

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 vs. : NO. CR-577-2018  
 :  
 CHARLES VINCENT MATTUCCI, :  
 Defendant :

Criminal Law - Eligibility for Parole – Effective Date of Parole – Notice of Parole – Automatic Parole - Revocation of Parole – New Criminal Offense While on Parole

1. The actual sentence of a prisoner subject to total confinement is his maximum sentence, and his minimum sentence merely sets the time after which he is eligible to serve the remainder of his sentence on parole.
2. The power and decision to grant parole for a county sentence is at the discretion of the sentencing court, not with the county probation office.
3. A defendant cannot be paroled prior to sentencing, nor can the effective date of parole be made retroactive to a date prior to the date of sentencing, in contrast to being granted credit for time served before sentencing.
4. Absent an express grant of parole by the sentencing court, Defendant's release from prison after serving his minimum sentence and his supervision by the county's probation office put Defendant on notice he had been released on parole.
5. Carbon County is one of several counties in this Commonwealth which has an administrative order granting automatic parole for defendants convicted of driving under the influence who receive a sentence in which the minimum term of imprisonment is not more than ninety days.
6. A trial court may revoke a defendant's sentence of parole if defendant (1) commits a new crime or (2) violates a specific, court-imposed condition of his parole or a condition of supervision imposed in furtherance of the court's conditions.
7. Upon revoking parole, the court must recommit the parolee to serve the remainder of the original sentence of imprisonment, from which the defendant can be re-paroled.

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CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :  
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 vs. : NO. CR-577-2018  
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 Defendant :  
 :

Gary F. Dobias, Esquire  
Assistant District Attorney  
Michael P. Gough, Esquire

Counsel for Commonwealth  
Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – January 24, 2023

Defendant appeals from our order dated December 9, 2022, revoking him from parole and recommitting him to prison contending that the parole proceedings were fatally flawed by the Probation Office's belief that he was placed on parole prior to being sentenced and that he could not violate terms of parole since he was never officially notified that he was on parole or subject to supervision. As discussed below, neither issue has merit.

PROCEDURAL AND FACTUAL BACKGROUND

On October 18, 2019, Defendant, Charles Vincent Mattucci, pled guilty to one count of driving under the influence, highest rate of alcohol,<sup>1</sup> as a second offense, and

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<sup>1</sup> 75 Pa.C.S.A. §3802 (c) .

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CARBON COUNTY

one count of driving under suspension/DUI related.<sup>2</sup> The date of offense was April 7, 2018.

The Honorable Steven R. Serfass sentenced Defendant on December 12, 2019, to a period of imprisonment in the Carbon County Correctional Facility to a term of not less than ninety days nor more than sixty months on the driving under the influence offense and a concurrent term of not less than forty-five days nor more than ninety days for driving under suspension/DUI related. On the driving under the influence offense he was given ninety-two days credit and received ninety days credit on his sentence for driving under suspension/DUI related.

At the time Defendant was sentenced, he was in prison in the county jail, having failed to post bail. He was not being detained for any other reason and was not serving another sentence. (N.T., pp. 32, 35).<sup>3</sup>

On December 13, 2019, Defendant was released from the Carbon County Correctional Facility. (N.T., p. 29). The authorization for this release is in question since the sentence Judge Serfass imposed did not grant Defendant immediate parole upon serving his minimum sentence, did not subject Defendant to a pre-parole investigation, and did not require Defendant to report to the Carbon County Adult Probation and Parole Office (Probation Office) within 72 hours of his release. It did however impose a monthly supervision fee of fifty dollars.

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<sup>2</sup> 75 Pa.C.S.A. §1543(b)(1.1)(i).

<sup>3</sup> Unless otherwise indicated, reference to the notes of testimony refers to the revocation hearing held on December 9, 2022.

After Defendant was released from prison, he was supervised by the County's Probation Office. (N.T., pp. 9, 15). On January 22, 2020, two members of the Probation Office met with Defendant at his home and discussed with him the special conditions of his parole, including the requirement that he attend treatment intervention group classes. (N.T., pp. 16-17).

On January 21, 2021, the Probation Office filed a Petition to Revoke Defendant's Parole (Petition). The Petition alleged that Defendant violated the conditions of his supervision in two respects: (1) that he failed to report to the Probation Office within 72 hours of his release for an intake to be completed; and (2) that he was arrested and charged by the Pennsylvania State Police in Lehighton with driving under the influence of a controlled substance and false identification to law enforcement from an incident which occurred on January 6, 2021. (N.T., p. 14). The Petition was amended twice to include additional alleged parole violations: (1) by order dated February 5, 2021, for new criminal charges filed by the Pennsylvania State Police in Lehighton; and (2) by order dated March 25, 2021, for new criminal charges filed by the Pennsylvania State Police in Belfast. A hearing on the Petition was held before this court on December 9, 2022.

At the hearing on December 9, 2022, the evidence established Defendant pled guilty to driving under the influence of a controlled substance and to driving under suspension/DUI related with respect to the incident of January 6, 2021, the offense referred to in the Petition as originally filed, but that Defendant had not yet been sentenced on these charges and had pending before the court a petition to withdraw his pleas. (N.T.,

pp. 4-5, 11-12).

With respect to the new criminal charges referred to in the order of February 5, 2021, Defendant pled guilty to false identification to law enforcement, a misdemeanor of the third degree, in Monroe County on March 12, 2021, and was given a time-served sentence of four days. (N.T., pp. 6, 12-13). With respect to the new criminal charges filed by the Pennsylvania State Police in Belfast referred to in the March 25, 2021 order, on September 16, 2021, Defendant pled guilty and was sentenced in Northampton County to a period of imprisonment of not less than three months nor more than twelve months, was given seven days credit, and had yet to be paroled as of the date of the revocation hearing. (N.T., pp. 6-7, 13).

At the December 9, 2022 hearing, Defendant did not dispute the new criminal charges or their disposition as presented by the Commonwealth, but took the position that he had never been placed on parole and therefore could not be in violation. (N.T., pp. 7-8, 31). Defendant further testified that notwithstanding the clear language of the final judgment of sentence sentencing him to no less than ninety days nor more than sixty months in prison for driving under the influence, the minimum and maximum stated in the sentencing order were only guidelines, that he in fact received a flat sentence of ninety-two days, and that he had completed his sentence in its entirety by the time he was released from prison on December 13, 2019. (N.T., pp. 23-28, 33-34).

At the conclusion of the hearing held on December 9, 2022, the court determined that Defendant's belief as to what sentence he received was of no consequence, that the

sentence itself was the best evidence of the sentence he received; that although there may have been no specific documentation or formal notice to Defendant placing him on parole on December 13, 2019, the fact of his release from prison and his subsequent supervision by the Probation Office evidenced, if nothing else, a *de facto* parole; and that Defendant's convictions for new criminal offenses while on parole constituted specific violations of his parole as a matter of law, but that because neither the sentencing order nor any specific, court-imposed condition of Defendant's parole required he report to the Probation Office within 72 hours of his release from prison, his failure to do so did not constitute a violation of the terms of parole. Cf. Commonwealth v. Foster, 214 A.3d 1240, 1244 n.5, 1250 (Pa. 2019) (holding that a trial court may revoke a defendant's probation only if the defendant (1) commits a new crime or (2) violates a specific, court imposed condition of his probation or a condition of supervision imposed in furtherance of the court's conditions). By order of the same date, the court revoked Defendant's parole and remanded him to the Carbon County Correctional Facility to serve the maximum date of his sentence, September 11, 2024. See Commonwealth v. Stafford, 29 A.3d 800, 803 n.5 (Pa.Super. 2011) (stating "a court faced with a parole violation must recommit the parolee to serve the remainder of the original sentence of imprisonment, from which the prisoner could be reparaoled").

On December 22, 2022, Defendant filed a Notice of Appeal from the December 9, 2022 revocation order. In response to the court's December 28, 2022 order directing Defendant to file a concise statement of the errors complained of on appeal, Defendant

filed a timely concise statement on January 9, 2023. Therein, Defendant raises two issues: (1) that the revocation proceedings initiated here were improper and unlawful in the first instance in that the Adult Probation Department had alleged that the Defendant was paroled on December 10, 2019, two days prior to his being sentenced in the case *sub judice*; and (2) that the Defendant could not have been adjudged in violation of parole in the first instance in that the Defendant was never furnished official notice that he was subject to parole supervision and was, in fact, never subjected to any supervision whatsoever.

## DISCUSSION

### Parole Prior to Sentencing

The genesis of Defendant's first issue is the testimony of Kimberly Cooper, an adult probation/parole officer in the Probation Office, who alleged in the Petition for Revocation and testified at the hearing that Defendant was paroled on December 10, 2019 (i.e., before he was sentenced on December 12 by Judge Serfass). (N.T., pp. 9-10, 14-15, 17-18). In explaining how this was possible, Ms. Cooper testified that because Defendant received a minimum sentence of ninety days but was given credit for ninety-two days, the system utilized in the Probation Office subtracts ninety-two days from the ninety day minimum sentence to reach a parole date two days earlier, on December 10. (N.T., pp. 17-18).

"[T]he actual sentence of a prisoner subject to total confinement is his maximum sentence, and his minimum sentence merely sets the time after which he is eligible to

serve the remainder of his sentence on parole." Hudson v. Com., Pa. Bd. of Probation and Parole, 204 A.3d 392, 396 (Pa. 2019). Whether a defendant is paroled upon serving the minimum sentence, or at some later date short of serving the maximum sentence, is at the discretion of the sentencing court. In any event, it is axiomatic that the power and decision to legally parole a defendant serving a maximum term of less than two years or a maximum in excess of two years for driving under the influence offenders sentenced to serve their time in the county prison, is with the sentencing court, not by a county probation office, see 42 Pa.C.S.A. §§9775, 9776 and 75 Pa.C.S.A. §3815(a), and that a defendant cannot be paroled at a point in time prior to being sentenced, in contrast to being granted credit for time served before sentencing. Cf. Patrick v. Com., Pa. Bd. of Probation and Parole, 532 A.2d 487, 489 (Pa.Cmwith. 1987) (holding that the courts of common pleas lack the power to grant parole retroactive to a date prior to the date of the actual imposition of sentence). To find otherwise in the instant case is a fiction contrary to the uncontested and undisputed fact that Defendant was not released from prison until one day after he was sentenced. Accordingly, Ms. Cooper's belief that Defendant was paroled on December 10, 2019, prior to his sentencing on December 12, 2019, is legally unsustainable and does not alter the fact that Defendant was not paroled until his release from prison on December 13, 2019.

#### Placement on Parole

Defendant's second issue, that he was not on parole because he never received notice of his parole and therefore could not violate the terms of parole defies common

sense.<sup>4</sup> Sentences in Pennsylvania are indeterminate and require the sentencing court to impose a sentence containing a minimum and maximum period of incarceration. 42 Pa.C.S.A. §9756(b)(1). This in fact occurred here. The minimum sentence Judge Serfass imposed, ninety days, was the statutory mandatory minimum required for a second offense driving under the influence conviction with a breath or blood-alcohol content of 0.16% or greater. 75 Pa.C.S.A. §3804(c)(2). The maximum sentence Judge Serfass imposed, sixty months, was similarly statutorily required since Defendant's drug and alcohol evaluations recommended treatment.<sup>5</sup> 75 Pa.C.S.A. §§3803(b)(4), 3804(d).

Defendant's testimony that he believed the minimum and maximum sentences imposed by Judge Serfass were simply guidelines and that he in fact received a flat sentence of ninety days is incredulous and belied by Defendant's criminal record, which evidences Defendant is criminally sophisticated. (N.T., pp. 24-25, 33). Before being sentenced on December 12, 2019, Defendant had four prior driving under the influence convictions, as well as multiple other convictions, including one for which he received an indeterminate sentence of six to twenty months in Chester County in 2013. After

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<sup>4</sup> Technically, as presented, Defendant's second issue makes neither legal nor logical sense. Even if Defendant was not notified he was subject to parole supervision and was not in fact supervised on parole, both of which are contrary to the credible evidence of record, that Defendant may have been on unsupervised parole would not prevent his parole from being revoked for committing a new criminal act while on parole. At the hearing, however, Defendant advanced the position that he was never placed on parole and, therefore, there could be no violations. (N.T., p. 7).

<sup>5</sup> A drug and alcohol evaluation was completed before Defendant was sentenced. (N.T., p. 24). The results of this evaluation recommended Defendant attend a treatment intervention group program. (N.T., p. 17; N.T. sentencing, 12/12/19, p. 2).

Defendant was sentenced on December 12, 2019, and while Defendant was on parole, Defendant committed three additional new criminal offenses including a second offense for which he received an indeterminate sentence of three to twelve months in Northampton County. Given this history, Defendant's claim that he did not understand the meaning of the indeterminate sentence imposed by Judge Serfass is given no credence.

Defendant's contention that he was not on parole because he did not receive official notice that he was being placed on parole is equally disingenuous. While it is true Defendant's sentencing order on its face did not make him immediately eligible for parole upon serving his minimum, and Defendant may not have been advised at the time of sentencing that he would be immediately released on parole, it is indisputable that Defendant was released from prison one day after he was sentenced, having served only ninety-three days of a five year sentence.

Defendant's release from prison, if nothing else, put Defendant on notice that he was on parole, as did the visit by two probation officers to his home on January 22, 2020. (N.T., pp. 22, 34-35). Cf. Commonwealth v. Stafford, 29 A.3d 800 (Pa.Super. 2011) (finding defendant was on parole absent an express grant of parole by the sentencing court where defendant was released from prison after completion of his minimum sentence when the court rescinded a bench warrant previously issued after defendant had absconded from home electronic monitoring and pursuant to which he had been re-arrested and incarcerated).

Nor can Defendant argue that his parole was illegal because the court never granted him parole. Carbon County is one of several counties in this Commonwealth which has an administrative order granting automatic parole for defendants convicted of driving under the influence who receive a sentence in which the minimum term of imprisonment is not more than ninety days. See Administrative Order dated August 26, 1991, docketed to No. 073 MI 91. This order authorizes and directs the prison warden to release any defendant subject to its terms immediately upon serving the minimum sentence without further action or order of court. See also Stafford, 29 A.3d at 801 n.2; Presley v. Com., Pa. Bd. of Probation and Parole, 748 A.2d 791, 794 n.3 (Pa.Cmwlt. 2000).


Even if no such order existed, the fact of Defendant's release from prison after serving ninety-three days of a five year sentence with a minimum term of ninety days - one day after he was sentenced and given ninety-two days credit - as well as two members of the Probation Office meeting with Defendant at his home and discussing with him the terms of his parole a month after his release and before any of the criminal offenses for which he was subsequently violated occurred, together with Defendant having been supervised by the Probation Office for fourteen months before the Petition was filed (N.T., p. 15), evidences, at a minimum, that Defendant was on "constructive parole." Pushed to its extreme, Defendant's claim that he was never placed on parole and/or was improperly or illegally paroled absent an order granting parole, leads to the

logical conclusion that Defendant should be returned to jail for the balance of his sentence, five years less ninety-three days, unless he is paroled on some earlier date.<sup>6</sup> Cf. Presley, 748 A.2d at 794 (“In the absence of specific language granting a parole, the court’s sentencing order cannot be construed as an order granting a parole.”); Young v. Com., Pa. Bd. of Probation and Parole, 409 A.2d 843, 848 (Pa. 1979) (only “if there is compliance with the terms of parole, [does a parolee’s] time spent in that status satisfy[y] the prison commitment”). Is this really what Defendant seeks.

### CONCLUSION

In accordance with the foregoing, Defendant’s attempt to bind the court to a legal nullity, that Defendant was paroled before he was sentenced, because of a mistaken belief by the Probation Office and to thereby alter the terms of a sentence lawfully imposed has no merit. Similarly, Defendant’s argument that he could not violate the terms of parole because he was never placed on parole is a fiction devoid of reality and the indisputable fact of his release from prison under the supervision of the Probation Office after serving only ninety-three days of a five year sentence in prison.

BY THE COURT:

  
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P.J.

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<sup>6</sup> This, of course, will extend Defendant’s maximum date far beyond September 11, 2024.