

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Abdul Sharief, :
 :
 Petitioner :
 :
 v. : No. 1838 C.D. 2009
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 :
 Pennsylvania Board of : Submitted: February 5, 2010
 Probation and Parole, :
 :
 Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE JOHNNY J. BUTLER, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE KELLEY

FILED: March 26, 2010

Abdul Sharief (Sharief) petitions for review of a decision of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief. We affirm.

On April 30, 2007, Sharief was released on parole from an eight to 16-year sentence for aggravated assault and a firearms offense. On November 10, 2007, Sharief was arrested in Philadelphia on new firearm charges. On December 18, 2007, Sharief was returned to a State Correctional Institution (SCI). Certified Record (C.R.) at 16.

On April 3, 2008, Sharief was moved on a judicial writ from SCI to Philadelphia County for trial and was returned to SCI that same day after he pled guilty to the firearms offense. Id. Sharief was convicted for the firearms offense

and sentenced to four to eight years of incarceration and two years consecutive probation. While Sharief's parole agent received notification of his guilty plea on April 5, 2008, official verification was not received until July 16, 2008.

On August 15, 2008, the Board held a revocation hearing based upon Sharief's conviction. By revocation decision mailed September 19, 2008, the Board recommitted Sharief as a convicted parole violator to serve 24 months backtime. Sharief filed a request for administrative relief, contending that his revocation hearing was not held within the required 120 days. On September 10, 2009, the Board denied Sharief's administrative appeal, noting that the revocation hearing was held within 120 days of July 16, 2008 - the date the Board received official verification of Sharief's conviction. Sharief now petitions this Court for review of the Board's decision.¹

In this appeal, Sharief argues that the Board failed to hold a revocation hearing within 120 days from Sharief's return to SCI or official verification of his conviction. We disagree.

The timeliness of a parole revocation hearing is governed by statute and regulation. Lawson v. Pennsylvania Board of Probation and Parole, 977 A.2d 85 (Pa. Cmwlth. 2009). A revocation hearing "shall be held within **120 days from the date the Board received official verification of the plea of guilty** or nolo contendere or of the guilty verdict at the highest trial court level..." 37 Pa. Code §71.4(1) (emphasis added). The Board's regulations define "official

¹ This Court's scope of review of a decision by the Board is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether the constitutional rights of the parolee were violated. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, Gaito v. Pennsylvania Board of Probation and Parole, 563 A.2d 545 (Pa. Cmwlth. 1989), petition for allowance of appeal denied, 525 Pa. 589, 575 A.2d 118 (1990).

verification” as “[a]ctual receipt by a parolee's supervising parole agent of a direct written communication from a court in which a parolee was convicted of a new criminal charge attesting that the parolee was so convicted.” 37 Pa. Code §61.1. When the timeliness of a hearing is challenged, the Board bears the burden of proving by a preponderance of the evidence that the hearing was timely. Mack v. Pennsylvania Board of Probation and Parole, 654 A.2d 129 (Pa. Cmwlth. 1995); Abbruzzese v. Pennsylvania Board of Probation and Parole, 524 A.2d 1049 (Pa. Cmwlth. 1987). If the Board fails to present substantial evidence demonstrating the timeliness of the revocation hearing, thereby failing to meet its burden of proof, the parole violation charges are dismissed with prejudice. Id.

Here, the Board presented evidence that official verification was received by the Board on July 16, 2008. C.R. at 35. Thus, the hearing on August 15, 2008 occurred within 120 days of July 16, 2008. While the supervising parole agent had knowledge of the conviction in April 2008, official verification was not received until July 16, 2008. C.R. at 34-35. The parole investigator testified that following Sharief’s guilty plea, she was contacted by the parole agent to obtain the official verification. C.R. at 35. She explained that she has experienced problems obtaining records in Philadelphia. C.R. at 33. She testified she made four attempts to acquire official verification of Sharief’s conviction – her first attempt was on April 24, 2008; second attempt was on June 18, 2008; third attempt was on July 9, 2008; and the fourth and final attempt was on July 10, 2008. C.R. at 35. She then forwarded the information to the agent of record. Id. The information was received by the parole office on July 16, 2008. Id.

Sharief argues that the record lacks any explanation as to why the parole agent was unable to obtain the official verification sooner. As we observed in Lawson, 977 A.2d at 88 n.5, “[p]arole agents have a lot to do, and they do not

have the time to chase down documents from court files, let alone investigate the specific reasons for a court's failure to respond to their request for court documents.” While neither the statute nor regulation places a burden on the Board to demonstrate that it exercised due diligence in obtaining official verification of a parolee's new conviction, the evidence offered by the Board demonstrates that the delay between notification and official verification was not unreasonable or unjustifiable. See Lawson; Ramos v. Pennsylvania Board of Probation and Parole, 954 A.2d 107 (Pa. Cmwlth. 2008); Taylor v. Pennsylvania Bd. of Probation and Parole, 931 A.2d 114 (Pa. Cmwlth. 2007), petition for allowance of appeal denied, 596 Pa. 750, 946 A.2d 690 (2008); Fitzhugh v. Pennsylvania Board of Probation and Parole, 623 A.2d 376 (Pa. Cmwlth. 1993). We, therefore, conclude that the parole revocation hearing was timely.²

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

² While we appreciate Sharief’s counsel’s plea to permit the certification of web docket sheets to serve as proof of conviction in order to expedite and standardize the procedure for verification, such certification is not “official verification” pursuant to the regulations because it is not a “a direct written communication from a court in which a parolee was convicted of a new criminal charge attesting that the parolee was so convicted.” 37 Pa. Code §61.1.

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Probation and Parole,		:
	Respondent	:

No. 1838 C.D. 2009

ORDER

AND NOW, this 26th day of March, 2010, the order of the Pennsylvania Board of Probation and Parole, at Parole No. 916-BW, dated September 10, 2009, is AFFIRMED.

JAMES R. KELLEY, Senior Judge