

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Victor Leandry,	:	
aka Victor Rodriguez,	:	
Petitioner	:	
	:	
v.	:	No. 1558 C.D. 2010
	:	Submitted: December 3, 2010
Pennsylvania Board of Probation	:	
and Parole,	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE P. KEVIN BROBSON, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: January 27, 2011**

Victor Leandry, a.k.a. Victor Rodriguez, (Leandry) petitions for review from an order of the Pennsylvania Board of Probation and Parole (Board) that recommitted him to serve nine months' backtime as a technical parole violator. Leandry, representing himself, asserts the Board based its determination that he violated special condition #7 of his parole (failure to complete the Gaudenzia First treatment program) on inadmissible hearsay. Upon review, we affirm.

In July 2009, the Board paroled Leandry from a three to fifteen year state sentence for possession of a controlled substance with intent to deliver. At that time, the Board released Leandry to the Gaudenzia First Center (Center).<sup>1</sup>

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<sup>1</sup> Gaudenzia First Center is a group home which offers inpatient alcohol, drug, and mental health treatment.

As a special condition of parole, the Board required Leandry to participate in the Center's treatment program until successfully discharged and to obey all established rules of the program. Pertinent here, program rules require residents to take prescribed medication.

In December 2009, the Center discharged Leandry based on his failure to successfully complete the treatment program. The Board issued a warrant to commit and detain Leandry based on an alleged violation of special condition #7 of his parole, the failure to successfully complete the Center's treatment program. The Board subsequently held a violation hearing, at which counsel represented Leandry.

At hearing, Lawrence Penn (Supervisor), a supervising counselor at the Center, testified Leandry's discharge from the treatment program resulted from his failure to comply with the Center's rules and regulations. Specifically, Supervisor testified Leandry refused to take prescribed psychotropic medication. The testimony of Louise King (Counselor), a counselor at the Center, supported Supervisor's testimony.

For his part, Leandry testified he does not need psychotropic medication. Leandry testified the psychiatrist at the Center did not prescribe him medication until he filed grievances against the staff at the state correctional institution at Mahanoy (SCI-Mahanoy). Thus, Leandry testified the psychiatrist prescribed medication in retaliation for the grievances Leandry filed and to erase his memory of his abuse by the staff at SCI-Mahanoy.

After hearing, the Board issued an order recommitting Leandry based on its determination that he violated special condition #7 of his parole. Leandry filed an administrative appeal, which the Board denied. This appeal followed.

On appeal,<sup>2</sup> Leandry argues the evidence presented against him at the violation hearing was entirely hearsay. Specifically, Leandry asserts that Supervisor's testimony included the notes of a psychiatrist, who was not present to testify, and his attorney timely objected. Leandry seeks reversal of the Board's order.

The Board counters that, although Leandry's counsel objected to portions of Supervisor's testimony at the hearing, Supervisor testified, without objection, that the Center discharged Leandry because he failed to follow the Center's rules. The Board further contends Supervisor's testimony that Leandry stated he would not take the medication is admissible as an admission by a party-opponent. The Board also argues Leandry, in presenting his defense, admitted he

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<sup>2</sup> Our review is limited to determining whether substantial evidence supports the Board's decision, and whether the Board erred as a matter of law, or violated the parolee's constitutional rights. McKenzie v. Pa. Bd. of Prob. & Parole, 963 A.2d 616 (Pa. Cmwlth. 2009). In determining whether a parolee violated a condition of his parole, the Board may consider all admissible evidence; however, its holding must rest on substantial evidence. Price v. Pa. Bd. of Prob. & Parole, 863 A.2d 173 (Pa. Cmwlth. 2004). Substantial evidence is such relevant evidence a reasonable person might accept as adequate to support a conclusion. Id.

Here, the Board is the ultimate fact-finder. Flowers v. Pa. Bd. of Prob. & Parole, 987 A.2d 1269 (Pa. Cmwlth. 2010). As such, it is the Board's function to "evaluate witness credibility, resolve conflicts in the evidence and assign evidentiary weight, and these are not matters for a reviewing court." Price, 863 A.2d at 175. "The mere presence of conflicting testimony or evidence in the record does not mean the Board's findings are not supported by substantial evidence." Harper v. Pa. Bd. of Prob. & Parole, 520 A.2d 518, 523 (Pa. Cmwlth. 1987).

refused to take prescribed psychotropic medication at the hearing. Thus, the Board asserts the finding that Leandry violated a special condition of his parole is adequately supported.

An admission by the alleged offender to the asserted violation at a revocation hearing constitutes substantial evidence to support a revocation order. DeMarco v. Pa. Bd. of Prob. & Parole, 758 A.2d 746 (Pa. Cmwlth. 2000); Pitch v. Pa. Bd. of Prob. & Parole, 514 A.2d 638 (Pa. Cmwlth. 1986). Further, testimony at a revocation hearing from a witness that the alleged offender previously admitted the violation charged may constitute substantial evidence to support a revocation order, if believed, and it is not excluded as hearsay. Cadogan v. Pa. Bd. of Prob. & Parole, 571 A.2d 3 (Pa. Cmwlth. 1990); Pa. R.E. 803(25) (admission against interest made by a party).

Here, the record reveals ample support for the Board's determination that Leandry violated his parole by failing to successfully complete the Center's treatment program. More particularly, Supervisor testified Leandry's discharge from the Center's treatment program resulted from his failure to comply with rules and regulations. Certified Record (C.R.) at 66; see Hearing Ex. 1 (Special Conditions of Parole). At hearing, the Board presented a form signed by Leandry that set forth compliance with the rules of the Center as a special condition of his parole. Id. at 63-64. Supervisor testified the program requires participants to take their prescribed psychotropic medications, and Leandry was advised of this fact upon his arrival. C.R. at 66. Supervisor indicated that over time the staff grew concerned about Leandry's behavior and prescribed him medication. Id. at 70-71.

Further, Leandry stated “the psychiatrist from [the Center] wanted to erase my mind” with medication. Id. at 81. According to Supervisor, Leandry stated his refusal to take psychotropic medication in Supervisor’s presence during Leandry’s case consultations. Id. at 70-71. Additionally, Counselor confirmed that Leandry stated he would not take his psychotropic medication. C.R. 77. Ultimately, Leandry’s treatment team, which included Supervisor, decided to discharge Leandry from the program for noncompliance. Id. at 66, 73.

Notably, Leandry did not dispute that he failed to comply with the Center’s rule, which required him to take his prescribed medication or that non-compliance with the Center’s rules constituted a parole violation. In fact, at hearing, Leandry admitted that he refused psychotropic medication prescribed to him.<sup>3</sup> C.R. at 81; see DeMarco. Therefore, the Board’s determination is adequately supported by substantial, competent evidence.

Also, contrary to Leandry’s assertion, the hearing examiner did not permit Supervisor to read from the psychiatrist’s notes. The hearing examiner

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<sup>3</sup> In further support of Leandry’s recommitment, the Board distinguishes this case from Hudak v. Pennsylvania Board of Probation and Parole, 757 A.2d 439 (Pa. Cmwlth. 2000). There, this Court examined whether the parolee was at least somewhat at fault for a technical parole violation based on an unsuccessful discharge from a community corrections center. The parolee in Hudak failed to remain at the center for the requisite time period because the center was not equipped to deal with parolee’s medical problems.

In contrast to the parolee’s situation in Hudak, here Leandry controlled whether he remained at the Center and voluntarily elected to violate the Center’s rule by refusing to take his prescribed medication. The Board established Leandry was discharged from the Center without successfully completing the treatment program in violation of special condition #7 of his parole. Leandry’s opinions that he does not need medication and that the psychiatrist retaliated against him by prescribing the medication do not negate the violation.

sustained Leandry's counsel's timely objection to this evidence. C.R. at 70. Furthermore, there is no indication the Board relied on such evidence, which is not part of the record, in making its determination. As such, Leandry's argument fails.

Moreover, Hracho v. Pennsylvania Board of Probation and Parole, 503 A.2d 112 (Pa. Cmwlth. 1986), relied on by Leandry for the proposition that the Board may not base its decision solely on inadmissible hearsay, is distinguishable. In Hracho, the evidence presented at the parolee's revocation hearing consisted exclusively of hearsay, and no good cause existed for the absence of witnesses.

Here, unlike Hracho, Leandry admitted during the hearing that he refused to take his prescribed medication, and the Center's witnesses had personal knowledge of Leandry's parole violation. See Cadogan. Therefore, this is not a case like Hracho.

Based on all the foregoing, we affirm.

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ROBERT SIMPSON, Judge

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**ORDER**

**AND NOW**, this 27<sup>th</sup> day of January, 2011, the order of the Pennsylvania Board of Probation and Parole is **AFFIRMED**.

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ROBERT SIMPSON, Judge