

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rodney L. Prey, :
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 Petitioner :
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 v. :
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 Pennsylvania Board of Probation and :
 Parole, : No. 2426 C.D. 2009
 Respondent : Submitted: April 9, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE ROBERT SIMPSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE PELLEGRINI

FILED: April 30, 2010

Rodney L. Prey (Prey) appeals the Pennsylvania Board of Probation and Parole's (Board) denial of his request for administrative relief from its previous order recommitting him as a convicted parole violator to serve an unexpired term of 10 months, 28 days with a maximum term expiration date of May 17, 2010. Discerning no error in the Board's decision, we affirm.

On April 9, 1999, Prey pled guilty to possession of a controlled substance with intent to deliver. He received a one to two year sentence with a maximum release date of December 30, 2000. On January 30, 2000, the Board paroled Prey with the condition that he complete out-patient drug and alcohol treatment as well as submit to urinalysis testing. After he tested positive for

cocaine twice and alcohol once, Prey was placed on intensive supervision with electronic monitoring. After he absconded on June 30, 2000, the Board declared him delinquent, and a warrant was issued for his arrest. Prey was arrested by the Philadelphia Police on August 29, 2000.

While on parole, Prey was also indicted by a federal grand jury for one count of conspiracy to distribute more than 50 grams of crack cocaine in connection with the narcotics conspiracy he joined during the summer of 1998. On January 8, 2001, Prey pled guilty to the federal charge of conspiracy, and the Amended Judgment admitted at his federal revocation hearing to prove his guilty plea stated that the conspiracy ran from Spring of 1998 until May 31, 2001. Prey was sentenced to 120 months imprisonment.¹ The Board issued a detainer as a convicted parole violator.

On June 19, 2009, Prey was released from his federal imprisonment, returned to state custody, and a revocation hearing was held on charges that Prey was a convicted parole violator. At the revocation hearing, Parole Agent Amy Stanton (Agent Stanton) testified that Prey was a convicted parole violator because of his 2001 federal conviction for conspiracy. Agent Stanton presented a signed copy from the United States District Court for the Eastern District of Pennsylvania stating that Prey pleaded guilty to this charge. He objected and argued that the Board did not have jurisdiction to revoke his parole because the conspiracy offense occurred in 1998 and 1999 before his state sentence was imposed and well before he was placed on parole. Agent Stanton admitted that she did not have any direct

¹ Prey's technical parole violations were not prosecuted because he was taken into federal custody for his conspiracy indictment.

evidence as to when the conspiracy occurred. She also stated Prey's federal indictment relating to the "Manner and Means of the Conspiracy" stated that the conspiracy continued from Spring of 1998 through the date of the indictment, which was filed on May 31, 2001.

The Board overruled Prey's objection and recommitted him as a convicted parole violator to serve his unexpired term based upon his federal conviction. Prey filed an administrative appeal, contending again that it was not shown that the conduct with which he was charged occurred during his parole, and the Board affirmed the revocation decision. It noted that the evidence presented at the hearing showed that the conspiracy began in 1998, did not cease until May 31, 2001, and Prey was on parole during that period. This appeal followed.²

On appeal, Prey argues the Board lacked evidence from which to conclude that the conduct underlying his conspiracy conviction occurred during his period of parole supervision; therefore, it lacked jurisdiction to revoke his parole. According to Prey, the Board should have dismissed his violation because Agent Stanton admitted that she lacked any evidence to identify a specific date for his conduct. In addition, the federal indictment did not describe any overt act by Prey in furtherance of the conspiracy which occurred after his state arrest – it only listed his being found in possession of crack cocaine on September 24, 1998. According

² Our scope of review of a decision by the Board is limited to determining whether necessary findings of fact are supported by substantial evidence, 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; *Armbruster v. Pennsylvania Board of Probation and Parole*, 919 A.2d 348 (Pa. Cmwlth. 2007).

to Prey, this proves his participation in the conspiracy ended with his arrest and incarceration on state charges in 1998. We disagree.

What Prey ignores is that the Amended Judgment and his federal indictment both indicated that the drug distribution conspiracy began in the spring of 1998 and did not end until May 31, 2001. This time frame encompasses Prey's period of state parole, which ran from January 30, 2000, through December 30, 2000. While Prey now urges this Court to rule the Board lacked jurisdiction to revoke his parole because of his self-serving declaration that his involvement in the conspiracy ended with his initial state sentence, the documentary evidence clearly shows that Prey was on parole while the conspiracy was on-going and, therefore, the Board had authority to recommit him as a convicted parole violator for this new criminal offense.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, Judge

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ORDER

AND NOW, this 30th day of April, 2010, the decision of the Pennsylvania Board of Probation and Parole is hereby affirmed.

DAN PELLEGRINI, Judge