 7, 2011, a decision was mailed affirming the Board's June 28, 2010 decision. Petitioner appealed to this Court.<sup>1</sup>

Petitioner argues that the Board erred when it failed to credit Petitioner's original sentence with the time he served on the Board's detainer from August 13, 2007 through June 2, 2010. Specifically, Petitioner contends that the record does not contain substantial evidence that bail was not satisfied. We disagree.

It is well established that,

if a defendant is being held in custody solely because of a detainer lodged by the Board and has otherwise met the requirements for bail on the new criminal charges, the time which he spent in custody shall be credited against his original sentence. If a defendant, however, remains incarcerated prior to trial because *he has failed to satisfy bail* requirements on the new criminal charges, then the time spent in custody shall be credited to his new sentence.

*Gaito v. Pennsylvania Bd. of Probation and Parole*, 488 Pa. 397, 403-04, 412 A.2d 568, 571 (1980) (emphasis added). Here, Petitioner conceded in his Petition for Administrative Review: "Petitioner never posted bail . . . ." Original Record at 105. He conceded the same in his Petition for Review before this Court, stating: "Petitioner never posted bail . . . ." Pet. for Rev. at 2. These statements are judicial admissions.

Judicial admissions . . . are formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and

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<sup>1</sup> "Our scope of review of a decision by the Board is limited to determining whether necessary findings of fact are supported by substantial evidence, an error of law was committed, or whether the constitutional rights of the parolee were violated." *Johnson v. Pennsylvania Bd. of Probation and Parole*, 19 A.3d 1178, 1179 n.2 (Pa. Cmwlth. 2011).

dispensing wholly with the need for proof of the fact. Thus, the judicial admission . . . is conclusive in the case . . . .

*Bartholomew v. State Ethics Comm'n*, 795 A.2d 1073, 1078 (Pa. Cmwlth. 2002).

“Judicial admissions may arise from a party’s statement in its pleadings . . . .” *Id.* “A party’s statements in its brief or oral argument to the trial court are treated as a judicial admission.” *Id.* Although Petitioner’s pleadings were filed during the appellate stage of this matter, it would be absurd for Petitioner to argue that although he admitted to failing to post bail, the fact that said failure was not proven discounts the admission.

As the law is clear that time gets credited to a parolee’s new sentence when bail is not satisfied and to Petitioner’s original sentence only when bail is satisfied, and given Petitioner’s admission that bail was not satisfied, the Board did not err in not crediting the time served to Petitioner’s original sentence.

For all of the above reasons, the Board’s order is affirmed.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 30<sup>th</sup> day of September, 2011, the February 7, 2011 order of the Pennsylvania Board of Probation and Parole is affirmed.

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JOHNNY J. BUTLER, Judge