NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. MATTHEW HOVEY Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 412 WDA 2012

Appeal from the Judgment of Sentence of February 2, 2012
In the Court of Common Pleas of Warren County
Criminal Division at No(s): CP-62-CR-0000368-2009
CP-62-CR-0000494-2009

BEFORE: STEVENS, P.J., BENDER, J., and WECHT, J.

MEMORANDUM BY WECHT, J. **FILED MAY 13, 2013**

Matthew Hovey ("Appellant") appeals from a judgment of sentence entered on February 2, 2012. Appellant's counsel has filed with this Court an "***Anders/Santiago*** brief,"[1] wherein counsel requests to withdraw. ***See*** Brief for Appellant at 5, 7. Counsel also has filed a separate motion to withdraw as counsel with this Court. Previously, we remanded this case for counsel to comply fully with the ***Anders/Santiago*** procedure. Counsel having done so, we now affirm the judgment of sentence, and grant counsel's motion to withdraw as counsel.

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[1] ***See Anders v. California***, 386 U.S. 738 (1967); ***Commonwealth v. Santiago***, 978 A.2d 349, 361 (Pa. 2009).

The trial court has provided us with a well-detailed history of this case:

> On September 9, 2009, the Commonwealth filed an Information for CR 368 of 2009, charging Appellant with one count of DUI: General Impairment – Incapable of Safe Driving pursuant to 75 Pa.C.S.A. § 3802(a)(1), one count of DUI: Highest Rate of Alcohol pursuant to 75 Pa.C.S.A. § 3802(c), one count of Classes of Licenses pursuant to 75 Pa.C.S.A. § 1504(a), one count of Operation on Streets and Highways pursuant to 75 Pa.C.S.A. § 7721(a), one count of Operation in a Safe Manner pursuant to 75 Pa.C.S.A. § 7726(a)(3), one count of Registration and Certificate of Title Required pursuant to 75 Pa.C.S.A. § 1301(a), and one count of Required Financial Responsibility pursuant to 75 Pa.C.S.A. § 1786(f). On September 10, 2009, Appellant filed a . . . Waiver of Formal Arraignment at [the] Court of Common Pleas level. The Commonwealth submitted a Motion to Amend Information to the Court, requesting permission from the Court to amend the DUI: General Impairment – Incapable of Safe Driving – 1st offense count to DUI: General Impairment – Incapable of Safe Driving – 2nd offense and to amend the DUI: Highest Rate of Alcohol – 1st offense count to DUI: Highest Rate of Alcohol – 2nd offense. On September 14, 2009, the Court granted the Commonwealth's Motion to Amend Information, and the Commonwealth filed an Amended Information on September 16, 2009. On September 29, 2009, Appellant filed a Motion to Continue to the Next Trial Term, and the Court granted Appellant's motion.
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> On January 11, 2010, the Commonwealth filed an Information for CR 494 of 2009, charging Appellant with one count of DUI: General Impairment – Incapable of Safe Driving – 2nd offense pursuant to 75 Pa.C.S.A. § 3802(a)(1), one count of DUI: Highest Rate of Alcohol – 2nd offense pursuant to 75 Pa.C.S.A. § 3802(c), one count of Traffic-Control Signals pursuant to 75 Pa.C.S.A. § 3112(a)(3)(i), one count of Driver Required to be Licensed pursuant to 75 Pa.C.S.A. § 1501(a), and one count of Restraint Systems pursuant to 75 Pa.C.S.A. § 4581(a)(2). On January 14, 2010, Appellant pled not guilty to the CR 494 of 2009 charges.
>
> On February, 5, 2010, for CR 368 of 2009, Appellant entered into a plea in which Appellant pled guilty to one count of DUI: Highest Rate of Alcohol – 2nd offense and one count of Registration and Certificate of Title Required and the

Commonwealth agreed to request that the Court enter a *nolle prosequi* on the remaining count. On the same date, for CR 494 of 2009, Appellant entered into a plea in which Appellant pled guilty to one count of DUI: Highest Rate of Alcohol – 2nd offense and one count of Driver Required to be Licensed and the Commonwealth agreed to request that the Court enter a *nolle prosequi* on the remaining counts.

On March 16, 2010, the Court sentenced Appellant. For the DUI: Highest Rate of Alcohol – 2nd offense count of CR 368 of 2009, the Court sentenced Appellant to a minimum period of 90 days to a maximum period of 30 months to the Warren County Jail; to pay the cost of prosecution, a $1,500 fine, a $100 surcharge, a $75 central booking fee, a $300 fee pursuant to Act 198 of 2002, and a $250 administrative fee; to attend and successfully complete an approved alcohol highway safety school program; to attend an approved victim impact panel; to complete 30 hours of community service; to undergo a drug and alcohol evaluation and any recommended counseling, therapy, training, or treatment; and to a period of 18 months operator's license suspension. For the Registration and Certificate of Title Required count of CR 368 of 2009, the Court sentenced Appellant to pay a $300 fine, to a period of 90 days operator's license suspension, and to a period of three months registration suspension. For the DUI: Highest Rate of Alcohol – 2nd offense count of CR 494 of 2009, the Court sentenced Appellant to a minimum period of 90 days to a maximum period of 30 months to the Warren County Jail; to pay the cost of prosecution, a $1,500 fine, a $100 surcharge, the costs under Act 198 of 2002 of $100, a $75 central booking fee, and a $250 administrative fee; to attend and successfully complete an approved alcohol highway safety school program; to attend an approved victim impact panel; to complete 30 hours of community service; to a period of 18 months operator's license suspension; and to complete any recommended drug and alcohol counseling, training, therapy or treatment. For the Driver Required to be Licensed count of CR 494 of 2009, the Court sentenced Appellant to pay a $200 fine and a $30 surcharge. Also, the Court indicated that the sentence for the DUI: Highest Rate of Alcohol – 2nd offense count of CR 494 of 2009 was to run consecutively to the DUI: Highest Rate of Alcohol – 2nd offense count of CR 368 of 2009. On March 18, 2010, the Commonwealth filed a Motion to *Nolle Prosequi* for CR 368 of 2009 and a Motion to *Nolle Prosequi* for CR 494 of 2009, and the Court ordered that a

nolle prosequi be entered on the remaining charges on both docket numbers. On April 1, 2010, Appellant filed a Motion for Reconsideration of Sentence, requesting the Court to reconsider its March 16, 2010, sentence on the two DUI counts. The Court scheduled argument on April 9, 2010. The argument occurred on April 9, 2010, and the Court denied Appellant's Motion for Reconsideration of Sentence.

On August 10, 2010, the Court ordered Appellant to be released from the Warren County Jail on August 11, 2010. The Court placed Appellant on parole for the balance of his maximum term of sentence and ordered Appellant to abide by all of the terms and conditions of his Probation Officer; to pay costs, fines, restitution, and probation fees; and to pay the $35 per month supervision fee. On October 13, 2011, the Warren County Adult Probation and Parole Department ("Adult Probation and Parole Department") filed an Order to Detain for Violations. On December 21, 2011, the Adult Probation and Parole Department filed a Supervisor's Warrant for Probation Violations, and the Warren County Sheriff's Department arrested Appellant. A ***Gagnon I***[2] hearing occurred on January 5, 2012, and the alleged violations included abuse of prescription medication, possession of drug paraphernalia, abuse of a controlled substance, overt behavior, curfew violation, and failure to report as directed. On January 5, 2012, the Adult Probation and Parole Department submitted a Motion for ***Gagnon II*** Hearing to the Court, and on January 6, 2012, the Court scheduled a ***Gagnon II*** hearing for February 2, 2012.

On February 2, 2012, Appellant pled guilty to violating his parole. For CR 368 of 2009, the Court revoked Appellant's parole, street time, and good time and sentenced Appellant to serve the balance of his maximum sentence of 775 days at a state correctional institution. For CR 494 of 2009, the Court revoked Appellant's parole, street time, and good time and sentenced Appellant to serve the balance of his maximum sentence of 854 days at a state correctional institution. The CR 494 of 2009 sentence was to run consecutively to the CR 368 of 2009 sentence. Also, the Court informed Appellant that he

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[2] ***See generally Gagnon v. Scarpelli***, 411 U.S. 778 (1973); ***Commonwealth v. Ferguson***, 761 A.2d 613 (Pa. Super. 2000).

> would be eligible for parole when he served one-half of his sentence, that he was not eligible for Boot Camp or RRRI, and that his transfer to a state correctional institution would be deferred in order for him to apply for Treatment Court. On March 1, 2012, Appellant filed a Notice of Appeal and a Motion to Proceed *In Forma Pauperis*. On the same date, the Court granted Appellant's Motion to Proceed *In Forma Pauperis* and ordered Appellant to file a concise statement of the errors complained of on appeal. On March 13, 2012, the Court filed an Amended Sentence correcting Appellant's balances of his maximum sentences for CR 368 of 2009 and CR 494 of 2009. For CR 368 of 2009, the Court amended 775 days to 763 days, and for CR 494 of 2009, the Court amended 854 days to 841 days. These amendments changed Appellant's aggregate period from 1,629 days to 1,604 days. On March 22, 2012, Appellant filed a Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b).

Trial Court Opinion ("T.C.O."), 3/29/2012, at 1-4 (footnotes omitted; spacing, emphasis, and some capitalization modified for consistency and clarity).

As noted above, counsel has filed an ***Anders/Santiago*** brief asserting that Appellant has no meritorious issues to pursue on appeal, and seeking to withdraw as counsel. Before reviewing the merits of the underlying issues presented by Appellant, this Court must first pass upon counsel's compliance with ***Anders/Santiago***. ***Commonwealth v. Goodwin***, 928 A.2d 287, 290 (Pa. Super. 2007) (*en banc*).

Prior to withdrawing as counsel on a direct appeal under ***Anders***, counsel must file a brief that meets the requirements established by our Supreme Court in ***Santiago***. The brief must:

> (1) provide a summary of the procedural history and facts, with citations to the record;

(2) refer to anything in the record that counsel believes arguably supports the appeal;

(3) set forth counsels' conclusion that the appeal is frivolous; and

(4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Santiago, 978 A.2d at 361.

Counsel also must provide a copy of the ***Anders*** brief to his client. Counsel also must advise Appellant by letter that Appellant may: "(1) retain new counsel to pursue the appeal; (2) proceed *pro se* on appeal; or (3) raise any points that the appellant deems worthy of the court's attention in addition to the points raised by counsel in the ***Anders*** brief." ***Commonwealth v. Nischan***, 928 A.2d 349, 353 (Pa. Super. 2007); ***see also Commonwealth v. Daniels***, 999 A.2d 590, 594 (Pa. Super. 2010); ***Commonwealth v. Millisock***, 873 A.2d 748, 751 (Pa. Super. 2005).[3]

Our review of counsel's ***Anders/Santiago*** brief and accompanying motion to withdraw as counsel reveals that counsel has complied

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[3] Our initial review of this case revealed that counsel had failed to comply with the letter requirement. We remanded the case for this deficiency to be corrected. Counsel has now provided us with a copy of a May 21, 2012 letter that counsel sent to Appellant. The letter substantially complies with the requirements set forth above. Based upon this letter, we are satisfied that Appellant was notified of his options in light of counsel's motion to withdraw as counsel. Our remand also provided provided Appellant with forty-five days to submit his own brief on the merits. Such time period has passed, and it appears that Appellant has declined to submit his own brief.

substantially with ***Santiago***'s requirements. In his brief, counsel provides a procedural history detailing the events relevant to the instant appeal. Brief for Appellant at 2-3. Counsel indicated in his Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal that he did not believe that any non-frivolous issues existed to justify an appeal. Nonetheless, counsel filed the statement to preserve Appellant's appellate rights. ***See*** Pa.R.A.P. 1925(b) Statement, 3/22/2012, at 1. In his brief, counsel reiterates his belief that Appellant's issues wholly lack merit. Brief for Appellant at 5-6. Based upon counsel's execution of the ***Anders/Santiago*** brief, it is clear that counsel does not believe that there is any information in the record that would even arguably support the appeal. Counsel discusses each of Appellant's arguments and concludes that "the issues raised by Appellant are frivolous and without merit." Brief for Appellant at 5-6. Lastly, as noted *supra*, counsel sent Appellant a letter informing him that his appeal was frivolous, that counsel was filing a motion to withdraw as counsel, and that Appellant may proceed with the case with new counsel.

Based upon our review, we conclude that counsel has complied substantially with ***Santiago***. Having so concluded, we now must conduct our own review of the record to determine whether the case is wholly frivolous. ***Santiago***, 978 A.2d at 354.

In this appeal, Appellant seeks to raise the following four issues:

1. Did the Warren County Court of Common Pleas have jurisdiction over the Appellant's case, as Appellant argues that he was previously given a state sentence to be served

locally, and therefore should have been supervised by the state parole system and decisions about the revocation governed by the state parole board?

2. As Judge Maureen A. Skerda of the Warren County Court of Common Pleas was the one who originally sentenced the Appellant, did Judge [Gregory] Hammond have authority to take the Appellant's guilty pleas for the parole violations and resentence him?

3. Should the Appellant have received credit for his street time, since his violations were not based upon a new crime?

4. Should the Appellant's sentences be vacated, as information about his drug and alcohol evaluation was not presented by his counsel at his Gagnon II hearing?

Brief for Appellant at 4.

After conducting our review, we adopt the extensive and well-reasoned trial court opinion. In that opinion, the trial court properly sets forth the applicable law and applies that law to the facts as to each of the four claims. A copy of the trial court's opinion is attached hereto for reference. Per ***Santiago***'s mandate, and having independently reviewed the record and the trial court's cogent analysis, we conclude that Appellant's claims are wholly frivolous.

Judgment of sentence affirmed. Petition to withdraw as counsel is granted. Jurisdiction relinquished.

Judgment Entered.

Nicholas V. Cusatti

Deputy Prothonotary

Date: 5/13/2013

IN THE COURT OF COMMON PLEAS
OF THE 37th JUDICIAL DISTRICT OF PENNSYLVANIA
WARREN COUNTY BRANCH
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA

vs.

CR 368 of 2009
CR 494 of 2009

MATTHEW C. HOVEY

OPINION PURSUANT TO Pa.R.A.P. 1925(a)

Procedural and Factual Summary

Appellant appeals this Court's February 2, 2012, sentence order. On appeal, Appellant raises four issues. The issues are the following: (1) whether the state parole system should have supervised Appellant and whether decisions about his revocation should have been governed by the state parole board; (2) whether the Honorable Maureen A. Skerda ("Judge Skerda") should have been the judge to decide his parole revocation; (3) whether Appellant should have received credit for street time; and (4) whether Appellant's counsel should have presented information about Appellant's drug and alcohol evaluation at Appellant's Gagnon II proceeding.

On September 9, 2009, the Commonwealth filed an Information for CR 368 of 2009, charging Appellant with one count of DUI: General Impairment – Incapable of Safe Driving pursuant to 75 Pa.C.S.A. § 3802(A)(1), one count of DUI: Highest Rate of Alcohol pursuant to 75 Pa.C.S.A. § 3802(c), one count of Classes of Licenses pursuant to 75 Pa.C.S.A. § 1504(a), one count of Operation on Streets and Highways pursuant to 75 Pa.C.S.A. § 7721(a), one count of Operation in Safe Manner pursuant to 75 Pa.C.S.A. § 7726(a)(3), one count of Registration and Certificate of Title Required pursuant to 75 Pa.C.S.A. § 1301(a), and one count of Required Financial Responsibility pursuant to 75 Pa.C.S.A. § 1786(f). On September 10, 2009, Appellant filed a Waiver of Formal Arraignment at Common Pleas Court Level. The Commonwealth submitted a Motion to Amend Information[1] to the Court, requesting permission from the Court to amend the DUI: General Impairment – Incapable of Safe Driving – 1st offense count to DUI: General Impairment – Incapable of Safe Driving – 2nd offense and to amend the DUI: Highest Rate of Alcohol – 1st offense count to DUI: Highest Rate of Alcohol – 2nd offense. On September

[1] The Commonwealth filed its Motion to Amend Information on September 16, 2009.

14, 2009, the Court granted the Commonwealth's Motion to Amend Information, and the Commonwealth filed an Amended Information on September 16, 2009. On September 29, 2009, Appellant filed a Motion to Continue to the Next Trial Term, and the Court granted Appellant's motion. On January 11, 2010, the Commonwealth filed an Information for CR 494 of 2009, charging Appellant with one count of DUI: General Impairment – Incapable of Safe Driving – 2nd offense pursuant to 75 Pa.C.S.A. § 3802(A)(1), one count of DUI: Highest Rate of Alcohol – 2nd offense pursuant to 75 Pa.C.S.A. § 3802(c), one count of Traffic-Control Signals pursuant to 75 Pa.C.S.A. § 3112(a)(3)(i), one count of Driver Required to be Licensed pursuant to 75 Pa.C.S.A. § 1501(a), and one count of Restraint Systems pursuant to 75 Pa.C.S.A. § 4581(a)(2). On January 14, 2010, Appellant pled not guilty to the CR 494 of 2009 charges. On February 5, 2010, for CR 368 of 2009, Appellant entered into a plea in which Appellant pled guilty to one count of DUI: Highest Rate of Alcohol – 2nd offense and one count of Registration and Certificate of Title Required and the Commonwealth agreed to request that the Court enter a *nolle prosequi* on the remaining counts. On the same date, for CR 494 of 2009, Appellant entered into a plea in which Appellant pled guilty to one count of DUI: Highest Rate of Alcohol – 2nd offense and one count of Driver Required to be Licensed and the Commonwealth agreed to request that the Court enter a *nolle prosequi* on the remaining counts.

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central booking fee, and a $250 administrative fee; to attend and successfully complete an approved alcohol highway safety school program; to attend an approved victim impact panel; to complete 30 hours of community service; to a period of 18 months operator's license suspension; and to complete any recommended drug and alcohol counseling, training, therapy, or treatment. For the Driver Required to be Licensed count of CR 494 of 2009, the Court sentenced Appellant to pay a $200 fine and a $30 surcharge. Also, the Court indicated that the sentence for the DUI: Highest Rate of Alcohol – 2nd offense count of CR 494 of 2009 was to run consecutively to the DUI: Highest Rate of Alcohol – 2nd offense count of CR 368 of 2009. On March 18, 2010, the Commonwealth filed a Motion to *Nolle Prosequi* for CR 368 of 2009 and a Motion to *Nolle Prosequi* for CR 494 of 2009, and the Court ordered that a *nolle prosequi* be entered on the remaining charges of both docket numbers. On April 1, 2010, Appellant filed a Motion for Reconsideration of Sentence, requesting the Court to reconsider its March 16, 2010, sentence on the two DUI counts. The Court scheduled argument on April 9, 2010. The argument occurred on April 9, 2010, and the Court denied Appellant's Motion for Reconsideration of Sentence.

On August 10, 2010, the Court ordered Appellant to be released from the Warren County Jail on August 11, 2010. The Court placed Appellant on parole for the balance of his maximum term of sentence and ordered Appellant to abide by all of the terms and conditions of his Probation Officer; to pay costs, fines, restitution, and probation fees; and to pay the $35 per month supervision fee. On October 13, 2011, the Warren County Adult Probation and Parole Department ("Adult Probation and Parole Department") filed an Order to Detain for Violations. On December 21, 2011, the Adult Probation and Parole Department filed a Supervisor's Warrant for Probation Violations, and the Warren County Sheriff's Department arrested Appellant. A Gagnon I hearing occurred on January 5, 2012, and the alleged violations included abuse of prescription medication, possession of drug paraphernalia, abuse of controlled substance, overt behavior, curfew violation, and failure to report as directed. On January 5, 2012, the Adult Probation and Parole Department submitted a Motion for Gagnon II Hearing[2] to the Court, and on January 6, 2012, the Court scheduled a Gagnon II hearing for February 2, 2012. On February 2, 2012, Appellant pled guilty to violating his parole. For CR 368 of 2009, the Court revoked Appellant's parole, street time, and good time and sentenced Appellant to serve the balance of his maximum sentence of 775 days at a state correctional institution. For CR 494 of 2009, the

[2] The Adult Probation and Parole Department's Motion for Gagnon II Hearing was filed on January 9, 2012.

Court revoked Appellant's parole, street time, and good time and sentenced Appellant to serve the balance of his maximum sentence of 854 days at a state correctional institution. The CR 494 of 2009 sentence was to run consecutively to the CR 368 of 2009 sentence. Also, the Court informed Appellant that he would be eligible for parole when he served one-half of his sentence, that he was not eligible for Boot Camp or RRRI, and that his transfer to a state correctional institution would be deferred in order for him to apply for Treatment Court. On March 1, 2012, Appellant filed a Notice of Appeal and a Motion to Proceed in Forma Pauperis. On the same date, the Court granted Appellant's Motion to Proceed in Forma Pauperis and ordered Appellant to file a concise statement of the errors complained of on appeal. On March 13, 2012, the Court filed an Amended Sentence correcting Appellant's balances of his maximum sentences for CR 368 of 2009 and CR 494 of 2009. For CR 368 of 2009, the Court amended 775 days to 763 days, and for CR 494 of 2009, the Court amended 854 days to 841 days. These amendments changed Appellant's aggregate period from 1,629 days to 1,604 days. On March 22, 2012, Appellant filed a Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b).

Conclusions of Law

Although Appellant's Statement of Matters Complains of on Appeal informs the Court that there are no non-frivolous issues preserved for appeal and that Appellant filed this in order to preserve his right to appellant review, the Court addresses Appellant's four issues, which are set forth above. The first issue is whether the state parole system should have supervised Appellant and whether decisions about his revocation should have been governed by the state parole board. Generally, sentencing courts have exclusive parole jurisdiction over offenders serving terms of imprisonment for less than a maximum period of two years, and the Pennsylvania Board of Probation and Parole has exclusive parole jurisdiction over offenders serving terms of imprisonment for more than a maximum period of two years. 42 Pa.C.S.A. § 9775 and 61 Pa.C.S.A. § 6132(a)(2)(ii). One exception to this rule is a driving under influence of alcohol or controlled substance violation pursuant to 75 Pa.C.S.A. § 3802.

> Notwithstanding the length of any maximum term of imprisonment imposed pursuant to sections 3803 (relating to grading) and 3804 (relating to penalties), and notwithstanding the provisions of section 17 of the act of August 6, 1941 (P.L. 861, No. 323), referred to as the Pennsylvania Board of Probation and Parole Law, the sentencing judge may grant parole under the supervision of the county parole system to any offender serving a sentence for a violation of section

> 3802 (relating to driving under influence of alcohol or controlled substance) and, if applicable, serving any concurrent sentence of imprisonment for any misdemeanor offense arising from the same criminal episode as the violation of section 3802. The power of the sentencing judge to grant parole shall apply only to those offenders whose sentences are being served in a county prison pursuant to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement) or section 3804(d). The sentencing judge shall declare his intention to retain parole authority and supervision at the time of sentencing in cases in which he would not otherwise have parole authority and supervision.

75 Pa.C.S.A. § 3815(a). In this matter, Appellant pled guilty to two counts of DUI: Highest Rate of Alcohol – 2nd offense, one count of Registration and Certificate of Title Required, and one count of Driver Required to be Licensed. The Registration and Certificate of Title Required count and the Driver Required to be Licensed count are summary offenses. 75 Pa.C.S.A. § 1301(d); 75 Pa.C.S.A. § 1501(d). Both of the summary offenses arose from the same criminal episode as the DUI offenses. The Court sentenced Appellant to an aggregate sentence of incarceration for a maximum period of 60 days in the Warren County Jail. In this Court's March 16, 2010, sentence order, the Court indicated that the 37th Judicial District of Pennsylvania would retain jurisdiction over Appellant. For instance, the March 16, 2010, sentence order included that Appellant's sentence was to be served locally, that Appellant's sentence was a local sentence, that Appellant would be committed to the Warren County Jail, and that Appellant was required to abide by all rules and conditions of parole pursuant to Local Rule 1405. Furthermore, Local Rule 1405 states,

> The defendant will be in the legal custody of the Court until the expiration of his/her probation/parole or the further order of Court, and the Probation or Parole Officer has the power any time during this period, in case of violation by the defendant of any of the conditions of his/her probation/parole, to detain the defendant in a county prison and make a recommendation to the Court, which may result in the revocation of probation/parole and commitment to a penal or correctional institution for service of the sentence.

Rule L Crim., 1405(1). Since Appellant's guilty plea involved two DUI violations and two summary offenses and the Court expressed its intention to retain jurisdiction over Appellant pursuant to 75 Pa.C.S.A. § 3815(a), the Pennsylvania Board of Probation and Parole did not obtain jurisdiction over Appellant. Therefore, the proper agency to supervise Appellant was the Adult Probation and Parole Department, and this Court retained jurisdiction over decisions about Appellant's parole.

The second issue is whether Judge Skerda, the sentencing judge, should have decided Appellant's parole revocation. This Court assumes that Appellant suggests that since a judge who receives a defendant's guilty plea is required to impose sentence, then that same judge is also required to decide probation and parole revocation matters. *See* Pa.R.Crim.P. 700(A). Pennsylvania Rule of Criminal Procedure 700 ("Rule 700") recognizes that "the rotation practices of many courts make it difficult in many instances for the same judge to sit in both capacities", so Rule 700 permits courts to designate in their local rules that a judge other than the judge who received a defendant's guilty plea may impose sentence. Pa.R.Crim.P. 700(B) and Comment. The Local Rules of Criminal Procedure of the 37th Judicial District include such a local rule. *See* Rule L Crim, 700. Pursuant to 42 Pa.C.S.A. § 9776, this Court is permitted to parole, recommit, or reparole individuals under its exclusive parole jurisdiction, but before revoking parole, the Court is required to hold a hearing as speedily as possible and find that an individual violated a condition of parole. Pa.R.Crim.P. 708(B)(1)-(2). "Speedily as possible" means that the court is required to hold a hearing within a reasonable time. *Commonwealth v. Woods*, 965 A.2d 1225, 1227 (Pa. Super. 2009). Local Rule 1409 requires this Court to hold a Gagnon II hearing no later than 120 days after the Gagnon I hearing. Pennsylvania Rule of Criminal Procedure 708 ("Rule 708") uses the language "the judge," not the plea judge or the sentencing judge[3]. On February 5, 2010, Judge Skerda received Appellant's guilty plea, and on March 16, 2010, Judge Skerda sentenced Appellant. On April 9, 2010, Judge Skerda heard oral argument on Defendant's Motion for Reconsideration of Sentence and denied Appellant's motion. On August 10, 2010, the Honorable Gregory J. Hammond ("Judge Hammond") ordered Appellant to be released from the Warren County Jail on August 11, 2010, and to be placed on parole. On December 21, 2011, Appellant was arrested for violating conditions of his parole, and a Gagnon I hearing occurred on January 5, 2012. On February 2, 2012, Judge Hammond presided over Appellant's Gagnon II hearing, and Judge Hammond sentenced Appellant on the same date. This Court's calendar rotates the judges' responsibilities. For instance, the court administrator typically schedules Gagnon II hearings twice a month, and the judges take turns presiding over Gagnon II proceedings. Since Judge Skerda presided over Gagnon II proceedings on January 12, 2012, which was the previous date scheduled for Gagnon II proceedings, it was Judge Hammond's turn to hear Gagnon II proceedings on February 2, 2012. If Judge Skerda was

[3] The Comment of Rule 708 does mention "the sentencing judge," but this is in reference to the motion to modify sentence paragraph of the rule. *See* Pa.R.Crim.P. 708(D) and Comment.

required to decide Appellant's parole revocation, then Appellant would have had to wait until March 22, 2012, which would have been 77 days after Appellant's Gagnon I hearing[4]. Since this Court has not found any authority requiring the sentencing judge to decide parole revocation matters, Judge Skerda was not required to decide Appellant's parole revocation.

The third issue is whether the Court erred by not giving Appellant credit for street time. After finding that an individual violated parole, the trial court only has "authority to recommit Appellant to serve out the balance of the terms from which he had been paroled." *Commonwealth v. Bischof*, 616 A.2d 6, 9-10 (Pa. Super. 1992). Also, Appellant "is not entitled as of right to credit for time spent on parole without violation." *Commonwealth v. Fair*, 497 A.2d 643, 645 (Pa. Super. 1985) (citing *Commonwealth v. Michenfelder*, 408 A.2d 860 (Pa. Super. 1979); citing also *Commonwealth v. Broden*, 392 A.2d 858 (Pa. Super. 1978)). Judge Hammond revoked Appellant's parole, street time, and good time and sentenced Appellant to serve the balance of his maximum sentence. Since Appellant is not entitled to street time credit, the Court did not commit an error.

The fourth issue is whether Appellant's counsel should have presented Appellant's drug and alcohol evaluation at Appellant's Gagnon II proceeding. Pursuant to Rule 708, the defendant has the opportunity to make a statement in his behalf and counsel has the opportunity to present relevant information at the time of sentencing. Pa.R.Crim.P. 708(c)(1). Although Appellant's drug and alcohol evaluation may have been relevant, this Court finds no authority requiring defense counsel to present this information. At the time of the Gagnon II proceeding, Public Defender John Parroccini, Esquire, Appellant's counsel, explained to the Court that he thought Appellant was eligible for Treatment Court, requested time for Appellant to apply for Treatment Court, and reserved his comments regarding Appellant's addiction problem for Treatment Court. Transcript of Proceedings Taken at Time of Gagnon II of 03/06/2012 ("Transcript") at 6-7, 14. Besides Public Defender Parroccini speaking at the Gagnon II proceeding, Appellant had an opportunity to speak as well. Below is an excerpt from the transcript of Appellant describing his addiction problem.

> I just, you know, I have had an addiction problem. It's never really drugs. All the time it was booze. I really had a heavy drinking problem, and I addressed that, and never took into consideration drugs.

[4] This Court acknowledges that holding Appellant's Gagnon II proceeding on March 22, 2012, would have been within the 120 days period required by Local Rule 1049.

> And, I tried those drugs, and I had never been that high before. It took over. It really did, and I had given the opportunity to acquire the NA, and slacked off on my meetings.
>
> I knew better for what I did. At this point in my life where I thought I was doing real well, I slipped. I am not ready to give up yet. I don't want to live like this the rest of my life. That's all I have.

Transcript at 15-16. Although Public Defender Parroccini did not introduce Appellant's drug and alcohol evaluation at the Gagnon II proceeding, Appellant spoke about his addiction problem. At the time of sentencing, the Court explained that it considered Appellant's comments, Public Defender Parroccini's comments, Appellant's past record, the Adult Probation and Parole Department's report, and the Warren County Jail's report regarding Appellant's period of incarceration. Transcript at 16. The Court found that

> supervision [has not] helped [Appellant] with [his] addiction issues . . . and [Appellant's] freedom in the community has only exacerbated [Appellant's] addiction beyond alcohol to . . . bath salts and prescription drugs. [It is] equally clear that the county system since [1995], [Appellant's] first DUI here, through the present time, simply has not been effective in helping [Appellant] achieve [his] rehabilitation.

Transcript at 17. In addition, the Court deferred Appellant's transfer from the Warren County Jail to a state correctional institution until his Treatment Court application had been processed. Transcript at 18. Based on this information, it is apparent that although Public Defender Parroccini did not present Appellant's drug and alcohol evaluation at the Gagnon II proceeding or at the time of sentencing, the Court was well aware of Appellant's addiction issues. This Court does not find err with Public Defender Parroccini's failure to present Appellant's drug and alcohol evaluation, but if Appellant believes that Public Defender Parroccini's failure to present his drug and alcohol evaluation demonstrates ineffective assistance of counsel, then Appellant has the right to file a Post Conviction Relief Act Petition.

No further opinion shall issue.

BY THE COURT

GREGORY J. HAMMOND, J.
March 29, 2012