

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Harold Saunders,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1459 C.D. 2009
	:	SUBMITTED: January 29, 2010
Pennsylvania Board of Probation and	:	
Parole,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: April 1, 2010

Harold Saunders petitions for review of the decision of the Board of Probation and Parole (Board) that denied his administrative appeal from the revocation of his parole. We affirm.

The Board found that Saunders had committed two violations of the conditions of his parole: change of residence without permission and failure to successfully complete a required community corrections center program. Saunders took an administrative appeal from that decision, but the Board affirmed, leading to an appeal to this court. Saunders argues that the Board's findings of fact constitute an abuse of discretion. The Board asserts that this argument, and therefore the entire appeal, is waived by a defect in Saunders' brief.

The Board argues that Saunders' brief to this court is in violation of Pennsylvania Rule of Appellate Procedure 2116, which requires all issues on appeal be included in the Statement of Questions Involved section of the appellant's brief. In an apparent proofing mistake, Saunders' brief includes a Question Presented that has no relation to the facts of his case or the issue addressed in every other section of the brief. More importantly, Saunders' Statement of Questions Involved does not include any mention of the sufficiency of the evidence, the issue Saunders addresses in the rest of his brief.

This court has occasionally overlooked violations of Rule 2116 when the issue presented is clear and there is no unfairness or lack of notice to the opposing party. *See Westerwald Pottery Corp. v. Workers' Comp. Appeal Bd. (Watters)*, 692 A.2d 1145 (Pa. Cmwlth. 1997); *Holmes v. Workers' Comp. Appeal Bd. (Schneider Power Corp.)*, 542 A.2d 197 (Pa. Cmwlth 1988). We choose to be similarly lenient in this case, as the issue to be addressed was stated in the petition for review as well as every other relevant section of Saunders' brief. Because the Board had notice of the argument Saunders intended to pursue, and Saunders' error did not prevent the Board from ably addressing the merits of this appeal, we choose to overlook the Rule 2116 violation and proceed to reach the merits of this appeal.

Upon his release on parole, Saunders was to report to a group home called Minsec-Broad, and remain there until discharged. Upon discharge, he was to report to his parole officer. Saunders was also directed not to change his address without prior approval. Saunders testified that upon release, he reported to Minsec-Broad, but that the staff there were unaware that he would be coming, and did not have space for him. According to Saunders, after he was turned away from

Minsec-Broad, he reported the next morning to his parole officer, to whom he conveyed his dilemma. He testified that he spent all day at the parole office, while they attempted to find a place for him, and at the end of the day, he was told to report to a different group home, Minsec-York. He claimed to have reported to Minsec-York that night, only to be told that they were not expecting him, and to be turned away. Saunders was unable to recall the names of the employees he encountered at either group home. Saunders did not testify as to his whereabouts between leaving Minsec-York the day after his release and the initiation of the revocation action several months later.

In response, the Board offered two witnesses: Minsec-Broad's record keeper and a parole supervisor. The record keeper testified that there was no record of Saunders ever reporting to Minsec-Broad. However, on cross-examination it was revealed that the record keeper had only examined the records for part of the time period at issue. The records on which the record keeper based his testimony covered the day of Saunders' release, but no subsequent days. No testimony was offered about the records of Minsec-York. The parole supervisor (a superior to Saunders' parole officer) confirmed that Saunders did report to the parole office the day after his release. However, she testified that she told him to return that night to Minsec-Broad, and denied ever telling him to report to Minsec-York. Based on the aforementioned testimony, the Board determined that Saunders had violated his parole by failing to complete the community corrections center program and changing his residence without permission.

When considering a challenge to the Board's findings of fact, we review to ensure findings are supported by substantial evidence.¹ *Price v. Bd. of*

¹ Saunders appears to argue for an abuse of discretion standard, but that is incorrect.

Prob. and Parole, 863 A.2d 173 (Pa. Cmwlth. 2004). Additionally, as the ultimate fact-finder, it is the role of the Board to evaluate credibility and resolve conflicts of evidence, and those conclusions will not be disturbed on review. *Id.*

It is hard to know exactly what the Board made of the evidence presented at the hearing, because both its initial decision and its response to Saunders' administrative appeal are tersely worded and contain little information. However, the Board did state that in making its decision, it relied on the testimony of the parole supervisor and the Minsec-Broad record keeper. The Board clearly found those two witnesses credible, and to the extent that their testimony contradicted Saunders' testimony, they found Saunders not credible. The testimony of the two witnesses the Board found credible establishes that Saunders was told to report to Minsec-Broad, but never did. In addition, although it is not clear where Saunders lived in the several months between his release and the initiation of these proceedings, it was certainly not a location that had been approved by his parole officer. There is substantial evidence to support both of the violations found by the Board: change of residence without permission and failure to successfully complete the required community corrections center program.

Saunders, citing dicta from one of our previous cases, appears to argue that the confusion surrounding his placement excuses his failure to abide by the conditions of his parole. However, we need not consider this argument because, according to the testimony of the witnesses found credible by the Board, Saunders' failure to report was his fault alone, not attributable to any bureaucratic failings. According to the Board's witnesses, on the second night following his release, Saunders was told to report to Minsec-Broad and never did so. That

failure was his alone, and any logistical difficulties from the first night do not excuse it.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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	:	
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ORDER

AND NOW, this 1st day of April, 2010, the order of Pennsylvania Board of Probation and Parole in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge