

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald Flynn,	:	
Petitioner	:	
	:	
v.	:	No. 105 C.D. 2025
	:	Submitted: April 13, 2026
Pennsylvania Parole Board,	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER

FILED: October 13, 2026

Donald Flynn (Petitioner), representing himself,¹ petitions for review of the Order of the Pennsylvania Parole Board (Board), mailed January 10, 2025, that affirmed the Board's Decision mailed September 3, 2024, as to Petitioner's recommitment as a convicted parole violator (CPV) for nine months and confinement credit calculations and dismissed as unauthorized Petitioner's challenge to the Board's December 3, 2024 Decision denying him reparole. (Certified Record (C.R.) at 120-22.) The January 10, 2025 Order further found that Petitioner's challenge to the Board's reasons given in the September 3, 2024

¹ The Court appointed counsel to assist Petitioner but granted counsel's application to withdraw based on Petitioner's decision to represent himself.

Decision for denying him credit for his time at liberty on parole, also known as street time, was moot because a new decision with a different rationale was issued.²

On appeal, Petitioner challenges both the initial reasons and subsequent reason for the Board's denial of credit for his street time as not being supported by the record in contravention of *Pittman v. Pennsylvania Board of Probation and Parole*, 159 A.3d 466 (Pa. 2017). He also asserts the Board abused its discretion and violated his due process rights in recommitting him and denying him parole when it relied on false information to render those decisions. Finally, Petitioner asserts the Board did not award him credit for time he was confined before he was sentenced that was not accounted for in his new sentence, leaving him with unaccounted for or "dead time." Upon careful review, we affirm in part and vacate and remand in part.

I. BACKGROUND

Petitioner is serving a 25-year to life sentence for second degree felony murder. (C.R. at 1-2.) The Board granted Petitioner parole by decision dated July 1, 2019, and he was released on August 6, 2019. (*Id.* at 4-6.) On September 30, 2019, Ridley Township Police arrested Petitioner on various criminal charges relating to an alleged carjacking, and a Warrant to Commit and Detain Petitioner was issued. (*Id.* at 17, 41.) By decision recorded on December 11, 2019, the Board recommitted Petitioner as a technical parole violator (TPV) for "Leaving the District Without Permission" to serve six months pending disposition of criminal charges arising from his arrest on September 30, 2019. (*Id.* at 18.) Also in that decision, the Board indicated that Petitioner would be automatically reparaoled on April 1, 2020,

² The Board's new decision on the street time credit was mailed on January 10, 2025, the same day as the Order at issue here.

pending certain conditions, one of which was that Petitioner “shall not possess ammunition or drug paraphernalia under any condition or for any reason.” (*Id.* at 19.) The criminal charges arising from Petitioner’s September 30, 2019 arrest were ultimately withdrawn on March 20, 2020. (*Id.* at 41.)

Petitioner was automatically released on reparole on April 1, 2020. (*Id.* at 23-30.) A condition of Petitioner’s reparole was that he shall

not [] possess any drug paraphernalia as defined by the Controlled Substance, Drug, Device and Cosmetic Act.^[3] “Drug Paraphernalia” means all equipment and materials of any kind which are used or designed for use in planting, processing, preparing, testing, analy[z]ing, packaging, repacking, storing, containing, concealing, injecting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this act.

and “refrain from owning or possessing any firearms or other weapons.” (*Id.* at 24, 28.) Petitioner acknowledged both conditions by initialing them or signing the form. (*Id.* at 28.)

On December 3, 2021, the Marple Township Police Department arrested Petitioner for conspiracy to commit retail theft. (*Id.* at 39, 42, 67.) Petitioner’s parole supervisors decided to allow Petitioner to remain on supervision with enrollment in GPS monitoring, pending disposition of the new charge. (*Id.* at 42.) Petitioner’s parole supervisor wrote on February 23, 2022, that Petitioner “made himself available to supervision staff and [was] compliant up to th[e] misdemeanor arrest” (the time between his reparole on April 1, 2020, and his arrest for conspiracy to commit retail theft). (*Id.*) The parole supervisor further wrote, “The offender was seen two times per month during this time. According to the available records during this time, the offender was compliant on supervision, making himself available and

³ Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. §§ 780-101-780-144.

not incurring any complaints from the community.” (*Id.*) The parole supervisor recommended Petitioner remain on supervision, as Petitioner “has maintained regular contact with supervision staff, maintains steady employment, has a stable home plan and has been compliant on GPS monitoring up to this date. The offender reported after the arrest for placement on GPS and [Petitioner] has maintained all court dates associated with the open matter.” (*Id.*) On May 24, 2022, Pennsylvania State Police arrested Petitioner on 17 criminal charges, including firearms, drug, and theft charges. On June 1, 2022, a new arrest warrant was issued against Petitioner for firearms charges related to the May 24, 2022 arrest. (*Id.* at 43.) When Petitioner did not appear in court for his hearing on the December 2021 retail theft charge scheduled on June 2, 2022, Petitioner was called and instructed to turn himself in at the parole office, which he did. (*Id.*) He was taken into custody, after which a detainer was placed on Petitioner on June 3, 2022. (*Id.*) Petitioner posted no bail on the new charges.

It is unclear what became of the December 2021 retail theft charge. The docket up through July 17, 2024, is in the certified record, but this docket no longer appears in the Pennsylvania Unified Judicial System portal. (*Id.* at 65-76.) No disposition of that charge appears in the record. Pertaining to the May 24, 2022 charges, Petitioner pled guilty to possession of an instrument of crime with intent to use in violation of Section 907(a) of the Crimes Code, 18 Pa.C.S. § 907(a), on July 30, 2024. (*Id.* at 46, 53.) Petitioner was sentenced to 3 to 12 months of confinement, with a notation on the sentencing sheet of “(6.2.22 to 12.2.22).” (*Id.* at 46, 53.) The remaining charges, including the firearms and drug charges, were dismissed per a negotiated plea. (*Id.* at 46, 52-53.)

On August 8, 2024, the Board issued a Notice of Charges and Hearing, advising Petitioner that a revocation hearing would be held based on his new criminal conviction for possession of an instrument of crime with intent to use in violation of Section 907(a) of the Crimes Code. (*Id.* at 35.) That same day, Petitioner signed a “Waiver of Revocation Hearing and Counsel/Admission Form,” thereby waiving his rights to counsel and a revocation hearing. (*Id.* at 33-34.) Petitioner also, through that form, “knowingly, intelligently, and voluntarily” admitted that he pled guilty to and was convicted of “18 § 907 §§ A POSS INSTRUMENT OF CRIME W/INT – M1.” (*Id.* at 33.) This form contained an acknowledgment that the signer understood and agreed that their admission was binding but could “be withdrawn if [the signer] submit[ted] a written withdrawal to [their] supervising agent, within ten (10) calendar days” (*Id.*) The record contains no written withdrawal form.

The Board issued the September 3, 2024 Decision, recommitting Petitioner as a CPV to serve nine months for his new conviction, “early failure on parole/reparole,” and “failure to comply with sanctions.” (*Id.* at 93-94.) The Board denied Petitioner credit for his street time, stating, “the offender committed a new offense involving possession of a weapon thereby warranting denial of credit for time at liberty on parole. The offender continues to demonstrate unresolved drug and/or alcohol issues that warrant denying credit for time at liberty on parole.” (*Id.* at 94.) In an Order to Recommit, the Board outlined its calculations of Petitioner’s maximum date, showing 424 days of backtime credit for the time he spent in pre-sentence confinement from June 2, 2023, to July 30, 2024, that his effective date of return was July 30, 2024, and that adding 424 days to the date of return did not change his maximum date because that date was “life.” (*Id.* at 95-96.)

Petitioner filed a petition for administrative review to the Board, asserting that his time incarcerated in Delaware County Prison

was credited from [June 2, 2022,] to [December 2, 2022, on his new sentence], the remaining [six] months [ran] concurrent with [his] parole time. . . . The recalculation by the Board only credit[ed] [him] from [June 2, 2023,] to [July 30, 2024], which is 1 year[,] 1 month[, and 28 days, instead of from [December 3, 2022,] to [July 30, 2024], which is 20 months. This does not include the 42 days [he] ha[s] served, after being sentenced, in the D[epartment of Corrections].

[He] was ordered to serve 9 months for being a [CPV.] However, [he is] still 12 months and 12 days over [his] violation time.

(*Id.* at 106.) He also argued he should be credited for his street time because his new offense did not involve a weapon and the lack of substantial evidence to support the Board’s conclusion that he has unresolved drug or alcohol problems or was convicted for possession of a weapon. (*Id.* at 107.) Additionally, he asserted that the Board erred in recommitting him for nine months for a conviction for possession of a weapon, when he was convicted of possession of an instrument of crime with intent to use, not a weapons offense. (*Id.*) Petitioner argued he did well on parole, notwithstanding his conviction, and he should be immediately released on reparole based on the Board’s reliance on inaccurate information and failure to give him the credit he was due. (*Id.* at 107-09.)

The Board subsequently issued a decision on December 3, 2024, denying Petitioner parole due to his “prior unsatisfactory supervision history,” and “the nature of [his] crime,” and because “reports, evaluations and assessments/level of risk indicate[] [his] risk to the community.” (*Id.* at 117.) This decision advised Petitioner that he would be reviewed again for reparole “in or after November 2025.” (*Id.*)

Petitioner appealed this decision on or about January 1, 2025, arguing he should not be denied parole based on “arbitrary and prejudicial reasons not found in any records.” (*Id.* at 112-13.) Petitioner maintained he posed no threat to the community, was an active contributor to his community, and had not tested positive for alcohol or drugs. (*Id.* at 112-16.) He also argued that the nature of his crime should not be a reason to deny him parole, as his possession of an instrument of crime was the possession of a broken glass smoke pipe that was purchased legally and not used in a crime. (*Id.* at 113-14.) Finally, Petitioner asserted he did not have a history of parole failures and, therefore, this could not be the basis of denying reparole. (*Id.* at 114-15.)

Thereafter, the Board modified its September 3, 2024 and December 3, 2024 Decisions on January 9, 2025, “correcting” the reason for denying Petitioner credit for his street time. (*Id.* at 118.) In this modified decision, mailed on January 10, 2025, the Board attributed its denial of street time credit to Petitioner’s “history of supervision failure(s) in probation and/or parole to warrant denying credit for time at liberty on parole.” (*Id.*) The Decisions otherwise remained the same. (*Id.*)

On the same day, the Board responded to Petitioner’s administrative remedies forms for the September 3, 2024 and December 3, 2024 Decisions. Therein, the Board explained it was within its authority under Section 6138(a)(1) of the Prisons and Parole Code (Code), 61 Pa.C.S. § 6138(a)(1), to revoke Petitioner’s parole based on Petitioner’s new criminal conviction. The Board noted that Petitioner “acknowledged the veracity of the new criminal conviction” in his waiver documents, and there was nothing in the record indicating he withdrew that admission. (*Id.* at 120.) As to Petitioner’s challenge to the denial of street time credit, the Board stated it had “recorded a new decision which provided a new

reason” for denying that credit, which complied with *Pittman*, and, therefore, Petitioner’s challenge to the prior reasoning was moot. (*Id.* at 120-21.)

The Board found no error in the 424 days backtime credit, noting that Petitioner did not post bail on the new charges and Petitioner’s maximum for his new criminal conviction was 12 months, meaning he was entitled to credit only for time served in excess of 12 months pursuant to *Martin v. Pennsylvania Board of Probation and Parole*, 840 A.2d 299 (Pa. 2003), and *Gaito v. Pennsylvania Board of Probation and Parole*, 412 A.2d 568 (Pa. 1980). Pointing to the order of sentences provision of Section 6138(a)(5) of the Code, the Board stated that Petitioner had to finish serving his new county sentence first and did not become available to commence service of his original sentence until July 30, 2024, the date he was sentenced. Lastly, the Board held that its denial of parole was not subject to administrative review, that there is no constitutional right to parole under either federal or Pennsylvania law, and that such decisions fall solely within its discretion. Thus, the Board dismissed the appeal of the December 3, 2024 Decision as unauthorized and upheld the September 3, 2024 Decision with respect to Petitioner’s recommitment and the Board’s calculations.

II. DISCUSSION

A. The Parties’ Arguments

Petitioner timely filed the Petition for Review in this Court, reasserting the claims set forth in his petitions for administrative review, as well as responding to the Board’s new reason for denying him street time credit.⁴ Specifically, Petitioner

⁴ In reviewing the Board’s Order, the role of this Court is to determine “whether the decision was supported by substantial evidence, whether an error of law occurred[,] or whether constitutional rights were violated.” *Brown v. Pa. Bd. of Prob. & Parole*, 184 A.3d 1021, 1023 n.5 (Pa. Cmwlth. 2017) (quoting *Ramos v. Pa. Bd. of Prob. & Parole*, 954 A.2d 107, 109 n.1 (Pa. Cmwlth. 2008)).

argues the Board violated his due process rights “by relying on false, inaccurate, hearsay information to deny him credit for” his street time, to recommit him, and to deny him parole. (Petitioner’s Brief (Br.) at 8, 10.) He asserts that the Board cannot rely on his signing the waivers to support his recommitment. Petitioner next argues that the Board violated his due process rights by “exercising its discretion in an arbitrary and capricious manner.” (*Id.* at 13.) Petitioner maintains there is nothing in the record to support that he was convicted of possessing a weapon or that he had drug or alcohol issues, and, therefore, these could not be the reasons for revoking his parole, denying him parole, or denying him credit for his street time. He also challenges the contention that he had failures during his parole that would justify denying him street time or recommitting him for nine months. Finally, Petitioner argues the Board “abused its discretion by failing to credit [P]etitioner with time served in Delaware County Prison,” leaving him with unaccounted for deadtime. (*Id.* at 15.)

In its brief, the Board responds that it did not abuse its discretion in denying Petitioner credit for his street time because, upon receiving Petitioner’s petition for administrative review, it issued a revised explanation for its decision to deny him credit, which is supported by the record showing his recommitment as TPV and multiple sets of new criminal charges. Thus, Petitioner’s arguments based on the Board’s prior reasons for denying credit are moot. It further asserts that, ultimately, its credit decision is of little consequence because Petitioner “is serving a life sentence which cannot by definition be extended through the deprivation of credit for” his street time; thus, any error is harmless as no relief could be given. (Board’s Br. at 6, 9-10.) Moreover, the Board argues it “did not violate [Petitioner]’s due process rights in ordering his recommitment,” as it presented Petitioner with notice

of his revocation hearing, and Petitioner elected to waive his hearing, acknowledging his conviction was for a revocable offense. (*Id.* at 6, 14-15.) The Board further observes that it did not consider any impermissible factors, and there is nothing to suggest the Board looked beyond the fact that Petitioner had a new conviction while on parole. (*Id.* at 15-16.) Finally, it argues its decision denying Petitioner parole is not subject to appellate review because that decision is not an adjudication. (*Id.* at 13-14.)

Petitioner filed a reply brief reasserting several of his arguments and challenging any reliance on arrests or criminal charges where no conviction followed. Such reliance, he asserts, is impermissible pursuant to *Commonwealth v. Berry*, 323 A.3d 641, 649, 654 (Pa. 2024). He further maintains that the Court does have jurisdiction to review the Board’s parole decision because it was arbitrary, capricious, based on impermissible reasons, and there is a constitutional right to review. Petitioner maintains that he can seek to have any inaccurate information removed from his record to avoid “tainting” any future parole decision. (Petitioner’s Reply Br. at 4 (citing *Toland v. Pa. Bd. of Prob. & Parole*, 311 A.3d 649 (Pa. Cmwlth. 2024)).)

B. Analysis

1. Recommitment as a CPV

Petitioner argues that the Board erred, abused its discretion, and/or violated his constitutional rights to due process in recommitting him because it relied on the erroneous reason that he was convicted of possessing a weapon, which he was not. He further asserts the Board could not rely on his signing the waiver forms, in which he admitted the conviction of possession of an instrument of crime, because

(conflictingly) he either did not sign those waivers or attempted to withdraw his waiver. Upon review of the record and law, neither argument is persuasive.

Section 6138(a)(1) of the Code states,

[t]he [B]oard may, at its discretion, revoke the parole of a paroled offender if the offender, during the period of parole or while delinquent on parole, commits a crime punishable by imprisonment, for which the offender is convicted or found guilty by a judge or jury or to which the offender pleads guilty or nolo contendere at any time thereafter.

61 Pa.C.S. § 6138(a)(1) (emphasis added). “If the offender’s parole is revoked, the offender **shall be recommitted** to serve the remainder of the term which the offender would have been compelled to serve had the parole not been granted and . . . shall be given no credit for the time at liberty on parole.” 61 Pa.C.S. § 6138(a)(2) (emphasis added).

Here, the record shows that Petitioner pled guilty to violating Section 907(a) of the Crimes Code, “possession of an instrument of crime with intent to use,” which is a misdemeanor in the first degree. 18 Pa.C.S. § 907(a). In addition to the sentencing order reflecting Petitioner’s guilty plea to this crime, the record also includes the docket for that case and Petitioner’s admission that he was convicted of this crime in violation of his parole.⁵ (C.R. at 33, 46-64.) Misdemeanors in the first degree are punishable for up to five years in prison. Section 1104(1) of the Crimes Code, 18 Pa.C.S. § 1104(1). Because Petitioner pled guilty to a crime that is

⁵ To the extent Petitioner argues the Board could not rely on his admission, his arguments are unpersuasive. Petitioner’s signature clearly appears on the waiver and admission documents, and he acknowledges in this brief that he did sign these documents. Although Petitioner indicates he submitted a request for a revocation hearing after signing the waivers, there is nothing in the record reflecting that request or that it was made in writing within the 10 days required to validly withdraw a waiver.

punishable with a prison sentence, the Board was within its discretion to revoke Petitioner's parole under Section 6138(a)(1).

Although Petitioner argues that the Board recommitted him based on his being convicted of possession of a weapon, which he was not, the repeated reference to Section 907(a) in the record belies Petitioner's claim. A conviction under Section 907(a) relates to the possession of "[c]riminal instruments generally" and provides that "[a] person commits a misdemeanor of the first degree if he possesses any instrument of crime with intent to employ it criminally." 18 Pa.C.S. § 907(a). Notably, "[p]ossession of a weapon . . . with intent to employ it criminally" is a separate criminal offense under Section 907(b), 18 Pa.C.S. § 907(b). No reference to Section 907(b) appears in the record. The Board's September 3, 2024 Decision references Petitioner's conviction for "possess [sic] instrument of crime with intent" based on the sentencing order and docket sheets, which reflect Petitioner's conviction under Section 907(a), not Section 907(b). (C.R. at 33, 47-64, 93 (emphasis omitted).) Further, any error in this regard would be harmless because Petitioner's conviction for violating Section 907(a) nonetheless supported his recommitment under Section 6138(a)(1). Additionally, the nine-month recommitment period imposed by the Board falls within the presumptive range for a conviction of violating Section 907(a). *See* 34 Pa. Code § 75.2 (providing that the additional part of the term a CPV would have been compelled to serve had they not been paroled, known as the presumptive range, for "[p]ossessing [i]nstruments of [c]rime" as "6 months to 12 months"). "As long as the period of recommitment is within the presumptive range for the violation, the Commonwealth Court will not entertain challenges to the propriety of the term of recommitment." *Smith v. Pa. Bd.*

of Prob. & Parole, 574 A.2d 558, 560 (Pa. 1990). Thus, we discern no reversible error or constitutional violation in the Board’s recommitment decision.

As for Petitioner’s abuse of discretion claim, “[a]n abuse of discretion is not merely an error of judgment, but occurs only where the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record.” *Pittman*, 159 A.3d at 474. Petitioner presents no evidence of prejudice, ill will, or bias against him by the Board. Moreover, the Board’s Decision recommitting him as a CPV is not “manifestly unreasonable,” where the record contains evidence establishing that Petitioner was convicted of a crime that supports the revocation of his parole and recommitment for a period of nine months, even if it did not include a weapon.

Accordingly, these are not reasons to reverse the Board’s Order.

2. Denial of Credit for Street Time

Petitioner argues he should be granted credit for time he spent at liberty on parole because the Board incorrectly relied on “false, inaccurate, hearsay information” in making its decision to deny him credit. (Petitioner’s Br. at 8.) He states this is because the Board denied him credit due to “unresolved drug and alcohol use, possession of a weapon with intent to use[,] and [failures] on parole supervision,” none of which is supported by the record. (*Id.*)

Section 6138(a)(2) states that “[i]f the offender’s parole is revoked, the offender shall be recommitted to serve the remainder of the term which the offender would have been compelled to serve had the parole not been granted and . . . shall be given no credit for the time at liberty on parole.” 61 Pa.C.S. § 6138(a)(2). However, Section 6138(a)(2.1) provides that “[t]he [B]oard may, in its discretion,

award credit to an offender recommitted under paragraph (2) for the time spent at liberty on parole” except in circumstances not applicable here. 61 Pa.C.S. § 6138(a)(2.1). In exercising its discretion to deny credit for street time, the Board must state its reasoning, though that explanation need not be extensive; “a single sentence explanation is likely sufficient in most instances.” *Pittman*, 159 A.3d at 475 n.12. This is necessary for appellate courts to assess the Board’s reasoning for its decision, as it **must be accurate and relate to the petitioner’s history of time spent on supervision**. *See id.* at 474. The reason given also must be “**documented by the record**.” *Plummer v. Pa. Bd. of Prob. & Parole*, 216 A.3d 1207, 1212 (Pa. Cmwlth. 2019) (emphasis added).

Initially, to the extent Petitioner’s arguments are based on the Board’s initial reasons for denying him credit for his street time, we agree with the Board that those reasons are now moot. The Board issued an amended Decision in January 2025 in response to Petitioner’s petition for administrative review, changing its reason for denying street time credit to Petitioner’s “history of supervision failure(s) in probation and/or parole.” (C.R. at 118.) Thus, we will not address these now-abandoned justifications for denying Petitioner credit for his street time. However, Petitioner also challenges the Board’s alternative basis for denying him credit as not being supported by the record.

We have held that the reason given here, “history of supervision failure(s) in probation,” is sufficient to support the denial of street time credit under *Pittman*. *Plummer*, 216 A.3d at 1211. Thus, we will affirm the Board’s decision if it is accurate and relates to the petitioner’s history of time spent on supervision, *Pittman*, 159 A.3d at 474, and is “documented in the record,” *Plummer*, 216 A.3d at 1212.

A review of the record here shows that in the approximately three years he was on parole, Petitioner accrued a travel violation for leaving his district, which led to his recommitment as a TPV, and pled guilty to the charge of possession of an instrument of crime with intent, upon which the Board revoked Petitioner's parole and recommitted him to serve nine months of backtime. (C.R. at 18, 93-94.) In his recommitment as a TPV in December 2019, the Board noted Petitioner's "early failure on parole" as a basis for his recommitment. (*Id.* at 18.) In addition, Petitioner was arrested three times on new criminal charges, only one of which resulted, as of yet, in a new conviction.

The Board cites in its brief Petitioner's accumulation of three sets of criminal charges. (Board's Br. at 8.) However, arrests that do not lead to a conviction may not be the basis for making its decision. In *Berry*, our Supreme Court noted its "rejection of arrests as a factor for the revocation of probation or parole." 323 A.3d at 654 (citing *Commonwealth v. Cottle*, 426 A.2d 598, 601 (Pa. 1981) (holding that the fact that a person had been subject to an arrest while on probation could not support a revocation sentence of incarceration)). "[M]ere arrests and indictments, without convictions . . . have no value as probative matter." *Berry*, 323 A.3d at 654 (quoting *Commonwealth v. Jones*, 50 A.2d 342, 344 (Pa. 1947)). Instead, "at a revocation hearing, the Commonwealth is required to prove a violation by a preponderance of the evidence, that evidence of an arrest does not meet this standard, and that the Commonwealth must adduce some evidence about the circumstances surrounding the arrest." *Id.* Of the arrests reflected in the record, one resulted in charges that were withdrawn, one resulted in the conviction at issue here, and the third resulted in charges that, from all accounts, remain pending. Based on *Berry*,

only one of the arrests, which led to the conviction, could be considered by the Board as a factor in its decision.

Excluding two of Petitioner's three arrests leaves Petitioner with a travel violation, for which he was recommitted as a TPV in 2019, and his subsequent conviction in 2022, which led to his current recommitment as a CPV. Otherwise, Petitioner's Supervision History reflects that he was compliant with his supervision from his release in 2019 to his arrest and subsequent conviction for possession of an instrument of crime with intent to use in 2022. (C.R. at 42.) Petitioner secured employment, resided at his approved residence, sought permission to change his residence, and made himself available consistently to his supervisors. (*Id.*) Petitioner's parole supervisor described him as "maintain[ing] regular contact with supervision staff, maintain[ing] steady employment, ha[ving] a stable home plan, and . . . be[ing] compliant on GPS monitoring" Therefore, the parole supervisor recommended that Petitioner remain on supervision rather than be recommitted after his 2021 arrest. (*Id.*)

This record and the Board's reasoning is akin to those in *Marshall v. Pennsylvania Board of Probation and Parole*, 200 A.3d 643 (Pa. Cmwlth. 2018), and *Baldwin v. Pennsylvania Board of Probation and Parole* (Pa. Cmwlth., No. 907 C.D. 2018, filed April 2, 2019),⁶ in which we held that the Board's explanation for denying street time credit was not documented in the record and/or was not individualized, and, therefore, a remand was warranted. In *Marshall*, the Board's explanation for denying street time credit, "felony drug[-]related crimes," suggested that the parolee had been convicted of multiple drug related crimes, where the record

⁶ Unreported panel opinions of this Court are not precedential but may be cited for their persuasive authority pursuant to Pennsylvania Rule of Appellate Procedure 126(b), Pa.R.A.P. 126(b) and Section 414(b) of the Court's Internal Operating Procedures, 210 Pa. Code § 69.414(b).

showed only one conviction, and failed to provide a clear reason why the new conviction warranted forfeiture of nine years of street time, a period longer than the sentence for the new conviction. 200 A.3d at 650. We further observed that the Board’s “few words” explaining its decision contained no apparent relationship to the parolee in particular. *Id.* at 650-51. In *Baldwin*, similar to here, the Board cited the parolee’s “poor supervision history” as the basis for denying him street time credit. *Baldwin*, slip op. at 3. Upon review, however, we concluded the Board’s explanation was “facially inconsistent with Baldwin’s spotless record of compliance” and the conclusion of his parole supervisor that Baldwin was “amenable to supervision” notwithstanding his recent arrest. *Id.* at 6. Absent an “individualized explanation,” we held, the Board’s reason was inadequate to allow review under *Pittman*, and a remand was needed for the Board to “explain its exercise of discretion in its credit determination, as well as to correct any error in exercising that discretion based on the facts and Baldwin’s individual circumstances.” *Id.* at 7.

This case is analogous to *Marshall* and *Baldwin*. The Board’s explanation here appears to be “facially inconsistent with” Petitioner’s “record of compliance” and his parole supervisor’s description of Petitioner’s time on parole and conclusion that he should remain on supervision following his 2021 arrest. *Baldwin*, slip op. at 6. Further, the Board’s “few words” explaining its decision contained no apparent relationship to Petitioner in particular. *Marshall*, 200 A.3d at 650-51. Thus, the Board did not adequately explain how Petitioner’s conduct, reflected in the record, aligned with its reasoning for why Petitioner should be denied credit so to allow this Court to perform our appellate review. Accordingly, we are constrained to vacate the Board’s Order in this regard and remand for the Board to “explain its exercise of

discretion in its credit determination, as well as to correct any error in exercising that discretion based on the facts and [Petitioner]’s individual circumstances.” *Baldwin*, slip op. at 7.⁷

3. Backtime Credit

Petitioner next argues that the Board’s back time credit decision should be reversed because it results in his having “dead time,” time confined that is neither credited toward his new sentence nor his original sentence. (Petitioner’s Br. at 7.) Here, Petitioner was confined in the Delaware County Prison from June 2, 2022, until around August 3, 2024, on his new charges and the Board’s detainer. This is a total of 26 months. Following his guilty plea, he was sentenced on the new charges on July 30, 2024, to serve 3 to 12 months, with the sentencing court giving him 6 months of credit towards his possession conviction and directing that the remaining 6 months was to run concurrent with his parole back time.⁸ In its recommitment calculations, the Board gave Petitioner 424 days of backtime credit, for the period from June 2, 2023, to July 30, 2024, or from the expiration of his 12-month sentence (June 2, 2022, to June 2, 2023) to the date of Petitioner’s sentencing on the new conviction.

⁷ We acknowledge the Board’s argument that even if it erred or abused its discretion in denying Petitioner credit for his street time, no change to his maximum sentence would result because that sentence is for life. However, the fact that an individual is sentenced to life, a maximum that will not change even if we were to conclude that credit should have been given, should not mean the Board’s decisions regarding street time credit are unreviewable. The Board must comply with the law in making such decisions.

⁸ Petitioner contends he had either 11 or 14 months of dead time but is unclear how he calculates that time. Per the record, Petitioner was in pre-sentence confinement for 26 months, he claims he received 6 months credit on his new sentence (reducing this to 20 months), and the Board gave him credit on his original sentence for 13 months and 28 days (June 2, 2023, to July 30, 2024), which leaves approximately 6 months and 2 days to qualify as potential dead time.

Contrary to Petitioner's arguments, all of his time confined in Delaware County is accounted for in the Board's credit calculations. Petitioner's argument that the Board erred in not giving him more credit on his original sentence appears to be based on the six months on his new sentence that was to purportedly run concurrently with his original sentence. Granting such credit, however, would be contrary to the well-settled principles of *Martin* and *Gaito*. Pursuant to *Gaito*, where a parolee is confined on **both** new criminal charges and a Board (or Department of Corrections) detainer, **all the pre-sentence confinement time shall** be applied to the **new sentence**. 412 A.2d at 571. *Martin* provides a narrow exception to *Gaito*'s general rule where it is not possible for all the pre-sentence confinement time to be credited against the new sentence, either because there was no conviction or the confinement time **exceeds the maximum term** of the sentence for the new crime. 840 A.2d at 304.

The record shows that Petitioner was confined on both the new charges, having not posted bail, and the parole detainer. (C.R. at 31, 49.) The Board's credit determination gave credit to Petitioner for any confinement time that exceeded the maximum 12-month term of Petitioner's sentence on the new charges, consistent with *Gaito* and *Martin*. Petitioner's relief for his claim that he has not received credit for the six months of concurrent time in violation of his plea agreement is to seek to vacate the plea agreement. *Palmer v. Pa. Bd. of Prob. & Parole*, 134 A.3d 160, 166 (Pa. Cmwlth. 2016). And, the Board's use of July 30, 2024, as his return to the Board's custody reflects that any time confined after that date would be credited toward Petitioner's original sentence. Accordingly, there are no errors in the Board's calculations that require reversal of the Board's Order.

4. Denial of Reparole

Petitioner argues he appeals the Board's decision denying him re-parole because it violated his due process rights by exercising its discretion in an arbitrary and capricious manner. He maintains the Board impermissibly relied on hearsay evidence that he was convicted of possession of a weapon with intent to use and that he had parole failures, neither of which is supported by his record. Petitioner asserts that the reliance on false information to deny parole can support a substantive due process claim. *Jubilee v. Horn*, 975 F. Supp. 761, 764-65 (E.D. Pa. 1997), *aff'd*, 151 F.3d 1025 (3d Cir. 1998) (per curiam). The Board asserts the Court lacks jurisdiction to review its parole decision, and Petitioner counters that jurisdiction exists "to address administrative matters and rule on them," (Petitioner's Reply Br. at 3).

The Board denied Petitioner re-parole on December 3, 2024, citing his "prior unsatisfactory supervision history"; "reports, evaluations and assessments/level of risk indicates [his] risk to the community"; and "the nature of [his] crime." (C.R. at 117.) Petitioner seeks appellate review of this decision. However, our Supreme Court has explained that Board decisions denying parole are not adjudications under Sections 101 and 702 of the Administrative Agency Law, 2 Pa.C.S. §§ 101, 702 (explicitly excluding "any order based upon a proceeding . . . which involves . . . paroles" from the definition adjudication), and, therefore, are not subject to appellate review. *Rogers v. Pa. Bd. of Prob. & Parole Bd.*, 724 A.2d 319, 322 (Pa. 1999). As the High Court explained,

because the General Assembly, in its wisdom, has conferred upon the [] Board sole discretion to determine whether a prisoner is sufficiently rehabilitated to serve the remainder of his sentence outside of the confines of prison, . . . the courts of the Commonwealth do not have statutory jurisdiction to conduct appellate review of a decision of the Board, since such decision does not constitute an adjudication.

Id. at 322.

The *Rogers* Court also rejected the petitioners' argument that there "exists a constitutionally-guaranteed right of appeal from the [] Board's actions," concluding that "parole release involves a prisoner who has no present liberty interest as a result of his confinement" and "parole is a matter of grace and mercy shown to a prisoner" and, thus, there is not "a liberty interest in parole which is protected by" due process. *Id.* at 322-23. Accordingly, the Supreme Court affirmed this Court's dismissal of the petitioners' appeal based on our lack of jurisdiction to review the Board's denial of parole. *Id.* at 323.

The petitioners in *Rogers*, like Petitioner here, argued that the denial of their parole was arbitrary and capricious and violated their right to due process, and that they had a constitutional right to appellate review. *Id.* at 321; (Petitioner's Reply Br. at 3). For the reasons set forth in *Rogers*, we are required to agree with the Board that we lack jurisdiction to consider Petitioner's appeal of the Board's December 3, 2024 denial of reparole.⁹

⁹ The *Rogers* Court further stated:

While appellants are not entitled to appellate review of a [] Board decision, they may be entitled to pursue allegations of constitutional violations against the [] Board through a writ of mandamus, or through an action under 42 U.S.C. § 1983. Mandamus is an extraordinary remedy which is available to compel the Parole Board to conduct a hearing or to apply the correct law. *Bronson [v. Bd. of Prob. & Parole]*, 421 A.2d 1021, 1023 (Pa. 1980)]. Section 1983 provides a remedy against any person who, under color of state law, deprives another of rights protected by the Constitution. *Collins v. City of Harker Heights*, 503 U.S. 115, 121 . . . (1992).

724 A.2d at 323 n.5.

III. CONCLUSION

For the foregoing reasons, we affirm the Board's Order in part because we discern no error of law, abuse of discretion, or constitutional violation in the Board's recommitment decision and back time credit decisions and lack jurisdiction to consider Petitioner's appeal of the Board's denial of reparole. However, we vacate in part because the Board's explanation for denying Petitioner credit for his street time does not comport with *Pittman* and its progeny, and the matter is remanded for a new determination as to that issue.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald Flynn,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 105 C.D. 2025
	:	
Pennsylvania Parole Board,	:	
	:	
Respondent	:	

ORDER

NOW, October 13, 2026, the Order of the Pennsylvania Parole Board is **AFFIRMED IN PART** and **VACATED IN PART**, and the matter is **REMANDED** in accordance with the foregoing opinion.

Jurisdiction relinquished.

RENÉE COHN JUBELIRER, President Judge