

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jason Williams,	:
Petitioner	:
	:
v.	:
	:
Pennsylvania Board of Probation	:
and Parole,	:
Respondent	: No. 934 C.D. 2008
	: Submitted: November 7, 2008

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: December 11, 2008

Jason Williams (Williams) petitions for review of the Pennsylvania Board of Probation and Parole's (Board) denial of administrative relief mailed April 25, 2008 affirming the Board's order recorded on March 10, 2008. Williams argues that the Board's March 10, 2008 order improperly recalculated Williams' maximum sentence date because it failed to credit time spent solely on the Board's detainer. We affirm in part and remand for further proceedings.

Williams was originally sentenced in March 1999 to a term of three to six years. His maximum sentence date was originally set as November 12, 2004. Williams was paroled in December 2000, but was recommitted as a convicted parole violator in February 2002. His new maximum sentence date was set at September 17, 2005. Williams was re-paroled in July 2002, and recommitted as a

technical parole violator in February 2004. He was subsequently re-paroled in August 2004. On February 18, 2005, Williams was arrested on new criminal charges and the Board filed a detainer.¹

Bail for the new charges was set at \$10,000.00 on April 6, 2005, but Williams did not post bail at the time. Williams was recommitted on his original case as a technical parole violator on August 8, 2005 to serve out the remainder of his unexpired term. On September 17, 2005, Williams reached his maximum sentence date and the February 18, 2005 detainer was lifted. Bail for the new criminal charges was modified to \$5,000.00 on March 12, 2007 and Williams posted bail on that date.

On March 27, 2007, Williams was convicted of the new criminal charges.² The trial court then deferred sentencing so that a pre-sentence investigation report could be filed, and remanded Williams to the county correctional facility without bail. Also on March 27, 2007, the Board re-lodged its detainer for Williams' original case in light of this new conviction.

A revocation hearing was held on May 2, 2007, as a result of which the Board recommitted Williams on his original case as a technical and convicted parole violator on June 1, 2007. The Board recalculated Williams' maximum sentence date to June 6, 2010, as a result of his recommitment as a convicted parole violator. Williams filed a timely petition for administrative review on April

¹ While there is some indication in the record that Williams was arrested by the Board on its detainer on February 18, 2005, but was not officially charged by the Montgomery County Detective Bureau for the criminal activity until March 15, 2005, this difference in dates does not affect the issue in this case. February 18, 2005 will be used as the date of arrest for purposes of this opinion.

² Williams was ultimately sentenced to five to ten years imprisonment for these charges.

23, 2008, which was denied by the Board. Williams then petitioned for review in this Court.³

Williams argues that, from March 12, 2007, when he posted bail, until October 5, 2007, when he was sentenced for the new criminal charges, he was held solely on the Board's detainer of February 18, 2005, and this time should be credited to his original sentence.

The law is well-settled that:

(I)f a defendant is being held in custody solely because of a detainer lodged by the Board and has otherwise met the requirements for bail on the new criminal charges, the time which he spent in custody shall be credited against his original sentence. If a defendant, however, remains incarcerated prior to trial because he has failed to satisfy bail requirements on the new criminal charges, then the time spent in custody shall be credited to his new sentence.

Hines v. Pennsylvania Bd. of Prob. and Parole, 491 Pa. 142, 147, 420 A.2d 381, 384 (1980) (quoting *Gaito v. Pennsylvania Bd. of Prob. and Parole*, 488 Pa. 397, 403-404, 412 A.2d 568, 571 (1980)). Moreover, the Board cannot hold a parole violator on detainer past his maximum sentence date. *See* Section 21.1 of the Act commonly referred to as the Parole Act.⁴

³ Our scope of review of the Board's decision denying administrative relief 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 have been violated. *McNally v. Pennsylvania Bd. of Prob. and Parole*, 940 A.2d 1289 (Pa. Cmwlth. 2008).

⁴ 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.

In relevant parts, Section 21.1 states:

(a) Convicted Violators. . . . If his recommitment is so ordered, he shall be reentered to serve the remainder of the term which said

(Footnote continued on next page...)

Williams was arrested on new criminal charges on February 18, 2005. Certified Record (C.R.) at 49. On that same date, the Board issued a detainer because Williams was on parole from his original conviction. C.R. at 39. Although bail was set for the new criminal charges on April 6, 2005, Williams did not pay it. C.R. at 63-64. On September 17, 2005, Williams' maximum sentence date for his original case, the Board lifted its detainer because the new criminal charges had not been disposed of and no revocation hearing had been held. C.R. at 9, 45, 53, 98. On March 12, 2007, Williams finally posted bail. C.R. at 84, 97, 142. On March 27, 2007, after the Board reinstated its detainer, Williams was convicted on the new criminal charges and was remanded to custody without bail, pending sentencing. C.R. at 46, 98.

Thus, from September 17, 2005 until March 12, 2007, Williams was not incarcerated under the jurisdiction of the Board; he was imprisoned because he had not posted the bail that was set for his new criminal charges. Therefore, Williams is not entitled to credit on his original sentence for the time he spent incarcerated between September 17, 2005 to March 12, 2007. Additionally, following the reissuance of the detainer on March 27, 2007, Williams was not imprisoned solely on the Board's detainer because he had been remanded to custody without bail based on his conviction for the new criminal charges. As noted, where a defendant is incarcerated pending new charges and does not make

(continued...)

parolee would have been compelled to serve had he not been paroled

. . . .

(b) Technical Violators. . . . If he is so recommitted, he 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.

bail for the same, the time spent incarcerated is credited to the new sentence. *Hines; Hardy v. Pennsylvania Bd. of Prob. and Parole*, 487 A.2d 99, 101 (Pa. Cmwlth. 1985) (“...he was not incarcerated solely pursuant to the Board's detainer and therefore did not meet the prerequisite conditions for having the period ... credited to the time he will serve ... for his original sentence). Therefore, Williams is not entitled to credit on his original sentence for the time he served from March 27, 2007 to his sentencing date of October 5, 2007. Thus the Board’s order should be affirmed in part. However, since there is no evidence to show why Williams was still in custody after he posted bail on March 12 through March 27, 2007, this matter will be remanded to the Board to determine whether Williams was held pursuant to the lifted detainer from March 12 to March 27, 2007.

Williams also raised the issue that he should receive credit for a misstated release date. Paperwork indicated that Williams had been released on a previous grant of parole on February 23, 2004, but the actual date of release was August 20, 2004. The Board stated in its brief that it agreed that Williams should receive credit for the 181 days served between February 23, 2004 and August 20, 2004. Therefore, this matter will be remanded to the Board in order for it to properly credit Williams’ time served in a manner consistent with this opinion.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 11th day of December, 2008, the March 10, 2008 order of the Pennsylvania Board of Probation and Parole is affirmed in part, in that Williams receives no credit on his original sentence for time served between March 27, 2007 and October 5, 2007. The matter is remanded for the Board to determine whether Williams should receive credit for time served between March 12, 2007 and March 27, 2007. Additionally, the Board shall credit Williams for time served from February 23, 2004 through August 20, 2004.

Jurisdiction relinquished.

JOHNNY J. BUTLER, Judge