

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edward R. Klingensmith,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 74 C.D. 2025
	:	Submitted: April 13, 2026
Pennsylvania Parole Board,	:	
	:	
Respondent	:	

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge

MEMORANDUM and ORDER

On April 3, 2019, the Westmoreland County Court of Common Pleas (trial court) sentenced Edward R. Klingensmith (Parolee) to serve: (1) a term of one year and six months to five years on Parolee's guilty plea to driving under the influence of alcohol or a controlled substance at the highest level of impairment; (2) an overlapping concurrent term of one year and six months to five years on his guilty plea to another count of the same charge; and (3) two underlapping concurrent terms of one year and six months to four years on his pleas of guilty to two counts of driving while his operating privileges were suspended or revoked (Original Sentence). With effective dates of August 28, 2018, and September 13, 2018, respectively, the Pennsylvania Parole Board (Board) ultimately released Parolee on parole on February 11, 2021.

On November 28, 2021, Parolee was arrested on new felony DUI charges and charges relating to his attempts to elude apprehension by the police in

Armstrong County (Armstrong Case). Bail was set at the outset of those proceedings, but the docket entries in the Certified Record (CR) of this case indicate that Parolee did not post bond. *See id.* at 37, 57, 67. While the new criminal case advanced through its routine course, the Pennsylvania Department of Corrections (DOC) issued a parole detainer on November 29, 2021, and the Board followed with a formal Board detention action on December 17, 2021.

On September 13, 2023, DOC cancelled its warrant because Parolee had reached the maximum date of his Original Sentence while he was on parole from that judgment of sentence. In addition, on November 16, 2023, Parolee was adjudicated guilty of numerous charges in the Armstrong Case. As a result, on November 17, 2023, DOC relodged its warrant based on Parolee's new convictions. Ultimately, on January 30, 2024, Parolee was sentenced to serve 40 to 84 months in the Armstrong Case, and given credit for the 655-day period between November 28, 2021, and September 13, 2023, on the new sentence. *See CR* at 100-06.

Based on the new convictions, the Board conducted a parole revocation hearing on May 13, 2024. At the hearing, Parolee testified that at the time that the Board removed its detainer on September 13, 2023, he continued to be detained even though he had posted bond in the Armstrong Case. *See CR* at 92-94. In support, he presented the Board's November 17, 2023 arrest warrant, and testified that he was free on bond until arrested on the warrant in jail on November 16, 2023. *See id.* at 93, 143. Nevertheless, on June 5, 2024, the Board issued an order recommitting him as a convicted parole violator (CPV) to serve the remainder of his Original Sentence.

On June 28, 2024, Inmate filed a Petition for Administrative Review (PAR) of the Board's recommitment decision. Ultimately, on December 24, 2024, the Board mailed its decision denying the PAR in which it stated the following:

[DOC] lodged its detainer against [Parolee] on November 29, 2021. He was arrested on November 28, 2021 for [the] new criminal charges [in the Armstrong Case]. He did not post bail. He was sentenced on January 30, 2024 to 40 to 84 months and 24 to 48 months to be served in a state correctional institution, two merged counts, and one count of no further penalty. Based on the above facts, he is not entitled to back time credit towards his original sentence because the Board did not hold him solely on it[s] warrant. He was not given credit after November 28, 2021[,] because he did not post bail prior to sentencing. *Gaito v. P[ennsylvania] Board of Probation and Parole*, 412 A.2d 568 (Pa. 1980). Thus, he owed 944 days on his original sentence.

CR at 144-45. Parolee then filed the instant petition for review of the Board's decision denying his PAR of his recommitment as a CPV to serve the remaining 944 months on his original sentence.

On appeal, Parolee claims that the Board abused its discretion by: (1) failing to credit his Original Sentence with all of the time to which he is entitled; and (2) imposing a recommitment period with backtime beyond the recommended recommitment period in its regulations. However, on January 31, 2025, the Board filed an Application to Remand, conceding that it erred in imposing backtime beyond the aggravated ranges of the guidelines in its regulations. By February 14, 2025 order, we directed that the Application to Remand be disposed of with the merits of the appeal.

As indicated, with respect to Parolee's latter appellate claim, the Board concedes that remand is necessary because the backtime that it imposed exceeds the presumptive ranges under the relevant regulations. As a result, the Board's remand request will be granted. *See, e.g., Boyd v. Pennsylvania Board of Probation and Parole* (Pa. Cmwlth., No. 912 C.D. 2015, filed March 9, 2016), slip op. at 2-3 ("The Board concedes in its brief to this Court that such recommitment was not within the

proper presumptive range. . . . The Board requests that this issue be remanded for the issuance of a new recommitment term that is within the presumptive range. This Court grants the Board’s request.”) (footnote omitted); *see also* Pa.R.A.P. 126(b)(1)-(2) (“As used in this rule, ‘non-precedential decision’ refers to . . . an unreported memorandum opinion of the Commonwealth Court filed after January 15, 2008. Non-precedential decisions . . . may be cited for their persuasive value.”).

Finally, with respect to Parolee’s former appellate claim, as indicated above, in the decision denying Parolee’s PAR, the Board merely states that he did not post bail on the charges in the Armstrong Case without addressing the conflict between Parolee’s hearing testimony on this issue with other documents of record. In such a case, the matter must be remanded to the Board to make the relevant findings while citing the relevant record evidence upon which it relied in imposing the recommitment term. *See, e.g.*, CR at 110 (“Parolee pointed out [at the hearing] that there are some crediting issues based on the warrant dates and when he was released on bail.”); *Barksdale v. Pennsylvania Board of Probation and Parole*, 217 A.3d 469, 471 (Pa. Cmwlth. 2016) (“[W]e must conclude that the Board’s decision does not meet the requirements of Section 507 [of the Administrative Agency Law, 2 Pa. C.S. §507], as it does not explain the reasons for [its] determination that it properly calculated [the parolee’s] maximum sentence date. The Court, therefore, is unable to engage in effective appellate review.”).

For these reasons, the Board’s recalculation of Parolee’s maximum date must be vacated, and the matter remanded to the Board with the direction to credit all confinement time attributable to the parole detainer between November 28, 2021, and September 13, 2023, based on the credible evidence presented; and to reimpose

a recommitment term consistent with the presumptive ranges or supported by a stated reasoning as required by its regulations. Accordingly, we issue the following:

ORDER

AND NOW, this 28th day of August, 2026, the Application to Remand filed by the Pennsylvania Parole Board (Board) is GRANTED; the Board's decision that was mailed on December 24, 2024, is VACATED; and the matter is remanded to the Board for proceedings consistent with the foregoing Memorandum and Order.

Jurisdiction is relinquished.

MICHAEL H. WOJCIK, Judge

Judge Wallace concurs in the result only.