

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Joel Allen Yancey, | : | |
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| Petitioner | : | |
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| | : | |
| v. | : | No. 2237 C.D. 2009 |
| | : | Submitted: April 30, 2010 |
| Pennsylvania Board of | : | |
| Probation and Parole, | : | |
| | : | |
| Respondent | : | |
| | : | |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: July 16, 2010

Joel Allen Yancey (Yancey) petitions for review from an order of the Pennsylvania Board of Probation and Parole (Board) which denied his request for administrative relief. We affirm.

On May 29, 2001, Yancey was sentenced in Lehigh County to one year, nine months to four years, eleven months for aggravated assault. Yancey was released on parole on July 29, 2002. While on parole, Yancey was arrested by the Easton Police Department and later convicted of simple assault on his wife, Natasha Yancey. In an order dated April 29, 2003, the Northampton County Court of Common Pleas sentenced Yancey to serve ten months to two years. In a decision mailed May 21, 2003, the Board

recommitted Yancey as a convicted parole violator for the simple assault crime.

While incarcerated at the Northampton County prison, Yancey's wife, on at least two occasions, conspired to deliver cocaine to Yancey. As a result, on June 7, 2004, Yancey was convicted of criminal conspiracy and possession of a controlled substance by an inmate and sentenced to one year, eight months to ten years. Yancey's wife was also sentenced as a co-conspirator. On September 13, 2004, the Board recommitted Yancey as a convicted parole violator.

On February 16, 2006, the Board constructively released Yancey on parole to his Lehigh County detainer sentence. On that same date, Yancey signed his general and special conditions of parole. The form advised Yancey that if he had any questions regarding the conditions of his parole, he was to consult with parole supervision staff. Additionally, if he believed any of his rights had been violated as a result of his parole supervision, Yancey was informed that he could file a complaint and an address was provided.

On October 3, 2008, Yancey reached the maximum date on his Lehigh County detainer sentence and began serving the remainder of his state sentence on parole at an approved home plan. On the same date, Yancey signed a special condition imposed by his parole agent which stated:

You are not authorized to have any contact with Natasha Yancey directly, indirectly, through correspondence, or through third parties. Any contact with her is a violation of this condition.

(Record at 31, 58.)

The form further provided in pertinent part:

If you believe the Special Conditions are inappropriate, you may submit a timely complaint in writing, first to the supervisor of the district office If your complaint is not resolved to your satisfaction, you may then submit your complaint ... to the Director of Supervision. If your complaint is still not resolved to your satisfaction, you may then submit your complaint ... to the Board Secretary for final disposition by the Board.

(Id.) Yancey signed the form, acknowledging that he read the special conditions and fully understood them.

Three days after signing the condition, Yancey was arrested on October 6, 2008 and charged with violating the agent imposed condition, after Board agents discovered Yancey's wife hiding in his apartment. In a decision dated February 26, 2009, the Board continued Yancey on parole and he was released from the State Correctional Institution on March 3, 2009. Upon release, a parole agent observed Yancey's wife at the institution waiting to pick him up. After further questioning, Yancey admitted that he had been in contact with his wife, in violation of the conditions of his parole. Additionally, on April 14, 2009, another parole agent observed Yancey's wife entering Yancey's approved home. Also on that date, Yancey admitted using crack cocaine while on parole.

The Board arrested Yancey on April 14, 2009 and charged him with violating condition #5a, use of drugs, and condition #7, no contact with co-defendant Natasha Yancey. Yancey, thereafter, waived counsel, a preliminary hearing and a violation hearing and admitted to violating conditions #5a and #7 of his parole. (Record at 49.) In a decision mailed

July 22, 2009, the Board recommitted Yancey as a technical parole violator to serve twelve months backtime for violating conditions #5a and #7.

Thereafter, Yancey filed a petition for administrative relief with the Board. Yancey, however, did “not dispute the finding or fact which resulted in the violations being established.” (Request for administrative relief at #4.) Rather, “[t]he sole purpose of this petition, is to challenge condition #7, contact with co-defendant.” (Request for administrative relief at #7.) Yancey requested that condition #7 be removed from the list of conditions he must comply with upon his subsequent release from incarceration. In a decision mailed November 2, 2009, the Board denied his request for administrative relief, noting that Yancey failed to indicate that the Board made any errors in revoking his parole and that an administrative appeal is not the proper forum to challenge a previously imposed condition. This appeal followed.¹

On appeal, Yancey objects to the imposition of condition #7 and claims that such violates his right to marital privacy. The Board responds that the previously imposed condition is moot, inasmuch as Yancey is no longer on parole, that this court lacks jurisdiction because imposition of a special condition does not constitute an adjudication for purposes of appellate review and that Yancey did not avail himself of available administrative remedies.

¹ This court’s review is limited to determining whether constitutional rights were violated, whether the adjudication was in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. McPherson v. Pennsylvania Board of Probation and Parole, 785 A.2d 1079 (Pa. Cmwlt. 2001).

In addressing the parties arguments, we are guided by this court's decision in Wheeler v. Pennsylvania Board of Probation and Parole, 862 A.2d 127 (Pa. Cmwlth. 2004). In that case, a district director of the Board denied Wheeler's request that a special condition of his parole be revoked. That condition prohibited Wheeler from having contact with his wife, except as permitted in writing by his parole agent.

The Board initially argued that the issue of the condition was moot, inasmuch as since the case was filed, Wheeler's parole had been revoked. This court observed that there is an exception to the mootness doctrine "where the conduct at issue is capable of repetition, but likely to evade review; the issue involved is important to the public interest; or the party will suffer some detriment without the court's decision." Id. 862 A.2d at 127, n.3. The court in Wheeler declined to dismiss the case because the condition had been imposed on Wheeler on previous paroles, was likely to evade review and because it involved an alleged violation of the right to privacy, an issue of public importance.

Next, this court determined that the letter denying Wheeler's request to revoke the special parole condition did not constitute an adjudication and was therefore not subject to appeal. An adjudication is defined in Section 101 of the Administrative Agency Law as:

Any final order ... or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made. The term does not include any order ... which involves paroles

2 Pa. C.S. § 101. Citing Rogers v. Pennsylvania Board of Probation and Parole, 555 Pa. 285, 724 A.2d 319 (1999), this court stated that when the Board exercises its paroling power, the action is not adjudicatory in nature. “It, therefore, follows that when the Board imposes a condition of parole, which is really a ‘lesser included power’ within the general power to grant parole, its action cannot be deemed an ‘adjudication’ for purposes of appellate review.” Wheeler, 862 A.2d at 130.

This court also did not agree with Wheeler’s contention that the condition that he not have contact with his wife affected his right to marital privacy and, therefore, impacted on a personal right thereby bringing the situation within the definition of an adjudication. “One who is subject to incarceration, by virtue of that status, gives up certain constitutional rights Wheeler, as a parolee, had been granted leave to serve his sentence outside prison walls, but, because of his status as a parolee, is subject to restrictions that might otherwise run afoul of constitutional principles.” Id. This court then stated that prohibiting a parolee from having contact with a spouse that he has physically abused in the past, serves the goal of protecting the public in accordance with the intentions of the popularly called Parole Act, Act of August 6, 1941, P.L. 861, as amended, 61 P.S. §§ 331.1-331.34a.²

In this case, as in Wheeler, Yancey is no longer on parole. We conclude that, as in Wheeler, the condition imposed is capable of repetition and can avoid review. Therefore, we will not dismiss the case based on mootness.

² The Parole Act was repealed by section 11(b) of the Act of August 11, 2009, P.L. 147. A similar act to the Parole Act is now found in 61 Pa. C.S. §§ 6101-6153.

We note that unlike Wheeler, there is an actual adjudication before this court. Namely, the Board denied Yancey's request for administrative review from a Board recommitment order. Yancey, however, does not challenge the Board's determination that he violated conditions of his parole. Nor does he contest the recommitment period. Instead, Yancey is attempting to use his appeal to this court as a vehicle to challenge a special condition of his parole. As stated in Wheeler, however, a condition of parole, imposed by the Board, is not reviewable by this court.

Finally, as already determined by Wheeler, prohibiting a parolee from having contact with a spouse he has physically abused in the past, and in this case, a spouse with whom Yancey was a co-conspirator, serves the Act's goal of protecting the public. Thus, Yancey has no personal right that would entitle him to appellate review of the parole condition at issues.³

In accordance with the above, because Yancey does not challenge the Board's recommitment order, but only a condition of his parole and because conditions of parole which are imposed by the Board are not reviewable by this court, the decision of the Board is affirmed.

JIM FLAHERTY, Senior Judge

³ We further note that, as set forth in the facts of this case, when the parole conditions were imposed on Yancey he was informed of his right to file a complaint and have it proceed through the appropriate channels. In Yancey's response to the Board's brief, Yancey maintains that he has pursued such remedies but to no avail. We observe that these communications which Yancey references are not part of the certified record. This court may not consider matters not made part of the record before the administrative agency. Anam v. Workmen's Compensation Appeal Board, 537 A.2d 932 (Pa. Cmwlth. 1988). Moreover, as previously stated, a condition of parole imposed by the Board is not reviewable by this court. Wheeler.

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ORDER

Now, July 16, 2010, the order of the Pennsylvania Board of Probation and Parole, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge