IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Barton,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 689 C.D. 2025
	:	Submitted: June 16, 2026
Pennsylvania Parole Board,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK FILED: August 20, 2026

William Barton (Inmate) petitions for review from an order of the Pennsylvania Parole Board (Board) denying administrative relief and affirming its decision to recommit Inmate to a state correctional institution (SCI) as a convicted parole violator (CPV) to serve 18 months' backtime. Inmate contends that the Board erred when it recommitted him to serve backtime after his new federal sentence, claiming the sequence of sentences contravenes Section 6138(a)(5.1) of the Prisons and Parole Code (Parole Code), 61 Pa. C.S. §6138(a)(5.1), as well as the federal court's directive, and Inmate's due process rights. Discerning no error, we affirm.

I. Background

Inmate was serving an aggregate 7-year, 3-month to 15-year sentence at a state correctional institution (SCI) for various counts of possession with intent to distribute a controlled substance, a firearm charge, and attempting to elude police.

Certified Record (C.R.) at 1-4. Inmate was last released on parole on July 8, 2014. C.R. at 23-24. At the time of his release, Inmate's maximum sentence date was August 31, 2020, and he owed 2,246 days on his original sentence. *Id*. at 12-16, 128.

In March 2020, federal authorities arrested Inmate for multiple counts of drug-related offenses under 21 U.S.C. §§841, 846. C.R. at 55-69. On March 10, 2020, the Board issued a warrant to commit and detain Inmate for parole violations pending the outcome of the new case but later withdrew that warrant upon the expiration of Inmate's maximum sentence date. *Id*. at 39-41. On March 11, 2020, federal authorities formally charged Inmate with new criminal charges. C.R. at 80. Inmate did not post bail and was confined in federal prison pending disposition of the new criminal charges. *Id*. at 46-53, 129.

On April 20, 2021, Inmate pleaded guilty to one count of conspiracy to distribute and possess with intent to distribute cocaine base. C.R. at 72, 79. On April 30, 2021, upon receiving official notification of the conviction, the Board lodged a warrant for violating his parole. *Id.* at 42-45, 79-83. Inmate waived his parole revocation hearing and admitted to being a CPV. Prior to federal sentencing, the Board verified the conviction and, on June 3, 2021, recommended that Inmate be recommitted as a CPV, when available, for 18 months without credit for the time that he spent on parole because he incurred a new conviction that is the same or similar to the original offense. *Id.* at 70-78. By decision dated August 16, 2021, the Board formally recommitted Inmate as a CPV, when available, pending sentencing on his federal conviction and return to an SCI. *Id*. at 84.

On October 26, 2021, the federal court sentenced Inmate to 180 months in federal prison. C.R. at 54-69, 88-89. The federal court initially ordered that

sentence to be served consecutively to any parole violations but, upon reconsideration, it directed that the anticipated parole revocation be served first, with the federal time to run concurrently. *Id*. at 124. On December 7, 2021, the Board issued a warrant so that it could obtain Inmate once federal authorities released him from their custody. *Id*. at 86.

On January 17, 2025, Inmate received executive clemency, reducing his federal sentence from 180 months to 70 months. C.R. at 87-89. On January 21, 2025, Inmate completed his federal sentence and was released by federal authorities and returned to an SCI. *Id*. at 87, 89.

By decision dated February 18, 2025, the Board calculated Inmate's new maximum sentence. C.R. at 90. In the calculation, the Board applied a one-day credit from March 10, 2020, to March 11, 2020, because the Board's warrant was the sole source of his incarceration during this period. *Id*. at 92. Adding 2,245 days to Inmate's January 21, 2025 effective date of return, the Board arrived at a new maximum sentence date of March 16, 2031. *Id*. at 92-93.

From this decision, Inmate filed an administrative remedies form. Inmate asserted that the Board violated his due process rights by not allowing him to serve his original sentence before the new federal sentence as required by Section 6138(a)(5.1) of the Parole Code. C.R. at 95, 105. By determination mailed on May 9, 2025, the Board affirmed its decision recorded February 18, 2025. *Id.* at 128. Thereafter, Inmate filed a petition for review in this Court.[1]

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[1] Our review is limited to determining whether constitutional rights were violated, whether the adjudication was in accordance with the law, and whether necessary findings were supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; *Adams v. Pennsylvania Board of Probation and Parole*, 885 A.2d 1121, 1122 n.1 (Pa. Cmwlth. 2005).

II. Issue

Inmate contends that the Board erred when it recommitted him to serve backtime *after* his new federal sentence instead of before, asserting that this sequence of sentences contravenes Section 6138(a)(5.1) of the Parole Code as well as the federal court's directive, and Inmate's due process rights.

III. Discussion

Inmate argues that the Board erred when, after finding Inmate violated his parole, it ordered him to serve 18 months of backtime following his new federal sentence. According to Inmate, pursuant to Section 6138(a)(5.1) of the Parole Code, he should have completed the balance of his initial state sentence before he began serving his federal sentence. Inmate contends that the Board cannot claim that he was unavailable to serve his original sentence, particularly where the federal court allowed the parole violation to be completed "up front." C.R. at 124. Inmate maintains that the Board had the ability and duty to seek his return to state custody but never did.

Section 6138(a)(5.1) of the Parole Code provides that "[i]f the offender is sentenced to serve a new term of total confinement by a Federal court or by a court of another jurisdiction because of a verdict or plea under paragraph (1), *the offender shall serve the balance of the original term before serving the new term*." 61 Pa. C.S. §6138(a)(5.1) (emphasis added). However, Section 6138(a)(5.1) of the Parole Code operates only when the Board has present authority over the parolee, and the Board's regulations expressly recognize that such authority does not arise until the parolee is actually "available." *See* 37 Pa. Code §§71.4(1)(i), 71.5(a), (c)(1). Under these regulations, when a parolee is "confined outside the jurisdiction

of the Department of Corrections, such as . . . confinement in a Federal correctional institution," "the Board may lodge its detainer but other matters may be deferred until the parolee has been returned to a State correctional facility," and any delays attributable to "the unavailability of a parolee" are excluded. 37 Pa. Code §§71.4(1)(i), 71.5(a), (c)(1). Thus, the statutory order-of-sentences provision presupposes the parolee's availability, which is a condition the regulations define and limit.

This regulatory framework aligns with and is reinforced by our decision in *Brown v. Pennsylvania Board of Probation and Parole*, 184 A.3d 1021, 1025 (Pa. Cmwlth. 2017). In *Brown*, this Court applied these provisions and squarely rejected the argument that Section 6138(a)(5.1) of the Parole Code required the Board to retrieve a parolee from federal custody to ensure state-sentence priority. We held that "when a parolee is in federal custody, confined in a federal facility, or otherwise unavailable, the Board's duty to hold a revocation hearing . . . is deferred until the parolee is returned to a SCI regardless of when the Board received official verification of a parolee's new conviction." *Brown*, 184 A.3d at 1025. In *Brown*, the parolee did not post bail on the federal charges and was detained by federal authorities. Because the parolee was already in federal custody when he pleaded guilty and was sentenced, he was unavailable to the Board, and thus did not become available until after his release from federal custody and return to an SCI. *Id.* at 1027.

As this Court has observed, "[t]he Board does not have the power to pluck a Pennsylvania parolee from a federal prison for the purpose of recommitting him as a parole violator." *Dill v. Pennsylvania Board of Probation and Parole*, 186 A.3d 1040, 1046 (Pa. Cmwlth. 2018) (quotation and citation omitted). "Due process

requires that a parolee receive a timely hearing after he is taken into custody for a parole violation." *Id*. at 1044. Where "a parolee is in federal custody, the Board's duty to hold a revocation hearing is deferred until the parolee is returned to state custody, regardless of when the Board received official verification of his new conviction." *Id*. at 1045.

Inmate relies on this Court's decision in *Fumea v. Pennsylvania Board of Probation and Parole*, 147 A.3d 610 (Pa. Cmwlth. 2016), arguing that the Board should have asserted jurisdiction over him at the federal sentencing to ensure that he served his sentences pursuant to the statutory order of sentences set forth in Section 6138(a)(5.1) of the Parole Code. In *Fumea*, the parolee was arrested and indicted by federal authorities while he was on parole with the Board. *Fumea* is distinguishable from *Brown* and the facts presented here, because the parolee in *Fumea* posted bond on his federal charges. *Id.* at 611. Pending disposition of the federal charges, the parolee was detained solely by the Board, but the Board released the parolee after the expiration of his maximum sentence. *Id*. A federal jury found the parolee guilty in July 2011, but he remained on bond until his sentencing in November 2011. *Id*. at 612. Although a Board agent was present at the parolee's federal sentencing and the Board issued a warrant to detain him that same day, the Board failed to take the parolee into custody, and he was instead remanded to the custody of federal authorities. *Id*. The parolee was released from federal custody in December 2014 and was returned to an SCI. *Id*. On appeal, we determined that, despite the expiration of his maximum sentence date, the Board retained jurisdiction to recommit the parolee as a CPV. Thus, the parolee became available to the Board upon his conviction in federal court. *Id*. at 616. Under these circumstances, we concluded that the Board erred by not complying with Section 6138(a)(5.1) of the

Parole Code and asserting jurisdiction when the parolee was still available to the Board before his federal sentencing. *Id*. at 619-20.

Contrary to Inmate's assertions, *Brown*, not *Fumea*, controls here. As this Court noted in *Brown*, the Board in *Fumea* had "actual knowledge" of the conviction "as evidenced by the agent's presence at his sentencing hearing," *and* that the parolee was not in federal custody from the time of his guilty verdict through his sentencing hearing. *Brown*, 184 A.3d at 1027. As a result, the parolee in *Fumea* was "available" to the Board at the sentencing hearing, whereas in *Brown*, the parolee was not available.

Further, in a very recent decision involving nearly identical circumstances as those presented here, this Court rejected the argument that the Board must proactively retrieve a parolee from federal authorities in order to enforce the statutory order-of-sentences provision. *Sampson v. Pennsylvania Parole Board* (Pa. Cmwlth., No. 615 C.D. 2025, filed March 23, 2026).[2] In *Sampson*, the record established that the parolee was in federal custody before and after his federal sentencing, as well as when the Board received official verification of his conviction. Slip op. at 6. This Court reiterated that continuous federal custody renders the parolee unavailable, and the Board's role is limited to lodging a detainer and awaiting the parolee's return. *Id*. (citing *Brown*, 184 A.3d at 1022). We opined that a parolee's due process rights are not violated merely because the Board does not attempt to reclaim him from federal authorities. *Id*. at 6-7. Where federal custody never lapses, the Board's limited actions of lodging a detainer and deferring further

[2] Unreported memorandum opinions of this Court filed after January 15, 2008, may be cited for their persuasive value pursuant to Rule 126(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 126(b), and Section 414(a) of the Court's Internal Operating Procedures, 210 Pa. Code §69.414(a).

proceedings fully satisfy constitutional requirements. *Id*. In short, Section 6138(a)(5.1) does not apply until the parolee becomes "available" to the Board -- a condition that cannot be satisfied while federal custody remains uninterrupted. *Id*.

As in *Brown* and *Sampson*, the record here establishes that Inmate was in continuous federal custody before and after his federal sentencing, as well as when the Board received official verification of his conviction. Consequently, the Board did not obtain jurisdiction over him, and he was not available to the Board at the time of his federal conviction. Jurisdiction turns on actual availability, not on the federal sentencing court's stated preference regarding the order in which sentences should be served. *See Fumea*; *Brown*. The Board's failure to invoke its jurisdiction did not violate the Parole Code or deprive him of due process. *See Sampson*; *Dill*. Thus, we conclude that the Board acted within the limits of its statutory authority, and its calculation neither undermined Section 6138(a)(5.1) of the Parole Code nor violated Inmate's constitutional rights.

IV. Conclusion

Accordingly, the order of the Board is affirmed.

MICHAEL H. WOJCIK, Judge

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O R D E R

AND NOW, this 20th day of August, 2026, the order of the Pennsylvania Parole Board, mailed May 9, 2025, is AFFIRMED.

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MICHAEL H. WOJCIK, Judge