IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KAITLYNN COOPER/YOUMANS,	**:**	**No. CP-41-MD-0000089-2024**
Appellant	**:**	
	:	
vs.	**:**	
	:	
PA PAROLE BOARD,	**:**	
SCI-MUNCY SUPERINTENDENT	**:**	
WENDY NICHOLAS, PAROLE	**:**	
SUPERVISOR STACY MILLER,	**:**	
PAROLE AGENT ASHLEY OLIVER,	**:**	
HEARING EXAMINER KARRY	**:**	
EVERETT FRITZ, AGENT ERIC LEE,	**:**	
SUPERVISOR DEAVON MAYO,	**:**	
BOARD SECRETARY DEBORAH L.	**:**	
CARPENTER,	**:**	
Appellees	**:**	**1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this court's Order entered on April 3, 2024, denying Appellant Kaitlyn Cooper's petition for writ of habeas corpus.

By way of background, this case was the second petition for writ of habeas corpus filed by Appellant. The first petition was filed to case CP-41-MD-0000052-2024.

In her first petition which was filed on or about February 12, 2024, Appellant contended that the DOC miscalculated her maximum date and she was being held beyond her "true" maximum date of February 8, 2024. According to her first petition, Appellant was sentenced on two different dates on two separate Schuylkill County criminal cases. In docket CP-54-CR-0001379-2019, Appellant pleaded guilty to theft of leased property and was sentenced on March 16, 2022 to six (6) to twenty-four (24) months' incarceration in a state

correctional institution with thirty-six (36) days of pre-sentence credit. According to Appellant, her maximum date on this case was February 8, 2024. With the credit, Appellant's sentence on this case essentially began on February 8, 2022. She would have been eligible for parole on or about August 8, 2022 and her maximum date would have been February 8, 2024, provided she was not paroled and/or did not incur any setback due to parole violations.

In docket CP-54-CR-0002025-2020, Petitioner was sentenced on May 19, 2022 to three (3) months to twenty-four (24) months' incarceration for interference with child custody. The sentencing judge made Petitioner eligible for a Recidivism Risk Reduction Incentive (RRRI), but she did not award Petitioner any credit for time served. This sentence was to be served concurrently with case 1379-2019. Appellant argued that because her cases were concurrent, her maximum for both cases was February 8, 2024. The court disagreed. Although her sentences were to run concurrently, they were not ***totally*** concurrent because Appellant was not sentenced on the same date and not given the same amount of credit on each case. The reduced minimum sentence and eligibility for RRRI in this case would have made Petitioner eligible for parole in August of 2022, which would have been similar, but perhaps not identical, to her minimum date in 1379-2019. However, since her maximum was 24 months, the earliest her maximum date would have been was May 19, 2024, provided she was not paroled and/or did not incur any setbacks due to parole violations. In other words, 24 months from May 19, 2022 was May 19, 2024. Since Appellant's maximum date for case 2025-2020 was no earlier that May 19, 2024, the court denied Appellant's first petition for writ of habeas corpus.

On March 6, 2024, Appellant filed a motion for reconsideration in MD-52-

2024, relying on a Third Circuit insurance case from 1995, "an intervening change in the law" due to the Comprehensive Probation Reform Act, the availability of new evidence, and the need to correct a clear error of law or prevent a manifest injustice. Appellant asserted that the Comprehensive Probation Reform Act precluded her incarceration for technical parole violations such as visiting out of state without permission and being late to appointments. She admitted that she left Pennsylvania and purchased a house in Louisiana, but contended that she could not be incarcerated for her parole violations. She also asserted that the transcript of her sentencing proceeding in Schuylkill County case CR-379-2019 contained statements that her credit could go on either case, it could go either way. She contended that meant she could receive credit on both cases and her maximums should be the same. She also claimed in Schuylkill County case CR-2025-2020 that there was new evidence in that Charles Mull would testify that the property was returned to Rent-A-Center and all that remained was an outstanding past due bill.

On April 3, 2024, the court denied Appellant's motion for reconsideration in MD-52-2024, noting that the Comprehensive Probation Reform Act (the Act) was not passed until December 14, 2023 and did not take effect until June 11, 2024. According to her own petition, Appellant's probation sentences were revoked on March 16, 2022 and May 19, 2022 and she was re-sentenced to incarceration in a state correctional institution, more than two years prior to the effective date of the Act.

Although the court did not address the other claims in its denial of Appellant's motion for reconsideration, her remaining claims had to be addressed to the Schuylkill County Court through a Post Conviction Relief Act petition. As will be discussed more fully later in this Opinion, this court could not award her credit for time served nor could it set her

conviction aside based on new evidence.

On or about March 14, 2024, Appellant filed her (second) petition for writ of habeas corpus pursuant to 28 U.S.C. §2254, which was filed to MD-89-2024. According to her petition, Appellant was charged with technical violations for failing to report within 48 hours, changing her residence without permission, failure to report as instructed, and failure to abide by special conditions. Appellant seemed not to contest most of the violations, but contended that her preliminary violation hearing was held 69 days late, the failure to abide by special conditions was unfounded as she had no special conditions, and her final hearing was improperly continued by the hearing officer due to lack of notice to Appellant's attorney. Appellant also asserted she could not be incarcerated on her parole violations due to the Act, which she asserted became effective on January 1, 2024 before her final violation hearing was held. She indicated that on March 2, 2024, she received the Board's action dated February which found that she violated her parole and gave her a 9-month jail sentence effective September 8, 2023 which would require her incarceration until June 8, 2024 – one day prior to her maximum date. She questioned her conditions that she wear an ankle monitor and not have contact with her husband and how she could be incarcerated for nine months for technical violations in violation of the Act. Appellant sought immediate release, monetary damages, credit for nine days, removal of her "unlawful conditions" and dismissal of the technical violations with prejudice.[1]

On April 3, 2024, the court denied Appellant's (second) petition for writ of habeas corpus. The court stated that it lacked jurisdiction to hold any proceedings pursuant to 28 U.S.C. §2254, which was a federal statute. To seek relief pursuant to that statute,

[1] Appellant filed a motion regarding habeas hearing on March 22, 2024 and an emergency writ/return on writ on April 2, 2024 based on her mistaken belief that the court had granted a hearing on her petition.

Appellant needed to file a petition in federal court. The court stated that it also lacked jurisdiction to address her claims regarding the revocation of her parole as appeals of the actions of the Board are within the exclusive jurisdiction of the Commonwealth Court in accordance with 42 Pa. C.S. §763(a) and *Commonwealth v. Reese*, 774 A.2d 1255, 1260 (Pa. Super. 2001). The court rejected Appellant's claims based on the Act because it would not become effective until June 11, 2024.

On April 17, 2024, Appellant filed a notice of appeal and a concise statement of errors on appeal.[2] In her concise statement, Appellant asserted the following issues:

> (1) Pennsylvania has a no dead time policy. Appellant was incarcerated from 2/8/22 to 3/15/22 on 2025-2020 yet not awarded credit. Did Lycoming County err in fully dismissing the habeas action without consideration of [Appellant's] claim she owed 35 days credit time served for pre-sentence imprisonment?
> (2) [Appellant's] case 1379-2019 became effective immediately pursuant to court's order. [Appellant's] sentence date was 3/16/22 yet was not transferred to SCI-Muncy until 3/20/22 thus [Appellant] was not awarded four days credit by SCI Muncy and PA Parole Board. Did Lycoming County err in dismissing habeas action without consideration or litigating this claim?
> (3) [Appellant] filed an amended complaint in the instant case on March 26, 2024 that PA Parole Board added 7 days "hit time" to an expired sentence of 1379-2019 after sentence had already expired which is unlawful. Did Lycoming County err in denying habeas corpus in part for this portion?
> (4) [Appellant] in her habeas petition alleges violation of due process rights to a preliminary hearing within 14 days and a timely violation hearing per applicable parole laws 42 Pa 234 §71.2(ii), 42 Pa 234 §71.3 (sic). Did Lycoming County err in dismissing habeas corpus without litigating her claims?
> (5) Trial court denies [Appellant's] habeas only due to inapplicable case law of Senate Bill 838 without responding to or reaching the merit of other claims listed above[.] [W]as this abuse of

[2] On April 22, 2024, Appellant filed a motion for reconsideration, in which she asked the court to address her parole violations claims on the merits. The court did not address those claims on the merits or the motion for reconsideration because it stated in its Order dated April 3, 2024 that it did not have jurisdiction to address her parole violations. Those claims were within the exclusive jurisdiction of the Commonwealth Court. In other words, Appellant needed to appeal the Board's action to the Commonwealth Court and raise those claims in that Court.

discretion and due process rights?
(6) [Appellant] filed 3-14-24 yet received no reply for almost 30 days. Was this abuse of discretion?

Initially, the court notes that it believes that this appeal is moot. Appellant was released from SCI-Muncy on June 9, 2024 at the expiration of her maximum term under case 2025-2020.

Appellant first asserts that the lower court erred in dismissing her habeas petition without considering her claim that she was owed 35 days credit for time-served in case 2025-2020. She claims that she was incarcerated on case 2025-2020 from February 8, 2022 through March 14, 2022 but not awarded credit despite Pennsylvania's "no dead time" policy. The court cannot agree for numerous reasons.

In her first habeas petition, Appellant acknowledged that the Schuylkill County sentencing judge did not award her credit for time served in case 2025-2020. She has never asserted that her sentencing order in case 2025-2020 awarded her the credit she is seeking and that the DOC or Board failed to give that credit to her despite the court order. Claims regarding the failure to award credit for time served is a claim related to the lawfulness of her sentence. Such a claim is cognizable under the Post Conviction Relief Act (PCRA). *See Commonwealth v. Heredia,* 97 A.3d 392, 395 (Pa. Super. 2014), quoting *Commonwealth v. Perry*, 563 A.2d 511, 513 (Pa. Super. 1989). The PCRA subsumes common law remedies such as habeas corpus and coram nobis. 42 Pa. C.S. §9542 ("This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas

corpus and coram nobis.”). Therefore, to receive credit for time served, Appellant needed to file a timely PCRA petition with the Schuylkill County sentencing court.

Even if Appellant were claiming that her sentencing order in case 2025-2020 awarded her credit for time served and the DOC or Board was not complying with that order, this court would not have jurisdiction (or the authority) to address the merits of that claim. Instead, the appropriate way to have a court address the merits of this claim is to file an original action in the Commonwealth Court challenging the computation. *Heredia*, *id*; *Perry*, 563 A.2d at 512-513.

Therefore, regardless of how Appellant styled her credit claim, this court did not have the jurisdiction (or authority) to address it on the merits. Instead, Appellant either needed to file a PCRA petition in Schuylkill County or an original action in the Commonwealth Court.

Even if the court had the jurisdiction to address this claim on the merits, the court would have denied Appellant’s claim. This was not “dead time.” “Dead time” is time that a litigant has spent incarcerated but not received in any case. Appellant received credit for time-served for February 8, 2022 through March 14, 2022 in case 1379-2019. She was not entitled to duplicate credit (credit for the same time) in case 2025-2020. *See Bright v. Pa. Bd. Prob & Parole*, 831 A.2d 775, 778-79 (Pa. Cmwlth. 2003)(finding appellant’s argument absurd and that time credit can only be granted when it has not been credited toward another sentence); *Commonwealth v. Ellsworth*, 97 A.3d 1255, 1257 (Pa. Super. 2014)(a defendant is not entitled to credit against more than one credit for the same time served; DOC has no power to change sentences to add credit for time served as this power is vested with the sentencing court). Furthermore, to the extent that Appellant relies on statements made during her sentencing hearing but not contained in her sentencing order, her reliance is misplaced. It

is the text of the sentencing order and not the statements made at sentencing or about the sentence that is determinative of the sentence imposed. *Commonwealth v. Borrin*, 80 A.3d 1219, 1226 (Pa. 2013).

Appellant next asserts that the court erred in not litigating her claim that she was entitled but not given credit for time served from March 16, 2022 to March 20, 2022. As with her first claim, this court did not have jurisdiction to address this claim. Instead, she either had to file a timely PCRA petition in the Schuylkill County Court of Common Pleas so that the sentencing court could address this claim or she had to file an original action in the Commonwealth Court. Even if this court had jurisdiction to address this claim, it would not have granted it. Appellant was sentenced in 1379-2019 on March 16, 2022 and her sentence was effective immediately. Credit for time served is for time spent incarcerated prior to sentencing, not after it. Furthermore, contrary to Appellant's contentions, she was "credited" with this time. If she were not, her original maximum date would not have been February 8, 2024. Rather, it would have been four days later. The date that she arrived at SCI Muncy did not affect her original state sentence. Her sentence in case 1379-2019 was effective on March 16, 2022 and her credit for time served in essence moved her start date back to February 8, 2022 making her original maximum date February 8, 2024. She was not entitled to any credit for time served on 2025-2020 because she was not sentenced on that case until May 19, 2022 and she had already been credited for February 8, 2022 up to May 19, 2022 as a result of the credit and effective date of her sentence in 1379-2019.

Appellant also asserts that the court erred in not litigating her claim that the Board unlawfully gave her a 7-day "hit" on an expired sentence in 1379-2019 because the Board issued its decision after her maximum date expired. The court cannot agree. When the act

constituting a violation of parole occurs prior to the expiration of the maximum date, the Board retains jurisdiction to revoke parole and recompute the parolee's sentence. *See Adams v. Pennsylvania Bd. of Prob. & Parole*, 885 A.2d 1121, 1124 (Pa. Cmwlth. 2005). Even if Appellant's claim was meritorious, she was not entitled to any relief, because she had not served her maximum sentence in 2025-2020 until June 9, 2024. Therefore, she was not entitled to release from incarceration prior to that date.

Appellant next asserts that the court erred in failing to litigate her claims that her due process rights were violated by the Board not holding a preliminary hearing within 14 days and a timely violation hearing. Although the citation listed by Appellant in her concise statement does not make sense to the court, the court believes that Appellant intended to rely on 37 Pa. Code §§71.2(3), (10). The court did not have jurisdiction over these claims, which means that the court did not have the authority to litigate these claims. Appellant needed to assert these claims in her parole proceedings. If she asserted them and the Board rejected them, she needed to file a petition for review and/or an appeal with the Commonwealth Court within thirty (30) days of the Board's decision. As the Commonwealth Court stated in *Commonwealth v. Reese*,

> A parolee may request administrative review of a Board determination, "relating to revocation decisions," within thirty days of the mailing date of the Board's determination. Appellate review of administrative parole orders, i.e., orders issued by the Board as opposed to parole orders issued by common pleas courts, is within the exclusive jurisdiction of the Commonwealth Court. A parolee is required to exhaust all of his administrative remedies before he has a right to judicial review of an order of the Board.
>
> The writ of habeas corpus is an extraordinary remedy that is available after other remedies have been exhausted or are ineffectual or nonexistent. The writ will not issue if another remedy exists and is available. The writ is not a substitute for appellate review.

774 A.2d 1255, 1259–60 (Pa. Super. 2001)(citations omitted). Appellant was attempting to use a writ of habeas corpus as a substitute for appellate review. Rather than file the proper procedures to challenge the Board's revocation of her parole and re-computation of her maximum date, Appellant filed a petition for writ of habeas corpus which she was not permitted to do. Rather, she had to exhaust her administrative remedies. According to Appellant, the Board issued its decision on or about February 23, 2024. Therefore, when Appellant filed her petition for writ of habeas corpus on March 14, 2024, she still had time to appeal the Board's decision. Since the writ is not a substitute for appellate review, the court could not hold a hearing on her petition. Instead, the Commonwealth Court would have exclusive jurisdiction over Appellant's claims.

The court also notes that the regulations upon which Appellant relies for the deadlines for holding a preliminary violation hearing and a final violation hearing contain various exceptions or exclusions. For example, in calculating the time period for conducting a hearing, delay attributable to the unavailability of a parolee or counsel and reasonable and necessary continuances granted to, or occurrences related to, the Board or its employees shall be excluded from the time period. 37 Pa. Code §71.5(c)(1), (3). In her petition, Appellant states that her preliminary violation hearing was scheduled held on November 29, 2023 and the excuse given was that she was not at SCI-Muncy until November 8, 2023. Appellant claims that so long as she was detained on the Board's warrant, she had to have a hearing within 14 days. That is not entirely accurate. If she was in custody in another state or in Federal custody, her hearing could be deferred until she was returned to a

State correctional facility in this Commonwealth. 37 Pa. Code §71.5(a). She also stated that the final violation hearing was originally scheduled for December 28, 2023, which would have been timely but it was continued at the request of Agent Oliver due to being unable to produce a witness. The hearing was rescheduled for January 31, 2023, which Appellant claims was 26 days late. This would be a necessary and reasonable continuance granted to the Board or its employees. Therefore, it is not clear that her hearings were untimely.

Appellant also contends that the court abused its discretion in only addressing the Act and not addressing her other claims. As the court explained in its order dated April 3, 2024, and in this Opinion, the court did not have jurisdiction over some of Appellant's claims, which meant that the court did not have the authority to hold a hearing those claims, other courts did (specifically, the Federal Court and the Commonwealth Court).

Appellant's final assertion is that the court abused its discretion in failing to issue its decision for nearly thirty (30) days. Appellant filed her petition in this case on March 14, 2024. The court denied it on April 3, 2024 without holding a hearing. Therefore, the court rendered a decision within 20 days, not 30 days. The court does not know why Appellant believes that the court abused its discretion. She has not cited any statute or case for this issue. If Appellant is relying on 42 Pa. C.S. §6504, the court finds that her reliance is misplaced. Section 6504 states:

> The writ, or the order to show cause why the writ should not issue, ***shall be directed to the person having custody of the person detained***. ***It shall be returned within three days unless for good cause additional time, not exceeding 20 days, is allowed.*** The person to whom the writ or the order is directed shall make a return certifying the true cause of the detention and, except as otherwise prescribed by general rules or by rule or order of court,

shall produce at the hearing the body of the person detained.

42 Pa. C.S. §6504 (emphasis added). If the court had issued a rule to show cause why the writ should not issue on the Superintendent of SCI-Muncy, the Superintendent would have three days to file a response (or return to the writ) unless for good cause the court granted the Superintendent additional time, but not more than 20 days. If the court had granted a hearing on the writ, the Superintendent would have had to produce Appellant at the hearing. The court, however, did not issue a writ or grant a hearing. It reviewed Appellant's filings and denied her petitions, which it was permitted to do. *See Balsamo v. Mazurkiewicz*, 611 A.2d 1250, 1253 (Pa. Super. 1992)("it is a general rule that the petition may be denied summarily and without a hearing where it fails to allege facts making out a prima facie case for the issuance of the writ."); *Com. ex rel. Rogers v. Claudy*, 90 A.2d 382, 383 (Pa. Super. 1952)("In the absence of any allegations in the complaint which make out a prima facie case for allowing a writ of habeas corpus, no hearing on the petition was necessary, and the issuance of a rule to show cause was not required."); *see also Com. ex rel Connelly v. Gilmore,* No. 1919 C.D. 2016, 2017 WL 3642992, *4 (Pa. Cmwlth., filed Aug. 25, 2017)(non-precedential)(a hearing is not required where the petitioner's allegations are refuted by the record and/or the law, or where the petition does not make out a prima facie case for issuing the writ).

Even if these time limits applied to the court, and not the person having custody of Appellant, the court issued its order denying Appellant's petition within twenty (20) days. The court did not receive Appellant's petition on the date that it was filed. The court had to review the petition and research the law, which took some time. This was not the only case that the court was handling. Therefore, the court did not abuse its discretion in failing to

issue its decision sooner.

Accordingly, the court respectfully requests the appellate courts to affirm its orders and reject Appellant's arguments.

DATE: 7/22/24 By The Court,

_____
Nancy L. Butts, President Judge

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