

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Warrenton F. Crew,	:	
Petitioner	:	
	:	
v.	:	No. 7 M.D. 2011
	:	SUBMITTED: November 4, 2011
Department of Corrections,	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER¹**

FILED: January 19, 2012

Before the Court for disposition are the Department of Corrections' (DOC) preliminary objections to Warrenton Crew's pro se petition for writ of mandamus, which is in the form of a brief.

Petitioner's factual averments, which can be found in his Statement of the Case and in the Argument section of his petition for writ of mandamus, are summarized as follows. While petitioner was on parole, he was charged with new criminal offenses in Philadelphia in two separate cases that were "consolidated" at one common pleas docket number. Petitioner was found guilty of committing four of the counts, and on May 18, 2007, the Honorable Sandy Byrd of the Court of

¹ This case was assigned to the opinion writer on or before January 6, 2012, when the opinion writer completed her term as President Judge.

Common Pleas of Philadelphia County, Docket Number CP-51-CR-1103971-2005, imposed a sentence of 5 to 10 years of imprisonment, followed by 10 years of probation for burglary of 4205 Ranstead Street (Count 1), a concurrent sentence of 5 to 10 years for criminal trespass of 4205 Ranstead Street (Count 4), a concurrent sentence of 2½ to 5 years for possession of an instrument of crime (Count 5), and a concurrent sentence of 5 to 10 years for criminal trespass of 503 South 41st Street (Count 9). Petition for Review (PFR), Exhibit 1. Petitioner avers that the sentences for the new convictions were “consolidated” and “running concurrent.”

Following this conviction, the Parole Board on July 16, 2007, issued a decision recommitting petitioner as a convicted parole violator (CPV) to serve 15 months of backtime when available for the new offenses of burglary, criminal trespass, and possession of an instrument of crime. PFR, Exhibit 2. On August 7, 2007, the Board issued a decision in which it 1) “noted” the conviction as to Philadelphia County indictment number 1103971-05 Count 9 and took no further action as to that conviction, and 2) referring to the July 16, 2007 Board decision, recalculated petitioner’s parole violation maximum date to be February 1, 2016. PFR, Exhibit 3.

Petitioner avers that in November 2007, he requested confirmation with the institutional records department that it was running his CPV backtime concurrent with the new sentences as ordered by the Parole Board and the trial court. Petitioner avers that after nearly three years, the records department altered the conditions of his sentencing. Petitioner’s Exhibit 6, DOC’s DC-16E Sentence Status Summary, shows the 5 to 10 year sentence for Count 9 running concurrent with, and overlapping, the parole violation sentence. The sentences for Counts 1, 4, and 5 are listed as detainer sentences. In a section for Deleted Detainers, the

DC-16E lists the sentence for Count 9, with the remarks, “CC to Ct.1 (Crew, Warrenton) removed, PBPP noted this conviction, will be concurrent with CPV backtime.” PFR, Exhibit 6. Petitioner avers that DOC has violated his 5th, 8th, and 14th amendment rights and altered the terms of his 2007 sentences by separating the concurrent sentences, running Count 9 concurrent with his parole violation backtime and listing the remaining sentences as detainer sentences.

Mandamus is an extraordinary writ designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the petitioner, a corresponding duty in the respondent, and want of any other adequate and appropriate remedy. *Sheffield v. Dep’t of Corr.*, 894 A.2d 836 (Pa. Cmwlth. 2006), *aff’d*, 594 Pa. 56, 934 A.2d 1161 (2007). Mandamus is not available to establish legal rights, but is appropriate only to enforce rights that have been established. *Feigley v. Dep’t of Corr.*, 731 A.2d 220 (Pa. Cmwlth. 1999). In considering preliminary objections, we must consider as true all well-pleaded material facts set forth in the petition and all reasonable inferences that may be drawn from those facts. *Sheffield*. Preliminary objections will be sustained only where it is clear and free from doubt that the facts pleaded are legally insufficient to establish a right to relief. *Id.* We need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Myers v. Ridge*, 712 A.2d 791, 794 (Pa. Cmwlth. 1998).

DOC filed preliminary objections alleging failure to conform to rules and in the nature of a demurrer. DOC objects to the form of the petition for review in that petitioner has failed to divide his petition for review into numbered paragraphs, each containing a single allegation as required by Pa. R.C.P. No.

1028(2) and Pa. R.A.P. 1513(c). As a petition for review in the form of a brief precludes the filing of a comprehensible answer, the objection is sustained.

DOC demurs that petitioner fails to explain why his sentence calculation is incorrect, that his factual averments fail to establish that he has a right, and that DOC has a duty, to recalculate his sentences. DOC argues that on the facts pleaded, 1) it is unable to discern why petitioner thinks the calculation is wrong, and 2) the calculation is facially correct because a parole recommitment arising from a conviction for a new crime while on state parole requires a recalculation and extension of the initial sentence pursuant to 61 Pa. C.S. § 6138(a) and any challenge to the recalculation is properly raised in an action against the Parole Board.

Petitioner responds that he is not challenging his recommitment as a convicted parole violator or the recalculation of his parole violation maximum. Petitioner argues that DOC has a duty to carry out the trial court's sentencing order and that DOC unilaterally modified his new sentence, changing his release date three years after it was imposed. He appears to argue that DOC unilaterally altered the terms of his new sentences by failing to run the new sentences concurrent with the parole violation sentence.

The Department of Corrections has a duty to credit an inmate with all statutorily mandated periods of incarceration; it lacks the power to adjudicate the legality of a sentence or to add or delete sentencing conditions. *McCray v. Dep't of Corr.*, 582 Pa. 440, 872 A.2d 1127 (2005). Under the Prisons and Parole Code, a parolee who commits a crime punishable by imprisonment for which the parolee is convicted, may be recommitted as a parole violator. 61 Pa. C.S. § 6138(a)(1). If the parolee's recommitment is so ordered, the parolee shall be recommitted to serve the

remainder of the term he would have been compelled to serve had parole not been granted, with no credit for time at liberty on parole. 61 Pa. C.S. § 6138(a)(2). Sentences for crimes committed on parole must be served consecutively with time remaining on the original sentence. 61 Pa. C.S. § 6138(a)(5).

The facts pleaded and exhibits attached to the petition for review reflect that petitioner's parole violation recommitment was based on his new conviction for Counts 1 (burglary of 4205 Ranstead Street), 4 (criminal trespass of 4205 Ranstead Street) and 5 (possession of an instrument of crime); therefore, the sentences for those counts must run consecutive to the original sentences, 61 Pa. C.S. § 6138(a)(5), and DOC listed them as detainer or reentry sentences. For reasons not explained by petitioner's factual averments or his exhibits, he was not recommitted for his conviction for Count 9 (criminal trespass of 503 South 41st Street). As a consequence, the sentence for Count 9 need not run consecutive to the original sentence. DOC accordingly deleted the detainer for that sentence, and the sentence status summary shows that sentence to be running concurrent with the original sentence.

Petitioner's Exhibits 4 through 6 contradict petitioner's averment that DOC altered the terms of petitioner's new sentences nearly three years after they were imposed. Petitioner's factual averments and exhibits are legally insufficient to establish that he has a legal right to have his sentences recalculated. DOC's demurrer is sustained.

BONNIE BRIGANCE LEADBETTER,
President Judge

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ORDER

AND NOW, this 19th day of January, 2012, respondent's preliminary objections are sustained, and the petition for review is dismissed.

BONNIE BRIGANCE LEADBETTER,
President Judge