

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Aurelio Ramos, :  
Petitioner :  
v. :  
Pennsylvania Board of Probation :  
and Parole, : No. 1419 C.D. 2010  
Respondent : Submitted: January 14, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McGINLEY

FILED: February 24, 2011

Aurelio Ramos (Ramos) petitions for review from a final determination of the Pennsylvania Board of Probation and Parole (Board) that recommitted him to serve eighteen months backtime for two technical parole violations, established his maximum date as December 18, 2011, and established his parole eligibility date as June 30, 2010.<sup>1</sup>

Ramos was effectively sentenced on December 18, 1986, to a term of ten to twenty years for third degree murder and consecutively sentenced to a term of two years six months to five years for possession of an instrument of crime. As

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<sup>1</sup> This Court's review is limited to determining whether the Board's findings are supported by substantial evidence, are in accordance with the law, and whether constitutional rights have been violated. Krantz v. Pennsylvania Probation and Parole, 483 A.2d 1044 (Pa. Cmwlth. 1984). This Court will interfere with the Board's exercise of administrative discretion only where it has been abused or exercised in an arbitrary or capricious manner.

a result, Ramos was sentenced to a combined term of twelve years six months to twenty-five years.

The Board released Ramos on parole on October 28, 2002. On March 26, 2004, the Board issued an order to commit and detain Ramos following his arrest by the City of Philadelphia Police Department. On May 19, 2004, the Board ordered that Ramos be detained pending disposition of criminal charges. The charges were subsequently dismissed. On September 23, 2004, the Board issued a warrant to commit and detain Ramos. On May 13, 2005, the Board issued a warrant to commit and detain Ramos following his arrest by the City of Philadelphia Police Department. Ramos was not convicted of a crime. On December 31, 2008, the Board issued a warrant to commit and detain Ramos following his arrest by the City of Philadelphia Police Department. The charges were subsequently dismissed.

Again, on November 3, 2009, the Board issued a warrant to commit and detain Ramos. On November 12, 2009, the Board charged Ramos with violating Condition #5B of his parole, refrain from carrying firearms/weapons and Condition #5C, assaultive behavior. The Board alleged that Ramos verbally abused and intimidated Tyrone Benjamin (Benjamin) on December 30, 2008, while armed with a knife.

On January 26, 2010, the Board held a violation hearing before Hearing Examiner Audrey Donald (Hearing Examiner Donald). Ramos waived his right to have a panel hearing before Board members. Parole Agent Freddie Joe

(Agent Joe) called Benjamin as a witness. Hearing Examiner Donald administered the oath. Benjamin described the incident between him and Ramos on December 30, 2008, which took place at Benjamin's mother's house where Ramos and his girlfriend were visiting:

I was upstairs and I heard Mr. Ramos hollering, doing a lot of cussing and hollering and stomping and stuff. So I went downstairs. I told him he got [sic] to stop or he got [sic] to go, so he stopped. I went upstairs, I came back downstairs. I went into the kitchen, he came behind me and grabbed an ice pick and waved it in my face. I forget what he was saying, but he was waving it in my face, then he put it down. Then he grabbed a knife and waved that in my face and then my mom came in the kitchen and stopped it. And I went outside, went next door and called the cops.

Notes of Testimony, January 26, 2010, (N.T.) at 8; Certified Record (C.R.) at 61. On cross-examination, Benjamin testified that the police came and arrested Ramos. N.T. at 14; C.R. at 67.

Ramos testified that Benjamin's mother invited Ramos and his girlfriend to her home for breakfast. He disputed that Benjamin lived at his mother's residence. N.T. at 16; C.R. at 69. Ramos said that he was already at the house when Benjamin came to the door and "[h]e shows up with his daughter. He came into the house with his daughter. He went into the kitchen when he came to the house and had an argument with his mom in the kitchen. I don't know what they were arguing about." N.T. at 17; C.R. at 70. Ramos related his version of December 30, 2008:

[H]e came over into my [sic] living room and he told me and my girl that we have to get up and leave; okay? Nobody told him nothing different. We said, look, your

mom invited us over for breakfast. He said, well, I want you's [sic] to leave now. He said you'll leave one way or the other and that's when he went outside. He came back inside about ten minutes later with the police officers. He came inside the house with the police officers and pointed me out. . . . He said, he [sic] on state parole, he threatened me. The cop told me to get up. I got up. He put handcuffs on me.

N.T. at 19-20; C.R. at 72-73. Ramos denied that he ever had a confrontation with Benjamin with an ice pick and/or a knife in the kitchen. N.T. at 22-23; C.R. at 75-76.

In a decision recorded February 22, 2010, and mailed March 9, 2010, the Board recommitted Ramos to serve eighteen months backtime for the two technical violations.

On March 31, 2010, Ramos requested administrative relief and alleged:

9. My next Parole Hearing was on January 26, 2010, ninety-nine (99) days, after the case was discharged. My parole unlawfully revoked, and I was recommitted as technical parole violator.

10. I received my Green Sheet on March 11, 2010, and I was given eighteen (18) months, with no credit time, for the period I was in custody on the Board's Warrant, from December 30, 2008 through November 3, 2009.

11. The Board erred when it failed to credit the period of time I spent in custody on a Board's Warrant.

12. The Board erred when holing [sic] a hearing on Board Warrant past it's [sic] fourteen (14) days, to detain.

13. I have been in custody for over four hundred and fifty-six days and parole is taking the law in there [sic] hands, by continuing to hold me without Due Process of Law.

Request for Administrative Relief, March 31, 2010, Paragraph Nos. 9-13 at 2; C.R. at 92.

The Board denied the request for administrative relief though it noted that it had already provided Ramos with credit for the period from December 30, 2008 through November 3, 2009, in a modified recalculation decision such that his parole eligibility date was changed from May 3, 2011, to June 30, 2010.

Before this Court, Ramos contends that the Board's findings that he violated Conditions #5B and #5C are unsupported by substantial evidence because Benjamin was not sworn in or affirmed to tell the truth by a person who was authorized to administer oaths in this Commonwealth. Ramos asserts that Hearing Examiner Donald was not authorized to administer oaths. Therefore, Hearing Examiner Donald was incapable of swearing in Benjamin which rendered his testimony unsworn and incompetent.

The Board asserts that Ramos waived this issue because he failed to raise it before either Hearing Examiner Donald at the hearing or before the Board in his request for administrative relief.

Ramos concedes that he did not raise the issue at the hearing. However, he argues that his claim that his rights to due process were violated in the request for administrative relief included the issue he raises here.

This Court does not agree that a claim for a violation of due process rights because of the time spent in custody as raised by Ramos in his petition for administrative relief encompasses a claim that the evidence presented at the hearing was incompetent because the hearing examiner lacked authority to administer an oath.

Further, in Newsome v. Pennsylvania Board of Probation and Parole, 553 A.2d 1050 (Pa. Cmwlth. 1989), this Court held that issues not raised before the Board at either the hearing or in the administrative appeal to the Board were waived and could not be considered for the first time on appeal to this Court. As Ramos did not raise this issue before either Hearing Examiner Donald or in his request for administrative relief to the Board, it was waived.

Accordingly, this Court affirms.

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BERNARD L. MCGINLEY, Judge

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No. 1419 C.D. 2010

**ORDER**

AND NOW, this 24th day of February, 2011, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is affirmed.

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BERNARD L. MCGINLEY, Judge