

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

SHAKEEM DANTE MILEY

Appellee

APPEAL OF: PENNSYLVANIA BOARD OF  
PROBATION AND PAROLE

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1743 MDA 2012

Appeal from the Order Entered September 10, 2012  
In the Court of Common Pleas of Clinton County  
Criminal Division at No(s): CP-18-CR-0000212-2010

BEFORE: SHOGAN, J., MUNDY, J., and COLVILLE, J.\*

MEMORANDUM BY MUNDY, J.:

**FILED MAY 21, 2013**

The Pennsylvania Board of Probation and Parole (the Board), appeals from the September 10, 2012 order releasing Appellee, Shakeem Dante Miley, from further parole and probation supervision.<sup>1</sup> After careful review, we affirm in part and vacate in part.

We summarize the relevant facts and procedural history of this case as follows. On October 4, 2010, Appellee pled guilty to three counts of

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> We note that Appellee has not filed a brief in this matter.

solicitation of minors to traffic drugs and one count of criminal conspiracy.<sup>2</sup> That same day, the trial court imposed an aggregate sentence of one to three years' imprisonment plus five years' probation.<sup>3</sup> Relevant to the instant appeal, the trial court's sentencing order stated that Appellee's "probation may be terminated early if [Appellee] has met all of his financial obligations." Sentencing Order, 10/5/10, at 3. Appellee did not file any post-sentence motion or a direct appeal.

On August 21, 2012, the Clinton County Adult Probation Unit filed a motion to revoke Appellee's probation.<sup>4</sup> The basis for the motion to revoke was that "[Appellee] ha[d] failed to make costs as scheduled through [the Board]." N.T., 9/10/12, at 2. Appellee was behind in his payments by \$83.29 as of August 30, 2012. *Id.* The trial court held a hearing on the motion on September 10, 2012. At this hearing, the trial court concluded that Appellee had a total outstanding balance of \$253.65 remaining on his financial obligations. *Id.* Appellee advised the trial court that he could have the money wired to a Wal-Mart near the courthouse that day. *Id.* The trial

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<sup>2</sup> 18 Pa.C.S.A. §§ 6319(a) and 903(a)(1), respectively.

<sup>3</sup> The trial court imposed concurrent sentences of one to three years' imprisonment for each count of solicitation of minors to traffic drugs. The trial court imposed a sentence of five years' probation for the criminal conspiracy charge, to run consecutive to the remaining sentences.

<sup>4</sup> Appellee was paroled on May 31, 2011 and his parole was set to expire in August 2013. N.T., 9/10/12, at 4.

court then advised Appellee that if he satisfied the remaining \$253.65, the court would release him from future parole and probation supervision. ***Id.*** at 5. Appellee paid the money that same day. As a result, the trial court entered an order the same day, discharging Appellee from any further parole or probation supervision. On October 3, 2012, the Board filed a timely notice of appeal.<sup>5</sup>

On appeal, the Board raises three issues for our review.

- I. Did the trial court commit an error of law when it released [Appellee] from all further parole and probation supervision because it lacked authority or jurisdiction to commute sentences?
- II. Did the trial court commit an error of law when it released [Appellee] from all further parole and probation supervision because it lacked authority or jurisdiction to modify his sentence?
- III. Did the [trial] court commit an error of law when it released [Appellee] from all further parole and probation supervision because it lacked authority or jurisdiction to discharge [Appellee] from parole supervision?

Board's Brief at 4.<sup>6</sup>

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<sup>5</sup> The Board and the trial court have complied with Pa.R.A.P. 1925.

<sup>6</sup> As Appellee has not filed a brief, he does not challenge the Board's standing on appeal. Additionally, we are cognizant of our Supreme Court's directive that "the matter of standing is not available to be raised by a[n appellate] court *sua sponte*." ***Rendell v. Pa. State Ethics Comm'n***, 983 (Footnote Continued Next Page)

In all of its issues, the Board avers that the trial court lacked authority to release Appellee from parole supervision. As these issues raise pure questions of law, our standard of review is *de novo* and our scope of review is plenary. ***Commonwealth v. Mockaitis***, 834 A.2d 488, 492 (Pa. 2003) (citations omitted).

At the outset, we observe that the argument section of the Board's brief appears to only challenge the portion of the trial court's order that released Appellee from further parole supervision. **See** Board's Brief at 6, 8-9. We elect to first address the Board's third issue, because we find it dispositive. The Board avers that it retains the exclusive authority to discharge Appellee from parole supervision. ***Id.*** at 8. The Board further argues this authority derives from 61 Pa.C.S.A. § 6132, which provides in relevant part as follows.

**§ 6132. Specific powers of board involving parolees**

**(a) General rule.**--The board shall have **exclusive** power:

(1)(i) To parole and reparole, commit and recommit for violations of parole and **to discharge from parole** all persons sentenced by any court at any time to imprisonment in a correctional institution

...

(Footnote Continued) \_\_\_\_\_

A.2d 708, 717 (Pa. 2009) (citation omitted), ***accord Pilchesky v. Gatelli***, 12 A.3d 430, 437 n.9 (Pa. Super. 2011).

(2)(i) To supervise any person placed on parole, when sentenced to a maximum period of less than two years, by any judge of a court having criminal jurisdiction, when the court may by special order direct supervision by the board, in which case the parole case shall be known as a special case and the authority of the board with regard thereto shall be the same as provided in this chapter with regard to parole cases within one of the classifications set forth in this chapter.

(ii) Except for such special cases, the powers and duties conferred by this section shall not extend to persons sentenced for a maximum period of less than two years and shall not extend to those persons committed to county confinement within the jurisdiction of the court pursuant to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement).

61 Pa.C.S.A. § 6132(a) (emphasis added). Our Supreme Court has recently confirmed the Board's exclusive authority in this area.

The Board has "exclusive" power "[t]o parole and reparole, commit and recommit for violations of parole and to discharge from parole" any persons sentenced to imprisonment in state or county correctional institutions for a maximum term of more than two years or any persons placed under Board supervision by a court; sentencing courts have residual authority to parole persons sentenced to a maximum of less than two years. 61 Pa.C.S. § 6132; 42 Pa.C.S. § 9776(a); **accord** 61 Pa.C.S. § 6134.1(c). Further, the Board supervises any person placed on probation by special order of the sentencing court. 61 Pa.C.S. § 6133(a). Otherwise, like probationers, parolees are supervised by county probation and parole officers. 42 Pa.C.S. § 9776.

***Fross v. Cnty. of Allegheny***, 20 A.3d 1193, 1196 n.3 (Pa. 2011). A trial court is permitted to make “a recommendation to the [B]oard respecting the person sentenced and the term of imprisonment ... required ... before ... parole is granted ....” 61 Pa.C.S.A. § 6134(b)(1). However, such a recommendation is not binding on the Board and is “advisory only.” ***Id.*** § 6134(b)(2).

In this case, there is no dispute that the maximum term for Appellee’s sentence was more than two years, and that he was sentenced to a state correctional facility as opposed to a county facility. **See** Trial Court Opinion, 11/1/12, at 1 (noting Appellee was released from State Correctional Institution at Laurel Highlands). As a result, the provisions of 42 Pa.C.S.A. § 9776 granting trial courts parole authority, and the restrictions on the Board’s authority under 61 Pa.C.S.A. § 6132(a)(2)(ii) do not apply. Therefore, the Board retained the exclusive authority under section 6132 to order Appellee discharged from parole supervision.<sup>7</sup> We therefore agree

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<sup>7</sup> We note the trial court does have authority to release Appellee from probation supervision. **See** 42 Pa.C.S.A. § 9771(a) (stating, “[t]he [trial] court may at any time **terminate continued supervision** or lessen or increase the conditions upon which an **order of probation** has been imposed[.]”) (emphasis added). We further observe, “[p]robation may be eliminated or the term decreased without a hearing.” ***Id.*** § 9771(d). **See also *Commonwealth v. Mitchell***, 955 A.2d 433, 435 n.2 (Pa. Super. 2008) (noting, “[u]nder Pennsylvania law, an order of probation can be changed or revoked “if, at any time before the defendant has completed the maximum period of probation, **or before he has begun service of his probation**” the defendant commits offenses or otherwise demonstrates he is (Footnote Continued Next Page)

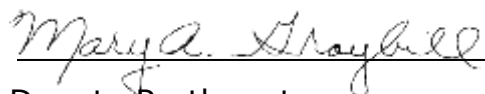
with the Board that the trial court erred when it released Appellee from all future parole supervision.<sup>8</sup>

Based on the foregoing, we agree with the Board that the trial court lacked authority to order Appellee released from parole.<sup>9</sup> Accordingly, the portion of the trial court's September 10, 2012 order releasing Appellee from all future parole supervision is vacated. As the Board does not challenge the portion of the trial court's order releasing Appellee from future probation supervision, we leave the remaining portion undisturbed.

Order affirmed in part and vacated in part. Jurisdiction relinquished.

Judge Colville concurs in the result.

Judgment Entered.

  
Deputy Prothonotary

Date: 5/21/2013

(Footnote Continued) \_\_\_\_\_

unworthy of probation[.]") (citations omitted; emphasis added), *appeal denied*, 964 A.2d 894 (Pa. 2009).

<sup>8</sup> In its Rule 1925(a) opinion, the trial court stated that it "recognize[s] that 61 Pa.C.S. § 6132 vests in the [Board] the right to 'discharge from parole all persons sentenced by any [c]ourt at any time to imprisonment in a correctional institution.'" Trial Court Opinion, 11/1/12, at 2.

<sup>9</sup> In light of our disposition, we need not address the Board's other two issues on appeal.