

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregorio Flores,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Board	:	
of Probation and Parole,	:	No. 1244 C.D. 2012
	:	
Respondent	:	Submitted: December 21, 2012

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE COVEY

FILED: January 16, 2013

Gregorio Flores (Flores) petitions this Court for review of the Pennsylvania Board of Probation and Parole’s (Board) June 6, 2012 denial of his petition for administrative relief. The sole issue for this Court’s review is whether the Board erred when it determined that Flores violated his parole conditions by possessing a knife. We affirm.

Flores, an inmate at the State Correctional Institution at Frackville, was granted parole on May 9, 2011 and released from prison on September 6, 2011, subject to Conditions Governing Parole/Reparole (Conditions). Original Record (O.R.) at 34. According to the Conditions, Flores was required to “refrain from owning or possessing any firearms or other weapons,” and to “refrain from assaultive behavior.” O.R. at 32.

On November 15, 2011, Flores was arrested at his sister's house based upon allegations of domestic disturbances occurring at his girlfriend's house. During the search incident to that arrest, a knife was found in Flores' pocket. Flores was charged with two counts of technical parole violations regarding assaultive behavior arising from the alleged domestic incidents at his girlfriend's house, and two counts of violating the prohibition on possessing weapons. However, at the violation hearing held on February 23, 2012, the Board advised the hearing examiner that it would only pursue one count of possessing a weapon in violation of the Conditions and not proceed on the other three counts.

At the February 23, 2012 hearing, the Board's agent, Michael Buffington (Agent Buffington), testified that a knife was found in the pants pocket that Flores was wearing at the time of his arrest. O.R. at 63-64. Flores stated that he was wearing sweatpants when he was arrested, and the knife was not in his possession, but instead was in his work pants that were on the floor. O.R. at 66. Flores further testified that he worked at CDS, a warehouse, and the knife was a work tool. O.R. at 67.

On March 26, 2012, the Board issued a decision recommitting Flores as a technical parole violator on two counts of possessing a weapon. On April 19, 2012, the Board issued a revised order deleting the reference to one of the two counts.<sup>1</sup>

On April 9, 2012, and on several dates thereafter, Flores filed requests for administrative relief from the Board's order. On June 6, 2012, the Board responded to the April 9, 2012 request for administrative relief,<sup>2</sup> concluding that the

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<sup>1</sup> The revised order was issued because one of the two counts of possessing a weapon referenced in the order had been withdrawn at the February 23, 2012 hearing.

<sup>2</sup> The response noted that pursuant to 37 Pa. Code § 73.1, the other subsequent requests for administrative relief were not accepted.

evidence - specifically the testimony of Agent Buffington - was sufficient to find that Flores had violated the conditions of his parole. Flores appealed to this Court.<sup>3</sup>

Flores argues that the Board erred when it held that the knife found violated the Conditions. Specifically, Flores contends that because the Board did not make a specific finding regarding whether the knife was being used for a legitimate purpose, the Board erred in finding that he violated his parole.

It is well established that:

The Board, as the ultimate fact-finder, evaluates witness credibility, resolves conflicts in the evidence, and assigns evidentiary weight. We leave the sufficiency of the evidence to the Board's discretion, and we will not interfere with the Board's finding of a technical parole violation if it is supported by substantial evidence. In addition, the Board has broad discretion in parole matters and its interpretation of its own regulations will control unless clearly erroneous.

*Flowers v. Pennsylvania Bd. of Prob. & Parole*, 987 A.2d 1269, 1271 n.2 (Pa. Cmwlth. 2010) (citations omitted). As factfinder, the Board concluded that Flores was in possession of a knife when he was searched on November 15, 2011. That finding is supported by substantial evidence; specifically, Agent Buffington's testimony. O.R. at 63-64. However, this Court's inquiry does not end there. Flores' possession of the knife may only be deemed a violation of parole conditions which prohibited him from "owning or possessing any firearms or other weapons," if the knife found constitutes a weapon. O.R. at 32.

This Court has previously defined the term "weapon[.]" for purposes of interpreting technical parole conditions, to mean "an instrument of offensive or defensive combat: something to fight with." *Michael v. Pennsylvania Bd. of Prob.*

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<sup>3</sup> "Our review in a parole revocation action is limited to determining whether the findings were supported by substantial evidence, whether constitutional rights were violated, or whether the Board committed an error of law." *Flowers v. Pennsylvania Bd. of Prob. & Parole*, 987 A.2d 1269, 1271 n.3 (Pa. Cmwlth. 2010).

*& Parole*, 481 A.2d 711, 712 (Pa. Cmwlth. 1984) (quoting *Webster's Third New Int'l Dictionary* 2589 (1976)). The *Michael* Court held that a folding knife found in possession of a parolee constituted a weapon. *Id.* Flores asserts that in *Macik v. Pennsylvania Board of Probation and Parole*, 526 A.2d 460 (Pa. Cmwlth. 1987), the Court subsequently recognized that there may be circumstances where a parolee might have a legitimate purpose for using a knife, and in such circumstances, the knife would not constitute a weapon. The *Macik* Court stated, “where, as here, the [parolee] has introduced evidence that he was **using** the alleged weapon for a legitimate purpose, the Board must make specific findings on whether it was **actually being used** for that legitimate purpose.” *Id.* at 461 (emphasis added).

When looking at the totality of the circumstances, the facts in this case are more aligned to the events in *Michael*, than the situation in *Macik*. “The parolee [in *Michael*] argued that the knife he had on his person was not a weapon, per se, since it also had a utilitarian purpose in addition to its use as a potential weapon.” *Macik*, 526 A.2d at 461. However, “[i]n *Michael* . . . there was no indication that the parolee was **using** the knife for a legitimate purpose.” *Macik*, 526 A.2d at 461 (emphasis added). In the instant action, Flores argues that the knife was a work tool. However, Flores was not at work when Agent Buffington recovered the knife from Flores’ pocket. In addition, although Flores stated he had the knife because he had no place to store it at work, he was not at his home when he was arrested, but rather at his sister’s house. Moreover, Flores did not testify that he was on his way to or from work at the time of his arrest, only that it was a work tool. Flores’ testimony that the knife was a work tool did not signify he was *using* it for a legitimate purpose, merely that the knife *had* a legitimate purpose. Agent Buffington’s testimony, which the Board relied on, clearly established that Flores was not “**using** the alleged weapon for a legitimate purpose” at the time of his arrest. *Id.* at 461 (emphasis added).

Accordingly, Flores' actions were a violation of his parole condition to "refrain from . . . possessing any . . . weapons." O.R. at 32.

For all of the above-stated reasons, the Board's order is affirmed.

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ANNE E. COVEY, Judge

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ORDER

AND NOW, this 16<sup>th</sup> day of January, 2013, the Pennsylvania Board of Probation and Parole's June 6, 2012 order is affirmed.

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ANNE E. COVEY, Judge