

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1148

September Term, 2014

PETER ABRAMUK

v.

BETTY JOHNSON, WARDEN, MARYLAND
CORRECTIONAL PRE-RELEASE SYSTEM

Meredith,
Hotten,
Nazarian,

JJ.

Opinion by Hotten, J.

Filed: October 20, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On May 17, 2013, the parole of appellant, Peter Abramuk, was revoked by the Maryland Parole Commission (“MPC”). In re-imposing appellant’s sentence, the MPC awarded appellant “credit” – used to describe days which are subtracted from the maximum expiration date of an inmate’s term of confinement – for time spent on parole (“street time”) between March 2, 2004 and June 2, 2007 (1,187 days). Appellant was then returned to the custody of the Department of Corrections (“DOC”). He filed a, *pro se*, Petition for a Writ of Habeas Corpus in the Circuit Court for Queen Anne’s County. In his petition, appellant alleged that the MPC erred in awarding him street time credit, because appellant had spent 183 of the days between March 2, 2004 and June 2, 2007 incarcerated. As a result of this error, appellant proffered that the DOC deprived him of 183 days of credit for time served, which is mandatory under COMAR 12.08.01.22F(7)(g). The circuit court denied appellant’s petition, and appellant appeals, presenting three questions for our review. We consolidate and rephrase these questions into one:

- I. Did the circuit court err in denying appellant’s petition for a writ of habeas corpus where the MPC revoked appellant’s parole and awarded him credit for a period of street time, despite the fact that appellant was actually incarcerated during a portion of this period for which street time was awarded?¹

For the reasons that follow, the judgment of the circuit court is affirmed.

¹ As acknowledged by appellee, appellant’s brief essentially raises one issue for our review: “[d]id the circuit court properly deny [appellant’s] petition for a writ of habeas corpus on the basis that his claims lacked merit?”

FACTUAL AND PROCEDURAL HISTORY

Appellant was sentenced to thirty-five years of imprisonment in 1985,² and was paroled from DOC custody on March 2, 2004. Appellant was returned to DOC custody on February 15, 2005 and his parole was continued on August 4, 2005. Appellant was again returned to DOC custody on November 29, 2006, and he was thereafter paroled on December 12, 2006.

On January 28, 2013, appellant was arrested on a MPC parole retake warrant, and on May 17, 2013, appellant's parole was revoked by Parole Commissioner Jasper Clay. In revoking appellant's parole and re-imposing appellant's 1985 sentence, Commissioner Clay granted appellant credit for street time for the 1,187 days between March 2, 2004 and June 2, 2007. This street time credit included February 15, 2005 to August 4, 2005, and from November 29, 2006 to December 12, 2006 – during which time appellant was in custody on prior retake warrants.

Aggrieved by Commissioner's Clay's award of street time credit for the 183 days that appellant spent incarcerated, appellant filed a Petition for A Writ of Habeas Corpus in the Circuit Court for Queen Anne's County on June 18, 2014.³ According to appellant:

Commissioner Clay 'erred' when he allowed 'released' on parole credits. (time spent on the street, street-time) for the same calendar dates (Feb. 15, 2005 to Aug. 4, 2005 and Nov. 29, 2006 to Dec. 12, 2006, totaling 183 in-

² The precise date of appellant's initial commitment to DOC custody, the offense[s] of conviction, and the case number for appellant's criminal prosecution are not contained in the lower court record, nor discussed by appellant.

³ Appellant also filed a Petition for Judicial Review of the MPC decision in the Circuit Court for Baltimore City. That Petition was denied on May 7, 2015.

cust [sic] days) that the MPC was holding this petitioner in-custody on parole revocation retake warrants.

Appellant alleged that the DOC did not credit the 183 days that he spent incarcerated on parole retake warrants against the maximum expiration date of his confinement, because Commissioner Clay erroneously granted him street time which included those same days. Appellant requested that the circuit court grant his immediate release, and “order the MPC to amend its decision to allow [him] those 1,187 street-time (Parole) days around the dates that they held [him] ‘in-custody.’”

In a three page memorandum and order denying appellant’s petition without a hearing, the circuit court noted that appellant’s argument was essentially “that credit for ‘street time’ on parole and in-custody days are ‘not equivalent.’” (footnote omitted). However, the Court observed that appellant failed to cite “authority for the supposition that ‘street time’ credits, once granted, are worth any less than in-custody credits.”

The Court also noted that COMAR 12.08.01.22F(7)(g) states that “time spent incarcerated following the issuance of a parole revocation warrant shall be awarded and credited by the Division of Correction[,]” and the 183 days appellant spent incarcerated on revocation warrants was credited as part of the 1,187 days of “street time” between March 2, 2004 and June 2, 2007. Accordingly, “[i]f [appellant’s] request were granted, it would simply remove 183 days from one type of credit and place it in another category.”

Thus, even assuming that this time was erroneously classified as “street time,” any error by the Parole Commission was harmless.⁴

Appellant timely appeals this decision.

STANDARD OF REVIEW

In considering appellant’s claims, we review the record to determine whether the circuit court correctly found “from the petition, any response, reply, [and] document[s] filed with the petition” that appellant was “not entitled to any relief[.]” Md. Rule 15-303(e)(3)(A).⁵

DISCUSSION

Appellant argues that the circuit court erroneously denied the petition for a writ of habeas corpus where his credit for street time included time that he was incarcerated on parole revocation warrants. We disagree, and affirm the decision of the circuit court.

Under COMAR 12.08.01.22F(7)(g), “time spent incarcerated following the issuance of a parole revocation warrant shall be awarded and credited by the Division of Correction.” While appellant asserts that he has been deprived of the mandatory credit for the 183 days he spent incarcerated, each of these 183 days falls within the window of time from March 2, 2004 to June 2, 2007 – during which Commissioner Clay granted appellant

⁴ On November 26, 2014, appellant was released from DOC custody on mandatory supervision. Appellant’s release does not render his claims moot, because an award of additional credit for time served would consequentially reduce appellant’s period of mandatory supervision.

⁵ This standard of review is derived from the appellee’s brief. *See* appellee’s brief at 4-5.

credit for street time. Appellant makes much of the distinction that credit under 12.08.01.22F(7)(g) is mandatory, whereas credit for street time is entirely within the discretion of the MPC.⁶ However, we agree with the circuit court, that appellant's failure to show that "street time" credits, once granted, are worth any less than in-custody credits[,] makes this distinction irrelevant.

Since appellant has in-fact been credited for the 183 days he was incarcerated, his allegation of error simply concerns *how* he was credited for his time served, not that he was deprived of any credit to which he was entitled. Under these circumstances, this Court sees no reason to interfere with the administration of COMAR 12.08.01.22F(7)(g). *See Young v. Anne Arundel Cnty.*, 146 Md. App. 526, 569 (2002) ("[W]e defer to an agency's interpretation of its own regulations.").

Assuming, *arguendo*, that the MPC did err in granting appellant credit for a period of street time that included time spent incarcerated, we agree with the circuit court that any error committed was harmless. As noted above, Commissioner Clay decided to award appellant credit for "street time" for the 1,187 days between March 2, 2004 and June 2, 2007. That decision was entirely discretionary with Commissioner Clay, and the circuit court is unable to "allow [appellant] those 1,187 street-time (Parole) days around the dates that they held [appellant] 'in-custody[,]'" because the court does not have authority to exercise discretion granted to the MPC by the legislature. *See generally Spencer v.*

⁶ Under Md. Code (Repl. Vol. 2008), § 7-401(d)(1) of the Correctional Services Article, a parole commissioner may "require the inmate to serve any unserved portion of the sentence originally imposed[]" in the commissioner's discretion.

Maryland State Bd. of Pharmacy, 380 Md. 515, 523 (2004). Furthermore, if the court were to hold that appellant is entitled to 183 additional days of credit for time served, appellant would be twice credited for the same 183 days. As noted by appellee, appellant is not entitled to such a windfall.

Therefore, should appellant succeed in demonstrating error on the part of the MPC, he would only be entitled to reclassification of 183 days of his street time to credit for time served. This remedy would not affect the maximum expiration date of appellant's confinement, because, again, appellant has failed to show that "'street time' credits, once granted, are worth any less than in-custody credits." Accordingly, this Court is convinced that no prejudice has inured to appellant as a result of the hypothetical mislabeling of his time served as street time.⁷

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

⁷ Appellant also alleges that the circuit court unlawfully disregarded the MPC decision by Commissioner Clay that "all the time that you had been brought back you'll get, they have to give you credit for that[, a]nd I understand you had about 400 days on that." While the DOC did apparently only credit appellant with 285 days of in-custody credit, appellant's allegation of error is without merit for two reasons: (1) as discussed above, appellant has been credited for all the time he was incarcerated on retake warrants, and (2) Commissioner Clay's statement that "I understand you had about 400 days on that" is not properly considered part of the MPC decision. Instead, this statement is no more than an off-hand remark that is properly characterized as dicta.