

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alonzo M. Brodie, :
 :
 Petitioner :
 :
 v. : No. 351 C.D. 2009
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 :
 Pennsylvania Board of : Submitted: September 11, 2009
 Probation and Parole, :
 :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE JAMES R. KELLEY, Senior Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: October 27, 2009

Alonzo M. Brodie petitions for review of an order of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief. We affirm.

Brodie was sentenced to serve 8 to 16 years at the State Correctional Institution at Camp Hill (SCI-Camp Hill) after pleading guilty on January 8, 1988, to the offense of aggravated assault with serious bodily injury. Brodie was released on parole on January 30, 1997. Brodie later absconded while on parole and was subsequently arrested for and convicted in Maryland for molesting a ten year old girl; therefore, he is classified as a Megan's Law Offender.¹

¹ See Sections 9791 through 9799.9 of the Judicial Code, 42 Pa.C.S. §§9791-9799.9, for
(Continued....)

Brodie was released on parole again on June 6, 2005, to the Harrisburg Community Corrections Center. On July 26, 2005, Brodie absconded from the Harrisburg facility and was declared delinquent. On June 5, 2006, Brodie was arrested in the Commonwealth of Virginia and charged with resisting arrest and other violations. Brodie pleaded guilty to the new criminal charges on September 11, 2006, and was sentenced to time served and fines. Although the Board had issued a detainer, Brodie was then released by the Virginia authorities.

The Board issued a second detainer and Brodie was arrested on September 20, 2007, by the Norfolk, Virginia police department based on the Board's detainer. Brodie was extradited to Pennsylvania on September 25, 2007, and lodged at SCI-Camp Hill. On October 1, 2007, Brodie was arrested by the Harrisburg police department for failing to register with the Pennsylvania State Police and failure to verify his address in violation of Megan's Law. He was given a preliminary arraignment and incarcerated at the Dauphin County Prison. Brodie did not post bail.

Brodie pleaded guilty in the Dauphin County Court of Common Pleas on February 6, 2008, to misdemeanor 2 Megan's Law violations. The Common Pleas Court sentenced Brodie to a new term of confinement of 6 to 12 months in Dauphin County Prison with credit for the period January 31, 2008 to February 6, 2008. On August 5, 2008, the Court of Common Pleas paroled Brodie from this new 6 to 12 month sentence and he was returned to SCI-Camp Hill.

Following a parole revocation hearing, the Board, by decision dated September 17, 2008, recommitted Brodie as a convicted parole violator to serve his unexpired term of 1 year, 4 months and 18 days. The Board also calculated

the provisions of what is commonly referred to as Pennsylvania's Megan's Law II.

Brodie's parole violation maximum date as December 23, 2009. In so doing, the Board credited Brodie with 11 days for the time period beginning September 20, 2007, when he was arrested pursuant to the Board's detainer, until October 1, 2007, when he was arrested on new criminal charges for which he did not post bail.

Brodie, *pro se*, appealed the Board's decision. Therein, Brodie challenged the recalculation of his parole violation maximum date on the basis that both the Board and the Court of Common Pleas of Dauphin County failed to give him credit for all the time served while he was incarcerated at SCI-Camp Hill. Brodie alleged that he was confined at SCI-Camp Hill from September 20, 2007, until January 31, 2008, when he was transferred to Dauphin County Prison for the new criminal charges related to his October 1, 2007, arrest. Brodie alleged further that he stayed confined at the Dauphin County Prison until February 15, 2008, when he was returned to SCI-Camp Hill where he stayed until April 8, 2008, at which time he was transferred back to Dauphin County Prison to start serving his county sentence of 6 to 12 months. Therefore, Brodie requested that the Board grant him credit for 201 days from September 20, 2007, until April 8, 2008, since he did not receive credit on this time for his new charges.²

By decision mailed February 5, 2009, the Board denied Brodie's request for administrative relief. Therein, the Board explained that Brodie was not entitled to any credit on his original sentence for the period between October 1, 2007, and August 5, 2008, because he was not incarcerated solely on the Board's warrant during that period. The Board explained further that Brodie did not become available to commence service on his original sentence again until he was

² The time period between September 20, 2007, and April 8, 2008, is 212 days; therefore, Brodie is not seeking credit for the 11 days he was already credited by the Board.

paroled from his new county sentence on August 5, 2008. Accordingly, the Board affirmed its September 17, 2008, decision. This appeal followed.³

This Court's scope of review of a decision by the Board is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether the constitutional rights of the parolee was violated. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, Gaito v. Pennsylvania Board of Probation and Parole, 563 A.2d 545 (Pa. Cmwlth. 1989), petition for allowance of appeal denied, 525 Pa. 589, 575 A.2d 118 (1990).

Herein, Brodie raises the issue of whether the Board erred when it recalculated his parole violation maximum date by failing to give him credit for the time he served while awaiting trial on new charges.⁴ Brodie argues that when a parolee's new sentence is less than the time spent awaiting trial for the new charges, the Board must credit excess time to the parolee's original sentence. In support of this argument, Brodie cites to our Supreme Court's decision in Martin v. Pennsylvania Board of Probation and Parole, 576 Pa. 588, 840 A.2d 299 (2003).

In response, the Board argues that amount of time in dispute is not 201 days but the 128 days that Brodie was confined because of his new criminal charges without posting bail from October 1, 2007, to February 6, 2008. The Board argues further that Brodie is clearly not entitled to credit under Martin and

³ By order of March 17, 2009, this Court appointed the Public Defender of Cumberland County to represent Brodie in this appeal. We note that the brief filed by the Public Defender was drafted by a certified legal intern.

⁴ We note that Brodie's brief correctly states in the Statement of the Case that he pleaded guilty on February 6, 2008, to the new Dauphin County charges; however, in the Summary of Argument, the brief misrepresents that Brodie awaited trial on these charges until April 8, 2008.

that a claim that a sentencing court did not properly award credit on a new sentence must be addressed at the sentencing court level or on appeal to the Superior Court. See Melhorn v. Pennsylvania Board of Probation and Parole, 883 A.2d 1123 (Pa. Cmwlth. 2005), reversed, 589 Pa. 250, 908 A.2d 266 (2006).

We agree with the Board that the Supreme Court's decision in Martin is not applicable to this matter. In Martin, a parolee was arrested on new criminal charges and served approximately 13 months in pre-sentence confinement on the charges. Ultimately, however, the parolee only received a 48-hour sentence on the new charges. Because the period served in pre-sentence confinement exceeded the sentence on the new charges, our Supreme Court required the Board to credit the parolee's original sentence for the period served in pre-sentence confinement.

Unlike Martin, Brodie's sentence of 6 to 12 months on the Dauphin County charges exceeds the period served in pre-sentence confinement whether it is calculated as 201 or 128 days. Thus, Martin is factually distinguishable.

More importantly, our Supreme Court limited application of Martin in Melhorn. This Court interprets the holding as follows:

[W]here a parole violator is confined on both the Board's warrant and the new criminal charges and it is not possible to award all of the credit on the new sentence because the period of pre-sentence incarceration *exceeds* the maximum term of the new sentence, the credit must be applied to the offender's original sentence.

Armbruster v. Pennsylvania Board of Probation and Parole, 919 A.2d 348, 355 (Pa. Cmwlth. 2007) (emphasis in original); see Banks v. Pennsylvania Board of Probation and Parole, 928 A.2d 384 (Pa. Cmwlth.), petition for allowance of appeal denied, 594 Pa. 706, 936 A.2d 41 (2007). Furthermore, where a state parolee does not post bail after an arrest on new criminal charges, and a court imposes a sentence on those charges that exceeds pre-sentence confinement, questions about

credit on the new sentence must be resolved by the sentencing court, not the Board.
Banks.

Herein, Brodie was held on both a Board detainer and the Dauphin County charges during the period for which he seeks credit toward his original state sentence. Ultimately, he was convicted on these charges and received the Dauphin County sentence, which includes a maximum term of 12 months that exceeded his pre-trial confinement.⁵ Under these circumstances, the Board did not err in rejecting Brodie's request for credit toward his original state sentence.
Banks.

The Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

⁵ Contrary to Brodie's implication in his brief, when determining whether a new sentence is longer than the pre-sentence period of confinement, the maximum term of the sentence is used not the minimum. See Armbruster.

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Pennsylvania Board of	:	
Probation and Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 27th day of October, 2009, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge