

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bobby Hast, :
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 Petitioner :
 :
 v. : No. 1237 C.D. 2009
 : Submitted: November 13, 2009
 Pennsylvania Board of Probation and :
 Parole, :
 Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: January 5, 2010

Bobby Hast (Hast) petitions for review of the May 28, 2009, order of the Pennsylvania Board of Probation and Parole (Board), which affirmed its prior decision to recommit Hast as a technical parole violator (TPV) for violating a condition of his parole. We affirm.

On June 25, 2007, Hast was released on parole from a three-year to ten-year sentence for aggravated assault. Condition #5C of his parole required that Hast refrain from any assaultive behavior. However, on October 20, 2008, Hast was given a Non-Traffic Citation for harassment; the citation alleged that Hast slapped Melissa Brown, an ex-girlfriend, on her head on October 19, 2008, at 5:40 p.m. As a result, the Board charged Hast with violating parole condition #5C and scheduled a violation hearing. (C.R. at 1, 35-36, 40-41, 57, 104.)

At the hearing, Brown testified that she and Hast have a child together and that, on October 19, 2008, Hast approached her and asked where his son was. When Brown replied that Hast's son was at home, Hast hit her on the side of the head and left in a white SUV. (C.R. at 80-81.) Hast countered that he was in Ohio with his brother and another friend at a pow-wow, i.e., a Native American gathering, at the time Brown alleged that Hast hit her. Hast also testified that his girlfriend, Mylisha Krishna, has his bank statement proving that he was in Ohio at the time, and he has a time-stamped toll road document, which he had to sign because he could not pay the entire toll, to prove it. Hast stated he could easily beat the assault charge and wanted to press charges against Brown for filing a false police report. (C.R. at 88-90.) The hearing examiner asked whether Hast had the evidence with him, and Hast said that he did not. The hearing examiner then advised Hast:

Mr. Hast, at this point in time you're offering your defense that you have evidence that you want to submit with regard to your statement that you're making, you have to present that at this time. Once this record becomes finalized and closed, you can't try to introduce that as evidence.

(C.R. at 89.) Hast did not request a continuance. On cross-examination, Hast admitted that his brother lied to Hast's parole agent, telling the agent that the two men were watching a football game together at the time of the incident, in order to keep Hast out of trouble for leaving the state without permission. (C.R. at 96-100.)

After considering the evidence, the Board found that Hast violated condition #5C and recommitted him as a TPV to serve twelve months backtime. (C.R. at 108.) Hast filed an administrative appeal, asserting he can prove that he was out of the state at the time of the alleged instance of assaultive behavior. (C.R. at

113-14.) On May 28, 2009, the Board affirmed the prior decision, stating that it was supported by sufficient evidence. (C.R. at 119.) On June 17, 2009, a district justice found Hast not guilty of slapping Brown on the head on October 19, 2008. (C.R. at 47.) Hast petitions this court for review.¹

Hast argues that, under *Boswell v. Pennsylvania Board of Probation and Parole*, 512 A.2d 66 (Pa. Cmwlth. 1986), the Board was precluded from finding that Hast failed to refrain from assaultive behavior where the district justice found him not guilty of slapping Brown on October 19, 2008, obviously based on the alibi evidence Hast mentioned at the violation hearing. We disagree.

In *Boswell*, this court held that the Board is collaterally estopped from re-litigating whether a parolee failed to refrain from possessing firearms and failed to refrain from assaultive behavior where the parolee was found not guilty of such conduct in a *prior* criminal proceeding based on an alibi defense, i.e., that the parolee was elsewhere at the time of the alleged incident. However, because Hast's proceeding before the district justice did not precede his violation hearing, there is no re-litigation of a prior issue here. Thus, collateral estoppel does not apply.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

¹ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

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	:	
Respondent	:	

ORDER

AND NOW, this 5th day of January, 2010, the order of the Pennsylvania Board of Probation and Parole, dated May 28, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge