

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lorenzo H. Dodson, :
Petitioner :
 :
v. :
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 :
Pennsylvania Board of :
Probation and Parole, : No. 2281 C.D. 2010
Respondent : Submitted: March 4, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: April 4, 2011

Lorenzo H. Dodson (Dodson) petitions for review from a final determination of the Pennsylvania Board of Probation and Parole (Board) that recommitted him to serve six months backtime when available as a technical parole violator.¹

Dodson was effectively sentenced on January 6, 2003, to a term of five to ten years for a drug conviction. The Board paroled Dodson on January 9, 2008. On September 30, 2009, Dodson was stopped for a traffic violation in a known drug dealing area in the City of Philadelphia. A search of the vehicle uncovered \$9,500.00 in cash and a small amount of cocaine. While police

¹ This Court's review is limited to determining whether the Board's findings are supported by substantial evidence, are in accordance with the law, and whether constitutional rights have been violated. Krantz v. Pennsylvania Board of Probation and Parole, 483 A.2d 1044 (Pa. Cmwlth. 1984). This Court will interfere with the Board's exercise of administrative discretion only where it has been abused or exercised in an arbitrary or capricious manner.

obtained the search warrant, Dodson departed the scene in another vehicle. On October 2, 2009, the Board declared Dodson delinquent effective October 1, 2009. On October 8, 2009, the Board issued a warrant to commit and detain Dodson. On October 8, 2009, a Philadelphia “FAST” Unit arrested Dodson. On October 28, 2009, the Philadelphia Police Department again arrested Dodson and charged him with possession of a controlled substance with intent to deliver, possession of paraphernalia, and criminal conspiracy. Then again, on November 10, 2009, the Pennsylvania State Police arrested Dodson and charged him with felony possession with intent to deliver, felony possession of a controlled substance, and use/possession of a controlled substance, a misdemeanor.²

On December 21, 2009, the Board held a preliminary hearing on the technical violations of Condition #1- Leaving the District without Permission, Condition #3A-Failure to Report as Instructed, and Condition #3B-Failure to Report Arrest on Receipt of Summons or Citation. On December 22, 2009, the Hearing Examiner found that probable cause existed for the violation of Condition #1 but not for the other two alleged violations.

The Board held a violation hearing on June 9, 2010. Parole Agent Aaron Forringer (Parole Agent Forringer) informed the Board that Dodson was charged with a violation of Condition #1- for leaving the district without prior

² In a decision recorded December 9, 2009, and mailed December 10, 2009, the Board recommitted Dodson to serve nine months backtime when available pending the resolution of new criminal charges for the following technical violations: Condition #1-Leaving the District without Permission and Condition #3A-Failure to Report as Instructed. This decision was later rescinded.

written permission of the parole supervision staff. Notes of Testimony, June 9, 2010, (N.T.) at 8; Certified Record (C.R.) at 65. Lieutenant Jeffrey Bender (Lieutenant Bender) of the Department of Corrections and the front gate Lieutenant at the State Correctional Institution at Graterford (SCI-Graterford) testified that Dodson visited a prisoner named Charles Lavender (Lavender) at SCI-Graterford on September 29, 2009. N.T. at 11; C.R. at 68. Lieutenant Bender submitted into evidence a history sheet for Lavender which indicated that Dodson visited him on September 29, 2009. N.T. at 11; C.R. at 68.

Agent Forringer testified that Dodson did not have written permission to leave Philadelphia County to visit Montgomery County, where SCI-Graterford is located, on September 29, 2009. N.T. at 12; C.R. at 69. Agent Forringer explained that Dodson had permission to visit an inmate but did not have written permission to visit SCI-Graterford on September 29, 2009. Dodson transferred from the Chester District to the Philadelphia District on March 26, 2009. N.T. at 14; C.R. at 71. On cross-examination, Agent Forringer explained that Dodson needed written permission to leave the district on that date. N.T. at 15; C.R. at 72. Also, on cross-examination, Agent Forringer stated that he saw Dodson one time since he came under his supervision. He did not recall having a conversation with Dodson concerning his desire to leave the district to visit an inmate. N.T. at 20; C.R. at 77.

Dodson testified that when he was in the Chester District he was permitted to go to Montgomery County. N.T. at 22; C.R. at 79. Agent Harris permitted him to go to SCI-Graterford to visit Lavender. When he transferred to

the Philadelphia District, he asked Agent Harris if he had to change anything when he moved to Philadelphia. Parole Agent Harris told him “everything in your file will remain the same.” N.T. at 24; C.R. at 81. Dodson said that he only saw Parole Agent Forringer one time, and he asked Dodson if everything was the same. N.T. at 24; C.R. at 81.

In a decision recorded June 24, 2010, and mailed July 16, 2010, the Board recommitted Dodson to serve six months backtime as a technical parole violator when available pending the disposition of criminal charges. The Board established Dodson’s maximum date as January 13, 2013. In a decision recorded August 14, 2010, and mailed August 17, 2010, the Board amended Dodson’s maximum date as January 6, 2013.

Dodson requested administrative relief and alleged that he did not leave the district without permission because in February 2009, Parole Agent Harris received permission from the Superintendent at SCI-Graterford for Dodson to visit Lavender. Dodson alleged that Parole Agent Forringer never revoked that permission. Dodson also alleged that the maximum date should be January 6, 2013, not January 13, 2013.

The Board denied the request for administrative relief. The Board affirmed with respect to the revocation portion of the decision and deemed Dodson’s objection to the recalculation moot because the Board had already made the change requested:

The Board determined that sufficient evidence was presented at the June 9, 2010 violation hearing to

recommit you for violating condition #1 (leaving the district without permission) based on the credible testimony of Lt. Binder and the exhibits presented at the hearing. This evidence was sufficient to support the revocation decision. The fact that you offered a different version of the events is not grounds for administrative relief because credibility determinations are not subject to review. . . . (Citation omitted).

Board Decision, September 24, 2010, at 1; C.R. at 121.

Before this Court Dodson contends that the evidence was insufficient to establish the technical violation when he had prior permission to leave the parole district. Dodson argues that Parole Agent Harris received permission from the Superintendent of SCI-Graterford for Dodson to visit Lavender. Dodson asserts that he was told by Parole Agent Harris that the conditions of his parole would not change when he came under the supervision of Parole Agent Forringer and that Parole Agent Forringer did not revoke his permission to leave.

At the hearing the Hearing Examiner explained that the permission granted by the Superintendent at SCI-Graterford for Dodson to visit was the Department of Corrections' permission to allow him to visit an inmate. The Board's permission to allow Dodson to leave the district was a separate matter. Agent Forringer testified that Dodson did have permission from DOC and the Board to visit Lavender. However, Dodson did not have permission to leave Philadelphia County where he was then based to visit SCI-Graterford in Montgomery County on the date in question. When he was supervised by the Chester District Office, Dodson did not need permission from a parole agent to visit SCI-Graterford on a particular date because SCI-Graterford was in the Chester District. Once his supervision was transferred to the Philadelphia District, Dodson

required prior written permission of the parole supervision staff to go to SCI-Graterford because SCI-Graterford was not in the Philadelphia District.

When Agent Forringer told Dodson none of his conditions had changed, he was correct. There was still a condition which prohibited Dodson from leaving the district where he resided without written permission. What had changed was the district. A visit to SCI-Graterford was no longer in the same district. Therefore, Dodson was required to obtain written permission to visit from Parole Agent Forringer. He did not do that. The Board's decision is supported by substantial evidence.³

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

³ Dodson also asserts that the requirement that he obtain permission violated his right to due process. Because Dodson did not raise this issue in his Statement of Questions Involved, it is waived. See St. Joseph Hospital v. Berks County Board of Assessment Appeals, 709 A.2d 928 (Pa. Cmwlth. 1998).

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ORDER

AND NOW, this 4th day of April, 2011, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge