

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Rankin, Jr., :
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 Petitioner :
 :
 :
 v. : No. 81 C.D. 2008
 : SUBMITTED: July 11, 2008
 Pennsylvania Board of Probation :
 and Parole, :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER

FILED: October 22, 2008

Thomas Rankin, Jr., currently incarcerated at State Correctional Institution-Retreat, petitions for review of the order of the Pennsylvania Board of Probation and Parole (Board), denying his administrative appeal from a decision recommitting him as a technical and convicted parole violator.

Rankin was originally sentenced to a term of 5 to 10 years on the charges of robbery, attempted burglary, and criminal conspiracy to commit robbery. The Board paroled Rankin on May 22, 2006. At that time, Rankin's maximum date was September 12, 2008. As a condition of parole (Condition #1), Rankin was required to: "Report in person or in writing within 48 hours to the district office or sub-office listed below, and do not leave that district without prior

written permission of the parole supervision staff.” Certified Record (C.R.), p. 15. Rankin was told to report to the Altoona District Office. Rankin later requested a transfer to the Scranton District in Lackawanna County, Pennsylvania. On October 6, 2006, Rankin was given a written order to report to the Scranton District Office on October 10, 2006, as a result of his supervision transfer.

On October 7, 2006, Rankin was arrested on new criminal charges in York County. The same day, the Board issued a detainer warrant. Rankin posted bail from this arrest on October 24, 2006. On May 10, 2007, the Court of Common Pleas of York County convicted Rankin of Criminal Attempt to Manufacture, Delivery, Possession with Intent to Manufacture or Deliver a Controlled Substance-Cocaine and Marijuana. On June 27, 2007, Rankin was sentenced to a term of 1 ½ to 3 years for this offense.

Rankin’s notice of violation/revocation hearing specified that Rankin was charged with, *inter alia*, violating Condition #1 of his parole (out of the district without prior written permission of the parole supervision staff), based on his arrest in York County.

At the violation/revocation hearing, Rankin’s parole agent testified that: (1) Rankin was instructed to report to the Scranton District on October 10, 2006, in order to transfer supervision from the Altoona District to the Scranton District; (2) Rankin was arrested in York County on October 7, 2006; (3) York County is not within the Scranton District, nor part of a direct route of travel between Rankin’s residence in Northern Cambria (in the Altoona District) and the Scranton District; and (4) Rankin did not have permission to travel to York County. Rankin’s parole agent also introduced documentation that Rankin was convicted by the Court of Common Pleas of York County of Criminal Attempt to

Manufacture, Delivery, Possession with Intent to Manufacture or Deliver a Controlled Substance-Cocaine and Marijuana.

On August 10, 2007, the Board ordered that Rankin be recommitted for 18 months backtime for the conviction to be served concurrently with 6 months backtime for the technical parole violation for violating Condition #2 of his parole (change of residence without permission), for a total of 18 months backtime.

Rankin filed a request for administrative relief, objecting to the decision mailed August 30, 2007, contending, *inter alia*, that he did not violate Condition #2 (change of residence without permission). On October 18, 2007, the Board sent a modified revocation decision, which deleted reference to violation of Condition #2 and recommitted Rankin for violating Condition #1, “failure to report within 48 hours of release.” C.R., p. 90.¹

Rankin, thereafter, filed another administrative appeal objecting, *inter alia*, to the amended revocation decision, “since an administrative appeal had already been timely forwarded to the Board alleging error by the Board and that the thirty (30) day period for filing an appeal had expired prior to the October 18, 2007[,] mailing date of the new Board action.” C.R., pp. 95-96. In the Board’s response to both administrative appeals, it affirmed the decision mailed August 30, 2007 (as amended by the decision mailed October 18, 2007). The appeal to this court followed.

Rankin raises three issues on appeal. Rankin first argues that he should have received credit for time spent in jail from June 27, 2007, when he was

¹ The Board’s decision did not reference the second part of Condition #1 which states, “and do not leave that district without prior written permission of the parole supervision staff.” C.R., p. 15.

sentenced, to August 10, 2007, when he was recommitted. Rankin contends that his bail was not revoked and he was being held solely on the Board's warrant, so he should be given 45 days credit to his original sentence.

After posting bail, Rankin was held on a detainer warrant while awaiting trial on the new charges. Rankin properly received credit on his original sentence from the date he posted bail, October 24, 2006, until the date of sentencing for the new charges, June 27, 2007. However, the Board must credit to the new sentence the time spent in custody between the date of conviction on the new charges and the date the Board recommits him as a violator. *Plummer v. Pa. Bd. of Prob. & Parole*, 926 A.2d 561, 563 (Pa. Cmwlth. 2007). Thus, Rankin is not entitled to credit on his original sentence for the period of June 27, 2007, to August 10, 2007. *Plummer*.

Next, Rankin argues that the 18 months backtime, imposed by the Board, deviated from the presumptive range for recommitment of convicted parole violators without written justification, as required by the Board's regulations.² Although Rankin did not waive this issue by failing to raise it in his administrative appeals to the Board as the Board argues, the argument is completely without merit. Rankin was convicted of Criminal Attempt to Manufacture, Delivery, Possession with Intent to Manufacture or Deliver a Controlled Substance-Cocaine and Marijuana. Section 13(a)(30) of the Controlled Substance, Drug, Device and Cosmetic Act (Act),³ 35 P.S. § 780-113(a)(30); 18 Pa. C.S. § 901(a). The statutory maximum for this offense is 10 years. Section 13(f)(1.1) of the Act, 35 P.S. § 780-

² See 37 Pa. Code § 75.1(c) (providing that the Board may deviate from the presumptive range only if written justification is given).

³ Act of April 14, 1972 P.L. 233, as amended.

113(f)(1.1); 18 Pa. C.S. §§ 901, 905. Thus, the appropriate presumptive recommitment range is 18 to 24 months. *See* 37 Pa. Code § 75.2. The 18 months backtime imposed falls within the presumptive range and the Board need not provide written justification.

Finally, Rankin argues that he did not fail to report within 48 hours of his release, and therefore, the Board did not prove a technical parole violation by preponderance of the evidence.⁴ “A preponderance of the evidence is such proof that leads the fact-finder, here the Board, to find that the existence of a contested fact is more probable than its nonexistence.” *Sigafoos v. Pa. Bd. of Prob. & Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986).

Condition #1 of Rankin’s parole provides: “Report in person or in writing within 48 hours to the district office or sub-office listed below, and do not leave that district without prior written permission of the parole supervision staff.” C.R., p. 15. Although the amended notice of the Board decision only states the first part of the condition, it is obvious from the record that the Board recommitted Rankin for leaving the Altoona district without permission. In the notice of charges and hearings signed by Rankin on July 3, 2007, the Board stated that Rankin was being charged with violating Condition #1 of his parole based on the fact that he was arrested in York County on October 7, 2006; that York County is not within the approved district; and, that York County is not part of a direct route for Rankin’s approved travel from the Altoona District to the Scranton District. In addition, State Parole Agent Mack testified that: “[Rankin is] not being charged with not reporting. He’s being charged with being out of the district without

⁴ *See* 37 Pa. Code § 71.2(19) (providing that the Board may not find that a violation was proved except by preponderance of the evidence).

permission.” C.R., p. 51. Moreover, the evidence adduced at the hearing supports the finding that Rankin violated Condition #1 because he was arrested in an area where he was not permitted to travel. Based on the foregoing evidence, the Board has established by a preponderance of the evidence that Rankin violated Condition #1 of his parole by leaving the district without permission.

Accordingly, the order of the Board is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

Judge Simpson concurs in the result only.

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Petitioner	:	
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v.	:	No. 81 C.D. 2008
	:	
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