

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Donald Marrow,	:		
	:		
Petitioner	:		
	:		
v.	:	No. 741 C.D. 2008	
	:	SUBMITTED: October 3, 2008	
Pennsylvania Board of Probation	:		
and Parole,	:		
	:		
Respondent	:		

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: December 4, 2008**

Donald Marrow petitions for review of the order of the Pennsylvania Board of Probation and Parole (Board) denying his petition for administrative review challenging his recalculated parole violation maximum date following his recommitment as a convicted parole violator.

On September 27, 1990, Marrow was released on parole from an aggregate sentence of 1 year, 6 months to 5 years, with a maximum date of November 2, 1993. He was detained on December 20, 1990, pending resolution of new criminal charges and released on March 25, 1992, after the charges were dismissed. He was arrested on April 30, 1992, on new state charges; the Board issued a detainer on May 1, 1992, and Marrow returned to a state correctional

institution on June 10, 1992. On September 9, 1992, Marrow was indicted on new federal criminal charges and the state charges were discharged for lack of prosecution.<sup>1</sup> Marrow entered a guilty plea to the federal charges on December 14, 1992, and on March 24, 1993, received a federal prison sentence of 210 to 260 months, followed by 6 years of supervised release. He was transferred to federal custody on August 4, 1993.

By decision mailed on July 16, 1993, the Board recommitted Marrow as a convicted parole violator to serve 36 months of backtime when available. By decision mailed on September 6, 2007, the Board modified the recommitment decision to reflect a recalculated parole violation maximum date of January 30, 2009. The Board denied Marrow's petition for administrative review.

On appeal to this court, Marrow argues that the Board violated Section 21.1 of the Act commonly referred to as the Parole Act,<sup>2</sup> 61 P.S. § 331.21a, by not permitting him to serve his backtime before serving his new federal sentence and, thus, lost jurisdiction to compel him to serve the backtime, and that the Board has failed to credit him with all time spent in custody on its warrant.

Section 21.1(a) of the Parole Act, 61 P.S. § 331.21a(a), states that when a new sentence is imposed on a parolee for commission of a crime punishable by imprisonment while on parole, the balance of the original term precedes the commencement on the new term when the parolee is paroled from a state correctional institution and the new sentence is to be served in a state correctional institution, or when the parolee is paroled from a county institution

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<sup>1</sup> By decision recorded on November 4, 1992, the Board recommitted Marrow as a technical parole violator when available.

<sup>2</sup> Act of August 6, 1941, P.L. 861, *as amended*, added by Section 5 of the Act of August 24, 1951, P.L. 1401.

and the new sentence is to be served in the same county institution. “In all other cases, the service of the new term for the latter crime shall precede commencement of the balance of the term originally imposed.” *Id.*

As a convicted parole violator, Marrow received a federal sentence to be served in a federal correctional institution. Where a convicted parolee is directed to serve his federal sentence in a federal correctional institution, he is required to serve the new federal sentence before serving backtime on his original sentence. *Id.*; *Griffin v. Pa. Dep’t of Corr.*, 862 A.2d 152 (Pa. Cmwlth. 2004), *aff’d per curiam*, 590 Pa. 651, 915 A.2d 639 (2007). The Board did not violate the Parole Act when it surrendered Marrow to federal custody, and it did not lose jurisdiction over him when it returned him to federal custody. *Bellochio v. Pa. Bd. of Prob. & Parole*, 559 A.2d 1024 (Pa. Cmwlth. 1989).

When Marrow was paroled in 1990, he had a balance of 1132 days remaining on his original state sentence. The Board credited Marrow with 462 days served pursuant to its detainer from December 19, 1990, to March 25, 1992, and with 131 days from May 1, 1992, to September 9, 1992, the date of his indictment on the new federal charges. Adding the balance of 593 days to August 10, 2007, the date Marrow was returned to the Department of Corrections upon completion of his federal sentence, resulted in a parole violation maximum date of January 30, 2009.

Marrow argues that because he was in state custody from May 1, 1992, to August 4, 1993, he should receive credit against his original sentence for that entire period. We disagree. Pursuant to our Supreme Court’s decision in *Gaito v. Pennsylvania Board of Probation and Parole*, 488 Pa. 397, 412 A.2d 568 (1980), time spent in custody pursuant to a Board detainer can be credited to a

convicted parole violator's original term only when the parolee was eligible for, and satisfied, the bail requirements for the new offense. When a parolee fails to satisfy bail requirements on new charges, he is not held solely on the Board's warrant and the time spent in custody must be applied to the new sentence unless the parolee is not convicted or no new sentence is imposed. *Id.*; *Jones v. Pa. Bd. of Prob. & Parole*, 831 A.2d 162 (Pa. Cmwlth. 2003).

As noted by the Board in its brief, Marrow does not argue that his parole violation maximum was not properly calculated pursuant to *Gaito*; rather, he argues that this case is similar to *Walker v. Pennsylvania Board of Probation & Parole*, 729 A.2d 634 (Pa. Cmwlth. 1999), and *Gustis v. Pennsylvania Board of Probation & Parole*, 737 A.2d 822 (Pa. Cmwlth. 1999). In *Walker*, the parolee was convicted of new charges in Maryland, and the issue before the court involved the effect of an out-of-state sentence ordered to run concurrent to the parolee's original Pennsylvania sentence. *Gustis* involved a convicted parole violator with multiple new in-state convictions and the issue involved a determination of when the parolee became available to serve his backtime and original sentence. Contrary to Marrow's assertions, neither *Walker* nor *Gustis* advances his claim for credit in this case. The record supports the Board's recalculation of Marrow's parole violation maximum date and reflects that the Board credited him for all periods of time when he was held solely on the Board's detainer.

Accordingly, the Board's order is affirmed.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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	:	
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**ORDER**

AND NOW, this 4th day of December, 2008, the order of Pennsylvania Board of Probation and Parole in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge