

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

William E. Smith, :  
 :  
 : Petitioner :  
 :  
 : v. : No. 1042 C.D. 2009  
 : SUBMITTED: October 23, 2009  
 :  
 Pennsylvania Board of Probation :  
 and Parole, :  
 : Respondent :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: February 9, 2010**

William E. Smith petitions for review of the decision of the Pennsylvania Board of Probation and Parole (Board) upholding his recommitment as a technical parole violator to serve 18 months of backtime.

Smith was released on parole from his 4- to 8-years sentence to an approved residence with his aunt at 481 Braddock Street in Uniontown, Pennsylvania. Certified Record (C.R.) at 13. On April 28, 2008, the Board declared Smith delinquent, and on October 22, 2008, he was arrested in Cuyahoga County, Ohio. The Board charged him with violations of Conditions 1 (leaving the district without prior written permission), 2 (changing approved residence without

written permission), and 3a (failing to maintain regular contact with parole supervision staff). C.R. at 13.

On December 12, 2008, Smith executed waivers of a preliminary hearing, a panel hearing, and representation by counsel. CR. at 42, 43. Smith also executed a Waiver of Violation Hearing and Admission Form, acknowledging his understanding of his right to a hearing and waiving that right “of my own free will, without promise, threat or coercion.” CR. at 50. The admission states, in pertinent part, as follows:

I William Smith do knowingly, intelligently, and voluntarily admit that I was in violation of the terms and conditions of my parole.  
The specific violation(s) that I committed was/were #1, #2, 3A.

*Id.* In the space provided below the signed admission for additional information the parolee would like the Board to consider, Smith wrote,

I admit to failure to report because I did not call [unreadable] agent.  
#3 I never lived at 83 Dunlap, it was public housing and my agent stated I couldn't live there. It was illegal because it was not an approved plan and Housing Authority wouldn't let me live there. #1 and #2 I'm guilty of. #3 I never lived at 83 Dunlap.

*Id.*

Based on Smith's admissions, the Board recommitted him to serve 18 months of backtime for violations of conditions 1, 2, and 3a, and recomputed his maximum date to October 28, 2011. In his pro se administrative appeal, Smith challenged the evidence supporting the violation of condition #2, asserted that the

violations for conditions #1 and #3 should merge, and challenged the backtime imposed as being beyond the presumptive range. In a hand-written addendum, he expressed his wish to “rescind the admission of guilt” because he did not understand that he would receive 18 months because the parole agent said he would receive only 9 months. C.R. at 57. In responding to the appeal, the Board reversed its decision with respect to condition #2 (change of residence without permission) and upheld the revocation for the other two violations and the recommitment period. Smith filed the present appeal.

Through counsel, Smith filed a petition for review raising the following: 1) the Board erred in revoking his parole for violation of condition 3a, because the parole agent left notice instructing him to report with another person, and because condition 3a is vague; and 2) the parole agent induced him to admit to the violations by promising he would have to serve only 9 months of backtime. Counsel filed a brief that addresses only the second issue.<sup>1</sup>

In response, the Board argues that Smith waived the issue of the vagueness of the parole condition by not raising it before the Board and that a parolee’s waiver of violation hearing and admission provide sufficient evidence to recommit absent evidence that the admission was obtained through coercion of false promises. We agree.

The record reflects that Smith did not raise the issue of the vagueness of parole condition 3a in his petition for administrative appeal. C.R. at 55-57. Issues not raised at the revocation hearing or in the administrative appeal will not

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<sup>1</sup> Our review here is limited to determining whether the Board's decision was supported by substantial evidence and whether the Board erred as a matter of law. *Prebella v. Pa. Bd. of Prob. & Parole*, 942 A.2d 257 (Pa. Cmwlth. 2008).

be considered for the first time on appeal to Commonwealth Court. *Dear v. Pa. Bd. of Prob. & Parole*, 686 A.2d 423 (Pa. Cmwlth. 1996); *Newsome v. Pa. Bd. of Prob. & Parole*, 553 A.2d 1050 (Pa. Cmwlth. 1989).

As for Smith's waiver of violation hearing and admission, in *Prebella v. Pennsylvania Board of Probation and Parole*, 942 A.2d 257 (Pa. Cmwlth. 2008), and *McKenzie v. Pennsylvania Board of Probation and Parole*, 963 A.2d 616 (Pa. Cmwlth. 2009), this court upheld the same uncounseled written waivers at issue in this case. We held that the waiver forms' clear statements were sufficient to establish the validity of the waivers. *McKenzie*, 963 A.2d at 622.

Smith now contends that he misunderstood that by admitting to the violations he would receive 18 months of backtime and, alternatively, that the admission was induced by the parole agent's representation that the backtime would be for only 9 months. Like the inmate in *Prebella*, Smith's claim of coercion or false promise is contrary to his signed statements. Also like the inmate in *Prebella*, Smith admitted the violations and does not now claim innocence. The record supports the Board's final decision, and the Board did not abuse its discretion in recommitting him based on his admission of the two technical violations. 942 A.2d at 262.

Smith cites to *Brown v. Pennsylvania Board of Probation and Parole*, 821 A.2d 170 (Pa. Cmwlth. 2003), and *Solano v. Pennsylvania Board of Probation and Parole*, 884 A.2d 940 (Pa. Cmwlth. 2005), in support of his argument that the waiver and admission cannot support the revocation. The issue in *Brown* was whether the parolee made a knowing and voluntary waiver of his right to a violation hearing and whether his counsel was ineffective where the record evidence showed that the parolee was forced to admit the violation in exchange for

a recommendation for a residential substance abuse treatment program and the withdrawal of a charge for violating an additional parole condition. *Brown* is distinguishable from the present case, which as noted above, is controlled by *Prebella* and *McKenzie*. Like the parolee in *McKenzie*, Smith signed three different waiver forms, each time agreeing that the waiver was voluntary and without promise, threat, or coercion. Smith does not now claim that he did not violate the conditions; rather, he claims that he misunderstood that he might be recommitted to serve 18 months of backtime.

The decision in *Solano* provides even less support for Smith' claim. In *Solano*, the issue was whether a parolee's qualified admission at his violation hearing that he visited a known gang member at a county prison constituted substantial evidence that he violated a parole condition expressing zero tolerance for gang activity. We held that the parolee's act of merely conversing with another gang member in the restricted environment of a prison did not constitute gang activity. Smith's admission in this case was unqualified and constituted substantial evidence that he left the district without prior written permission and failed to maintain regular contact with parole supervision staff.

Accordingly, the order of the Board is affirmed.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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Pennsylvania Board of Probation	:	
and Parole,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 9th day of February, 2010, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge