

recommitted again as a convicted violator in 2007, and reparaoled again in 2009. Following his most recent reparole, Petitioner was living in a group home as a condition of his parole where, on November 24, 2009, the incident in question took place.

According to the testimony before the hearing examiner of José Feliu (Feliu), the group home security monitor, Petitioner approached Feliu at 5:45 a.m. to receive his medication. Petitioner was not permitted to receive his medication until 6:00 a.m., so Feliu told him to wait. Petitioner responded by complaining that the group home had too many rules and punishments. He then made a wringing motion with his hands, and said of clinical supervisor Ed Saadi (Saadi) that “this is the kind of person if you see in the street, I’ll shoot him in the head.” (Original Record at 134). Saadi was not present when Petitioner made this threat against him. Petitioner then testified before the hearing examiner and denied that he ever made such a threat and that the incident described by Feliu never occurred.¹

The Board found that Petitioner had violated general condition of parole 5c, refraining from assaultive behavior, and recommitted him to a state correctional institution as a technical parole violator to serve six months backtime.

¹ There was also testimony that Petitioner violated special condition of parole 5-7, which stated, *inter alia*, “You will follow all treatment recommendations and instructions of the treatment and/or parole supervision staff.” The group home handbook, which Petitioner signed, was entered into evidence. Rule six of the handbook stated, “You are required to be respectful to staff at all times. Any community member who engages in threatening behavior may be discharged at once.” (Original Record at 161). For some unknown reason, the Board made no findings one way or the other with regard to condition 5-7.

Petitioner took an administrative appeal, and the Board affirmed. This appeal followed.²

On appeal, Petitioner contends that assaultive behavior is defined using the ordinary dictionary definition of assault, which was not met here because he had no physical encounter with Saadi and did nothing that would cause Saadi to have a reasonable apprehension of bodily harm.³ While Petitioner is correct that if “assaultive behavior” is defined using the ordinary dictionary definition of “assault” his conduct would not constitute assaultive behavior, we have held that assaultive behavior is broader than the crime of assault.⁴ *Jackson v. Pennsylvania*

² Our scope of review of a Board recommitment order is limited to determining if the order is in accordance with law, whether necessary factual findings are supported by substantial evidence, and whether the petitioner’s constitutional rights were violated. *Chapman v. Pennsylvania Board of Probation and Parole*, 484 A.2d 413 (Pa. Cmwlth. 1984).

³ Petitioner also listed in the statement of the questions involved and in the heading of the argument section, “The Pennsylvania Board of Probation and Parole violated the Petitioner (sic) for conditions that were not signed by him until after the incident.” However, as Petitioner failed to mention this contention anywhere in the body of his argument or develop it in any way, it is waived.

⁴ Section 2701 of the Crimes Code, 18 Pa.C.S. § 2701, relating to “simple assault,” provides, in part:

- (a) Offense defined.-A person is guilty of assault if he: (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another; (2) negligently causes bodily injury to another with a deadly weapon; (3) attempts by physical menace to put another in fear of imminent serious bodily injury

The Restatement (Second) of Torts §21 (1965) defines “assault” as follows:

- (1) An actor is subject to liability to another for assault if (a) he acts intending to cause a harmful or offensive contact with the

(Footnote continued on next page...)

Board of Probation and Parole, 885 A.2d 598 (Pa. Cmwlth. 2005). We reached that conclusion because according to the Webster’s Third New International Dictionary (1976), which we quoted with approval in *Moore v. Pennsylvania Board of Probation and Parole*, 505 A.2d 1366 (Pa. Cmwlth. 1986), “assaultive” is defined as “[i]nclined toward or disposed to commit assault.” In addition, the Board has broad latitude in administering the parole laws, and this Court will defer to the Board’s interpretation of its regulations if it is consistent with statutory authority and not clearly erroneous. *Jackson*.

Here, Petitioner undoubtedly did not commit either the crime or tort of assault, as he neither acted in such a way as to cause bodily injury or offensive contact nor put Saadi in imminent fear or apprehension of bodily injury or offensive contact, as Saadi was not even present when the alleged threat was made. However, the Board credited Feliu’s testimony that Petitioner said with regard to Saadi, “this is the kind of person if you see in the street, I’ll shoot him in the head.” This statement clearly shows that Petitioner, while not actually committing assault, was “inclined toward or disposed to” commit assault. It could easily be interpreted as a threat to murder Saadi if the opportunity ever arose once Petitioner left the group home. Such a statement is sufficient to constitute “assaultive behavior.”⁵

(continued...)

person of the other or a third person, or an imminent apprehension of such a contact, and (b) the other is thereby put in such imminent apprehension.

⁵ In addition, we note that had the Board ruled on condition 5-7, as it should have, Petitioner’s statement would certainly have constituted “threatening behavior” toward staff, **(Footnote continued on next page...)**

For the foregoing reasons, the decision of the Board is affirmed.

DAN PELLEGRINI, JUDGE

(continued...)

which would have properly resulted in dismissal from the group home, thereby violating this term of Petitioner's parole as well.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | |
|---------------------------------|----------------------|
| Clement Butterfield, | : |
| Petitioner | : |
| | : |
| v. | : No. 1030 C.D. 2010 |
| | : |
| Pennsylvania Board of Probation | : |
| and Parole, | : |
| Respondent | : |

ORDER

AND NOW, this 28th day of October, 2010, the determination of the Pennsylvania Board of Probation and Parole No. 3847-M, mailed May 14, 2010, which affirmed a revocation decision dated March 23, 2010, is affirmed.

DAN PELLEGRINI, JUDGE