

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Lucas, :  
 :  
 Petitioner :  
 :  
 v. : No. 172 C.D. 2010  
 :  
 : Submitted: February 25, 2011  
 Pennsylvania Board of Probation :  
 and Parole, :  
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: July 15, 2011

Michael L. Lucas petitions for review of the January 8, 2010, decision of the Pennsylvania Board of Probation and Parole (Board), which denied his petition for administrative relief and affirmed the Board's August 11, 2009, recommitment order. For the reasons that follow, we dismiss this appeal.

On July 8, 2002, Lucas was sentenced to a period of incarceration of five to ten years for robbery and criminal conspiracy. (Certified Record (C.R.) at 1, 113.) The Board paroled Lucas from this sentence on October 10, 2006, and ordered him to comply with, among other things, the following parole conditions: condition 5B, to "refrain from owning or possessing any firearms or other weapons;" and condition 5C, to "refrain from any assaultive behavior." (C.R. at 6 -10.)

Lucas was arrested on August 21, 2008, for attempted murder, carrying a firearm without a license, and other criminal charges stemming from a shooting that occurred on August 12, 2008. (C.R. at 15.) The Board issued a warrant to detain

Lucas for violation of his parole pending disposition of the criminal charges. (C.R. at 13-14.) However, all of the criminal charges were subsequently dismissed on February 23, 2009. (C.R. at 33, 108.)

The Board issued a second detainer on March 4, 2009, pending a revocation hearing for technical violations of conditions 5B and 5C, related to the August 21, 2008, arrest. (C.R. at 28.) The revocation hearing was conducted on May 28, 2009. By decision dated August 12, 2009, the Board, finding sufficient evidence to establish violations of conditions 5B and 5C, recommitted Lucas to a state correctional institution to serve his unexpired term of two years and one month. (C.R. at 115.) The Board also stated in its decision that Lucas' parole maximum violation date was March 23, 2011. (Id.)

On September 9, 2009, Lucas filed a petition for administrative relief claiming the Board did not have sufficient evidence linking him to the August 12, 2008, shooting incident. (C.R. at 116-17.) On January 8, 2010, the Board denied Lucas' petition for administrative relief, concluding that sufficient evidence was presented at the revocation hearing to establish violations of conditions 5B and 5C. (C.R. at 151.)

On appeal to this Court,<sup>1</sup> Lucas raises the following issues: (1) whether the Board lacked jurisdiction to consider parole violations stemming from the August 12, 2008, incident because the criminal charges were dismissed; (2) whether his

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<sup>1</sup> Our scope of review is limited to determining whether any of the parolee's constitutional rights were violated, whether the Board's findings are supported by substantial evidence, and whether the Board's adjudication is in accordance with the law. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

counsel at the violation hearing was ineffective; and (3) whether the Board violated his due process rights by delaying his violation hearing.

Our review of the record reveals that Lucas waived all of these issues by failing to present them to the Board in his petition for administrative relief.<sup>2</sup> Pa. R.A.P. 1551(a); McCaskill v. Pennsylvania Board of Probation and Parole, 631 A.2d 1092 (Pa. Cmwlth. 1993). Moreover, the expiration of a parolee's maximum term renders an appeal from a Board revocation order moot. Taylor v. Pennsylvania Board of Probation and Parole, 746 A.2d 671 (Pa. Cmwlth. 2000). As the Board points out, the record reflects that Lucas' maximum term expired on March 23, 2011; therefore, it is impossible for this Court to grant the relief requested, and Lucas' appeal is moot.

Accordingly, this appeal is dismissed.

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PATRICIA A. McCULLOUGH, Judge

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<sup>2</sup> Lucas contends that the Board lacked subject matter jurisdiction to consider the technical violations stemming from the August 12, 2008, incident because the underlying criminal charges were dismissed. However, this issue actually involves the doctrines of *res judicata* and collateral estoppel, and not subject matter jurisdiction. Boswell v. Pennsylvania Board of Probation and Parole, 512 A.2d 66 (Pa. Cmwlth. 1986) (holding that the Board was collaterally estopped from revoking parole, where a criminal jury found the parolee not guilty of the underlying charges). Unlike subject matter jurisdiction, the issues of *res judicata* and collateral estoppel may be waived. Sewickley Valley Hospital v. Department of Public Welfare, 550 A.2d 1351 (Pa. Cmwlth. 1987) (holding that *res judicata* and collateral estoppel are affirmative defenses, not jurisdictional questions, and may be waived if not properly asserted).

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and Parole,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 15<sup>th</sup> day of July, 2011, the appeal in the above-captioned matter is hereby dismissed.

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PATRICIA A. McCULLOUGH, Judge