

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ronald D. Weaver, :  
Petitioner :  
 :  
v. : No. 1641 C.D. 2007  
 : Submitted: February 29, 2008  
Pennsylvania Board of Probation and :  
Parole, :  
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE FRIEDMAN

FILED: April 10, 2008

Ronald D. Weaver (Weaver) petitions for review of the July 20, 2007, order of the Pennsylvania Board of Probation and Parole (Board), which denied Weaver's exceptions to the denial of his request for records under the act known as the Right to Know Law (Law or RTKL).<sup>1</sup> We affirm.

On May 4, 2007, the Board rendered a decision to deny parole to Weaver. Subsequently, Weaver submitted the following request to the Board's Right to Know Office.

1. Identify by full names of each and every person employed, acting as agents, members or chair, with the Pennsylvania Parole Board, along with their titles who

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<sup>1</sup> Act of June 21, 1957, P.L. 390, *as amended*, 65 P.S. §§66.1-66.9.

rendered or aided in rendering a decision denying Ronald Weaver parole as indicated by the attached copy of the Parole Board's decision dated as rendered on May 4, 2007, include copies of all letters and/or statements presented by a judge, prosecutor or any alleged victim or family member.

2. Provide copies of all documents listed on the attached copy of the Pennsylvania Board of Probation and Parole decision as rendered on May 4, 2007, concerning Ronald Weaver, at the paragraph indicated by the arrow which documents are titled as: Reports, evaluations and assessments concerning mental and behavior conditions; and, history that reflects ongoing risk to the community along with the authors and their titles, degrees and qualifications to render the reports, evaluations and behavior condition along with the history as indicated.

(Board's 6/26/07 decision.)

The Board's Right to Know Officer denied the request for the following reasons:

1. The record(s) you requested do not exist or are not in the possession of this agency and we have no obligation to create such records. *65 P.S. §66.2(e)*

2. The identified record(s) do not meet the general definition of "public record," i.e., none of the records is "an account, voucher, or contract dealing with the receipt or disbursement of funds by the Board or its acquisition, use or disposal of services or of supplies, materials, equipment or other property," nor is it "a minute, order, or other decision by the Board fixing the personal or property rights, privileges, immunities, duties or obligations of any person or groups of person." *65 P.S. 66.1*

3. The identified record(s) are subject to an exception to the general definition of “public record,” namely the exception pertaining to restrictions imposed by law, including statute law, order or decree of court. *65 P.S. 66.1 and 18 Pa. C.S.A. §9101 et. seq.*

(Board’s 6/26/07 decision) (emphasis in original).

Weaver filed exceptions with the Board. On July 20, 2007, the Board denied the exceptions, giving the following explanation.

The Pennsylvania Board of Probation and Parole does not report the names of the voting Board Members on cases to the public.

The identified record(s) are subject to an exception to the general definition of “public record;” namely, the exception pertaining to restrictions imposed by law, including statute law, order or decree of court. *65 P.S. 66.1 and 18 Pa. C.S.A. §9101 et. seq.*

Additionally, the RTKL Exceptions Official is enclosing a copy of *The Pennsylvania Code §61.2 Confidentiality of Records*, as a courtesy to you, which states:

Records, reports and other written things and information, evaluations, opinions and voice recordings in the Board’s custody or possession touching on matters concerning a probationer or parolee are private, confidential and privileged; except that a brief statement of the reasons for actions by the Board granting or refusing a parole will at all reasonable times be open to public inspection in the offices of the Board.

(Board’s 7/20/07 decision) (emphasis in original). Weaver now petitions this court for review of the Board’s decision.

Weaver argues that the Board erred in denying his exceptions pursuant to 37 Pa. Code §61.2. Weaver maintains that the regulation applies only to persons who are, or have been, on probation or parole. Indeed, the regulation specifically states that matters “concerning a probationer or parolee” are private, confidential and privileged. Obviously, the provision is a Board regulation that does not apply to inmates under the jurisdiction of the Department of Corrections who have never been on probation or parole.

However, the Board did not deny Weaver’s exceptions based on 37 Pa. Code §61.2. The Board only mentioned the regulation at 37 Pa. Code §61.2 after explaining that the Board does not report the names of voting Board members and after concluding that the records sought by Weaver fell within an exception to the definition of “public record” in the Law. Weaver does not argue that the Board acted improperly in denying his request on these bases. Thus, such arguments are waived.<sup>2</sup> See Pa. R.A.P. 2116(a) (stating that ordinarily no point will be considered which is not set forth in the brief’s statement of questions involved or suggested thereby); see also Pa. R.A.P. 2119(a) (stating that the argument in a brief

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<sup>2</sup> Weaver does argue that the Board has violated his equal protection and *ex post facto* rights by denying him parole eligibility under section 9718.1(b) of the Judicial Code, which provides that a sex offender shall not be eligible for parole unless the offender has participated in a sex offender program. 42 Pa. C.S. §9718.1(b). Evidently, Weaver has not participated in a sex offender program because such programs require that he admit his offense, and Weaver refuses to do so, exercising his constitutional right not to incriminate himself. Although this argument pertains to the Board’s denial of parole to Weaver, it does not pertain to the Board’s denial of Weaver’s request for records under the Law. Thus, we decline to address it.

shall be divided into as many parts as there are questions to be argued and that each point shall be followed by discussion).

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Judge

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Parole,	:	
	:	
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ORDER

AND NOW, this 10th day of April, 2008, the order of the Pennsylvania Board of Probation and Parole, date July 20, 2007, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Judge