



On March 31, 2006, while on parole, Blassingale was arrested and charged with robbery and other related offences. The Board issued a warrant and detainer against Blassingale on that same day, as a result of which Blassingale remained confined in the Curran Fromhold Correctional Facility (CFCF). A preliminary/detention hearing was held for Blassingale at SCI-Graterford. A panel violation hearing was held for Blassingale at SCI-Graterford on July 25, 2006, after which the Board ordered Blassingale recommitted as a technical parole violator (TPV) to serve nine months backtime, when available.

On February 21, 2008, Blassingale was convicted in the Court of Common Pleas of Philadelphia County (trial court) of robbery and inflicting or threatening to inflict immediate serious bodily injury, with respect to his March 31, 2006 arrest. On May 28, 2008, Blassingale was sentenced by the trial court to a term of three and one-half to seven years imprisonment in a state correctional institution followed by a three year period of probation.<sup>1</sup>

On October 8, 2008, Blassingale was afforded a panel revocation hearing at SCI-Graterford. At the hearing, Blassingale moved to have the direct parole violation dismissed on the basis that the hearing was being held more than 120 days from the date of Blassingale's February 21, 2008 conviction and that Blassingale had been confined under the custody of the Department of Corrections since his arrest in March of 2006.

---

<sup>1</sup> Blassingale timely appealed this judgment to the Superior Court. Such appeal was affirmed on October 14, 2009 and is currently pending before the Supreme Court at docket number 703 EAL 2009.

On behalf of the Board, Parole Agent Brian Stahmer (Agent Stahmer) testified that following Blassingale's conviction of February 21, 2008, he personally went to the Philadelphia Criminal Justice Centre (CJC) building on March 5, 2008 to obtain proof of the conviction. Agent Stahmer stated that he was told by the court clerk that the presiding judge had not relinquished Blassingale's file, as Blassingale had not been sentenced yet. Agent Stahmer testified that he continued to monitor the Administrative Office of Pennsylvania Courts (AOPC) website and discovered that Blassingale had been sentenced on May 28, 2008 and that the results became available on the AOPC website on June 24, 2008. Agent Stahmer stated that he asked his parole investigator to obtain proof of Blassingale's February 21, 2008 conviction, which was returned to him by the parole investigator with a time stamp receipt of August 5, 2008. A copy of the original June 24, 2008 request for proof of Blassingale's February 21, 2008 conviction was admitted into evidence. Agent Stahmer further testified that the Board has experienced on-going problems with the Philadelphia Court system holding up records of conviction.

The Board overruled Blassingale's challenge to the timeliness of the October 8, 2008 revocation hearing, finding that Agent Stahmer did in fact act with due diligence in securing proof of Blassingale's February 21, 2008 conviction.

On November 4, 2008, the Board ordered Blassingale recommitted as a CPV to serve twenty-four months backtime as a result of his new conviction. The Board also recomputed Blassingale's maximum term expiration date to November 29, 2028.

Blassingale filed an administrative appeal from the November 4, 2008 revocation order. Blassingale challenged the timeliness of his October 8, 2008 revocation hearing and also the Board's computation of his extended maximum term expiration date.

On April 28, 2009, the Board notified Blassingale that it was affirming the revocation order of November 4, 2008, as the October 8, 2008 hearing was timely held, within sixty-four days after the Board received official verification of his new conviction of August 5, 2008. The Board also dismissed Blassingale's challenge to the computation of his maximum term expiration date as moot, noting that the date was modified by a Board decision dated April 16, 2009. Blassingale now petitions this court for review of the November 4, 2008 revocation order.<sup>2</sup>

Before this court, Blassingale contends that the Board erred in determining that his October 8, 2008, revocation hearing was timely held. Specifically, Blassingale contends that the Board's determination that Agent Stahmer exercised due diligence to obtain the official verification of his new conviction was not supported by substantial evidence of record.

When a parolee alleges that the Board failed to hold a timely revocation hearing, the Board bears the burden of proving that the hearing was timely. Taylor v. Pennsylvania Board of Probation and Parole, 931 A.2d 114, 116 (Pa. Cmwlth. 2007), petition for allowance of appeal denied, 596 Pa. 750, 946 A.2d 690 (2008). Determining whether a revocation

---

<sup>2</sup> Our review is limited to determining whether constitutional rights have been violated, whether an error of law has been committed or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

hearing was timely is a straightforward inquiry that is governed by Board regulation. The pertinent regulation states that:

[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). For purposes of the regulation, “official verification” is defined 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.

Applying the regulation to the facts in this case, there is no doubt that Blassingale’s parole revocation hearing was timely. According to Agent Stahmer’s credited testimony, he received official verification of Blassingale’s new convictions on August 5, 2008. The Board conducted Blassingale’s revocation hearing 64 days later, on November 4, 2008, well within the 120-day time period mandated by 37 Pa. Code §71.4(1).

Blassingale acknowledges the Board’s well-settled burden under 37 Pa. Code §71.4(1) and this courts recent decision in Lawson v. Pennsylvania Board of Probation and Parole, 977 A.2d 85 (Pa. Cmwlth. 2009), which ruled that there is no requirement that the Board show that its

staff acted with “due diligence” in procuring the official verification of the new conviction.<sup>3</sup>

However, Blassingale respectfully submits that our holding in Lawson was wrongfully decided and that this court should adopt the well-reasoned and well-written dissent of Senior Judge Rochelle S. Friedman. We agree with this court’s decision in Lawson.

Accordingly, we affirm the order of the Board.

---

JIM FLAHERTY, Senior Judge

---

<sup>3</sup> A petition for allowance of appeal to our Supreme Court was filed on behalf of Lawson on July 13, 2009 at docket number 492 MAL 2009.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Reginald Blassingale,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 845 C.D. 2009
	:	
Pennsylvania Board of	:	
Probation and Parole,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 13<sup>th</sup> day of January, 2010, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is affirmed.

---

JIM FLAHERTY, Senior Judge