

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Samuel Walton,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 681 C.D. 2008
	:	SUBMITTED: September 19, 2008
Pennsylvania Board of Probation	:	
and Parole,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: October 22, 2008

Samuel Walton petitions for review of the decision of the Pennsylvania Board of Probation and Parole (Board) denying his administrative appeal from his recommitment as a convicted parole violator.

Walton was paroled from a York County sentence of 2½ to 5 years with a maximum expiration date of March 28, 1999. He was arrested by New York City Police on March 12, 1999, on the charge of criminal possession of a weapon in the second degree. The Board declared him delinquent for control purposes, effective March 12, 1999, as recorded on March 31, 1999. Walton entered a guilty plea on August 4, 1999, and received a 10-year determinate

sentence followed by 5 years of supervised release. The Board issued a detainer warrant on October 12, 1999.

The Board's Supervision History report reflects that the Pennsylvania Interstate Compact Service¹ received notice on October 2, 2007, that Walton completed his New York sentence and was available for transfer, and Board agents took custody of Walton on October 9, 2007, for return to SCI Somerset. At a revocation hearing held on December 18, 2007, where Walton was represented by counsel, the Board entered into evidence certified copies of the New York arrest report and sentence and commitment documents. Walton admitted to the New York criminal conviction, but raised the issue of the Board's authority to revoke his parole based on its failure to declare him delinquent before the expiration of his original sentence on March 28, 1999. The Board recommitted Walton as a convicted parole violator to serve 9 months of backtime and recalculated his parole violation maximum date as November 12, 2009. The Board denied Walton's administrative appeal. This appeal followed.

Walton argues essentially that the Board had no authority to revoke his parole because it failed to declare him delinquent or issue a detainer warrant until after the expiration of his maximum term. More specifically, Walton argues that the delinquency notice issued on March 31, 1999, effective March 12, 1999, declared him delinquent retroactively, a procedure denounced by this court in *Treng v. Pennsylvania Board of Probation and Parole*, 456 A.2d 224 (Pa.

¹ Pennsylvania enacted the Interstate Compact for the Supervision of Adult Offenders Act, Act of June 19, 2002, P.L. 377, as amended, 61 P.S. §§ 324-324.4.

Cmwlth. 1983), and the Board did not issue a detainer warrant until October 12, 1999.² Discerning no merit in Walton's argument, we affirm.

Walton concedes that he pleaded guilty to a crime committed while on parole. Section 21.1(a) of the Act commonly referred to as the Parole Act,³ 61 P.S. § 331.21a(a), provides in pertinent part:

(a) Convicted Violators. Any parolee under the jurisdiction of the Pennsylvania Board of Parole released from any penal institution of the Commonwealth who, during the period of parole or while delinquent on parole, commits any crime punishable by imprisonment, from which he is convicted or found guilty by a judge or jury or to which he pleads guilty or nolo contendere at any time thereafter in a court of record, may, at the discretion of the board, be recommitted as a parole violator.

The Board retains jurisdiction to recommit a parolee convicted of a crime committed while on parole even after the expiration of the maximum sentence date. Parole Act Section 21.1(a), 61 P.S. § 331.21a(a); *Commonwealth ex rel. Sparks v. Russell*, 403 Pa. 320, 169 A.2d 884 (1961). This is so even when the arrest occurs after the parolee's maximum date, so long as the act constituting the parole violation occurred during the period of parole. *Adams v. Pennsylvania Board of Probation and Parole*, 885 A.2d 1121 (Pa. Cmwlth. 2005); *Sparks*

² The petition for review raises issues related to the timeliness of the revocation hearing based on language in the Interstate Compact relating to extradition. These issues are not addressed in petitioner's brief and are therefore not considered. Pa. R.A.P. 2116(a); *Muretic v. Workers' Comp. Appeal Bd. (Dept. of Labor and Indus.)*, 934 A.2d 752 (Pa. Cmwlth. 2007), *petition for allowance of appeal granted on other grounds*, ___ Pa. ___, 955 A.2d 343 (2008) (issues not presented in statement of issues and developed in brief are waived).

³ Act of August 6, 1941, P.L. 861, *as amended*, added by Section 5 of the Act of August 24, 1951, P.L. 1401.

(parolee becomes convicted parole violator as of date of arrest if subsequently convicted of offense).

Walton cites no authority in support of his argument that the Board must issue a notice of delinquency or detainer warrant before the expiration of the parolee's maximum sentence date and, as stated above, the Board need not issue a detainer or notice of delinquency to acquire jurisdiction to recommit a parolee.

Contrary to Walton's contentions, this court's decision in *Treng* does not hold that the Board may not declare a parolee delinquent retroactively or that a failure to declare a parolee delinquent before expiration of his maximum sentence date deprives the Board of jurisdiction to recommit the parolee as a convicted parole violator. After Treng's maximum date, the Board declared him delinquent for control purposes as of the date of his arrest on criminal charges, some three months earlier. Treng argued that had he received notice that he was declared delinquent, he would have pleaded guilty to the new criminal charges. While agreeing with Treng that the Board's notice declaring him delinquent retroactively seemed to have no statutory basis, the court held that the Board acted within its statutory authority to recommit Treng as a direct violator even though he was not convicted until after the expiration of his maximum sentence. Two years later in *Carr v. Pennsylvania Board of Probation and Parole*, 494 A.2d 1174 (Pa. Cmwlth. 1985), the court upheld the Board's jurisdiction to recommit a convicted parole violator when the arrest and the Board's delinquency declaration⁴ occurred after the parolee's maximum date. *Accord Adams*.

⁴ A delinquency declaration is "an administrative procedure not mandated by the Parole Act or Board regulations." *Passaro v. Pa. Bd. of Prob. and Parole*, 499 A.2d 725, 726 (Pa. Cmwlth. 1985). This administrative procedure signals that the case is to be reviewed after disposal of the new charges. *Jeziak v. Pa. Bd. of Prob. and Parole*, 530 A.2d 1031 (Pa. Cmwlth. 1987).

Walton's argument that, under the reasoning of *Williams v. Pennsylvania Board of Probation and Parole*, 654 A.2d 235 (Pa. Cmwlth. 1995), the Board erred by failing to lodge a detainer before the expiration of the maximum date, is similarly without merit. In *Williams*, the parolee raised the issues of whether the Board's authority to recommit a convicted parolee depended on its initiating violation proceedings before the parolee's maximum date and whether the Board erred in failing to lodge a detainer until after the conviction. The court noted that the parole agent did not become aware of Williams' arrest until after the maximum date and, under those circumstances, rejected Williams' argument that the Board's failure to take administrative action prevented it from revoking his parole. The *Williams* decision does not hold or even suggest that the Board must lodge a detainer before the expiration of the parolee's maximum date or be precluded from recommitting a convicted parole violator.

In conclusion, the Board retains jurisdiction to recommit a parolee convicted of a crime committed while on parole even after the expiration of the maximum sentence date, notwithstanding the Board's failure to issue a delinquency declaration or detainer before the parolee's maximum date. *Adams*.

The Board's order is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

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

ORDER

AND NOW, this 22nd day of October 2008, the order of the Pennsylvania Board of Probation and Parole in the above captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge