

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Alston, :  
Petitioner :  
v. : No. 775 C.D. 2007  
 : Submitted: January 25, 2008  
Pennsylvania Board of :  
Probation and Parole, :  
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: March 26, 2008

William Alston petitions for review of an adjudication of the Pennsylvania Board of Probation and Parole (Board) recommitting Alston as a technical parole violator and recalculating his maximum term expiration date. Alston contends that the Board erred by failing to give him credit for 788 days he was incarcerated in New Jersey. Finding no error by the Board, we will affirm.

Alston was initially sentenced on December 13, 2001, to serve an aggregate term of 3 years, 6 months to 7 years (original sentence) after he was convicted of aggravated assault, attempting to elude a police officer and robbery of a motor vehicle. At the time his original sentence was imposed, Alston's minimum expiration date was July 5, 2004, and his maximum expiration date was January 5, 2008. Alston was paroled from his original sentence on July 29, 2004.

Alston absconded from parole supervision and was declared delinquent effective October 1, 2004. The Board issued a warrant for his arrest on October 8, 2004. Alston was arrested in Jersey City, New Jersey on October 8, 2004, and detained on both the Board's warrant and a warrant issued by the State of New Jersey for a violation of his New Jersey probation that had occurred prior to his Pennsylvania conviction and sentence. On November 12, 2004, a New Jersey Superior Court revoked Alston's probation and sentenced him to serve a new 5-year term in a New Jersey correctional facility, with credit toward that sentence for the 35 days Alston was confined from October 8, 2004, to November 11, 2004. The New Jersey court ordered that Alston's 5-year term run concurrently with his Pennsylvania sentence. Alston was released from his New Jersey sentence on December 5, 2006, and he was returned to the Board's custody.

Alston waived his right to a parole violation hearing and admitted to violating the following conditions of his parole: (1) leaving the parole district without permission, (2) failing to report to parole staff and (3) using a controlled substance (cocaine). By order mailed January 19, 2007, the Board recommitted Alston as a technical parole violator and recalculated his maximum term expiration date to be March 10, 2010. The effect of the Board's order was to deny Alston credit for the 7 days he was delinquent prior to his arrest (October 1, 2004, to October 8, 2004); the 35 days of pre-sentence confinement in New Jersey (October 8, 2004, to November 11, 2004); and the 753 days he was incarcerated in New Jersey on his new 5-year sentence (November 12, 2004, to December 5, 2006).

Alston petitioned for administrative review of the Board's recalculation order on February 20, 2007. The Board affirmed the order on April 17, 2007, and Alston now petitions this Court for review.

Before this Court,<sup>1</sup> Alston contends that he is entitled to credit for the 788 days he was incarcerated in New Jersey.<sup>2</sup> He advances two arguments in support of this claim. First, Alston argues that because he was held in New Jersey on new criminal charges as well as on the Board's detainer, the Board should have credited his new sentence with the time he was confined in New Jersey. Second, Alston argues that the Board failed to give full faith and credit to the New Jersey Superior Court's order that his New Jersey sentence run concurrently with his Pennsylvania sentence.

We begin with Section 21.1a(b) of the Parole Act,<sup>3</sup> which governs the recommitment of technical parole violators. Pursuant to Section 21.1a(b), a technical parole violator who is recommitted

*shall be given credit for the time served on parole in good standing but with no credit for delinquent time, and may be reentered to serve the remainder of his original sentence or sentences. Said remainder shall be computed by the board from the time his delinquent conduct occurred for the unexpired period of the maximum sentence imposed by the court without credit for the period the parolee was delinquent on parole, and he shall be required to serve such remainder so computed from the date he is taken into custody on the warrant of the board.*

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<sup>1</sup> Our review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. *Hears v. Pennsylvania Board of Probation and Parole*, 851 A.2d 1003, 1004 n. 2 (Pa. Cmwlth. 2004).

<sup>2</sup> Alston concedes that he is not entitled to credit for the 7 days he was delinquent from October 1, 2004, to October 8, 2004.

<sup>3</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, 61 P.S. §331.21a(b).

61 P.S. §331.21a(b) (emphasis added). In interpreting Section 21.1a(b), this Court has held that “[a]ny time which a parolee spends incarcerated on another charge cannot be considered time served on parole in good standing.” *Ranson v. Pennsylvania Board of Probation and Parole*, 568 A.2d 1334, 1335 (Pa. Cmwlth. 1989).

Applying the foregoing principles, the 788 days Alston was incarcerated in a New Jersey correctional facility was, quite simply, time spent on “another charge.” *Id.* It cannot be considered time served on parole in good standing for purposes of Section 21.1a(b) and, therefore, that time is not creditable.

Our Supreme Court’s decision in *Martin v. Pennsylvania Board of Probation and Parole*, 576 Pa. 588, 840 A.2d 299 (2003), does not, as Alston argues, command a different result. Citing *Martin*, Alston contends that because he was detained in New Jersey on warrants issued by the Board and by the State of New Jersey, he was actually serving time on both sentences while he was incarcerated in the New Jersey correctional facility. Alston’s position is without merit and directly contrary to the Supreme Court’s actual holding in *Martin*: “[W]here an offender is incarcerated on both a Board detainer and new criminal charges, all time spent in confinement must be credited to *either the new sentence or the original sentence.*” *Id.* at 605, 840 A.2d at 309 (emphasis added). Alston’s 5-year sentence in New Jersey was the “new sentence,” and the time he spent in jail in New Jersey counted toward that sentence, not toward his original sentence in Pennsylvania. Adopting Alston’s position would effectively award him double credit for the same period of incarceration toward two sentences imposed by two different sovereigns. Such a position is untenable. In sum, we agree with the Board that Alston is not entitled to credit for the 788 days he was incarcerated in New Jersey.

Alston also contends that the Board was required to give full faith and credit to the New Jersey Superior Court's directive that his sentences run concurrently. In support, Alston cites *Walker v. Pennsylvania Board of Probation and Parole*, 729 A.2d 634 (Pa. Cmwlth. 1999), where this Court held that the Board had to give full faith and credit to concurrent sentencing imposed by a Maryland court. Alston's reliance on *Walker* is misplaced, however, because that case is distinguishable from the present case. In *Walker*, Maryland authorities permitted a parolee to serve a portion of his sentence in Maryland concurrently with the backtime he had served on his original sentence in the Commonwealth. In this case, Alston does not seek credit for time served as a result of a Board recommitment order. Nor does he seek credit for time served in the Commonwealth. Alston seeks credit for time served in the state of New Jersey, an argument that has already been soundly rejected by this Court:

Petitioner now seeks to extend our holding in *Walker* to require that the Commonwealth grant him credit for time served outside of the Commonwealth's jurisdiction. Neither *Walker* nor the Full Faith and Credit Clause mandate such a result.

*Vance v. Pennsylvania Board of Probation and Parole*, 741 A.2d 838, 841 (Pa. Cmwlth. 1999). We likewise reject Alston's attempt to extend *Walker* to the facts in this case.

For all of the foregoing reasons we affirm the order of the Board.

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MARY HANNAH LEAVITT, Judge

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**ORDER**

AND NOW, this 26<sup>th</sup> day of March, 2008, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter, dated April 17, 2007, is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge