

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hakim Allen, :
 :
 Petitioner :
 :
 v. :
 :
 :
 Pennsylvania Board of :
 Probation and Parole, : No. 316 C.D. 2010
 Respondent : Submitted: July 23, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: August 20, 2010

Hakim Allen (Allen) petitions for review from a final determination of the Pennsylvania Board of Probation and Parole (Board) that recommitted him as a convicted parole violator to serve his unexpired term and established his maximum date as March 20, 2012.¹

Allen was effectively sentenced on September 27, 2006, to a term of one year six months to five years for receiving stolen property. The Board released Allen on parole on March 27, 2008. The Board issued a warrant to commit and detain Allen on July 29, 2008. On July 29, 2008, the Philadelphia Police Department arrested Allen and charged him with possession of a firearm, carrying

¹ This Court's review is limited to determining whether the Board's findings are supported by substantial evidence, are in accordance with the law, and whether constitutional rights have been violated. Krantz v. Pennsylvania Board of Probation and Parole, 483 A.2d 1044 (Pa. Cmwlth. 1984). This Court will interfere with the Board's exercise of administrative discretion only where it has been abused or exercised in an arbitrary or capricious manner.

a firearm without a license, and carrying firearms in public.² On April 9, 2009, Allen was convicted in the Court of Common Pleas of Philadelphia County of possession of a firearm, firearm not to be carried without a license, and carrying a firearm in public.³

On August 18, 2009, the Board held a revocation hearing. Allen's counsel objected to the timeliness of the hearing. Parole Agent Freddie Joe (Agent Joe) responded:

Basically, what happens in Philadelphia, we have a procedure in which we have a parole investigator. We submit a request to the parole investigator at our Criminal Justice Center. In turn, they reach out to the judge and go and try to verify the conviction and get the information for us. The attempts are then made and then the information is given back to us.

This document [the proof of conviction] is stamp dated July 30th 2009. The request was made May the 19th of 2009.

.....

[O]nce a month, we do computer checks on the entire caseload. So for the court computer check in May, there was an indication that Mr. Allen had received a guilty verdict. So in turn, that's when the request was made. May the 19th, 2009 was the original request date of the certification from the parole investigator. The parole

² In a decision recorded September 30, 2008, and mailed October 8, 2008, the Board recommitted Allen as a technical parole violator to serve six months backtime as a technical parole violator when available pending the disposition of criminal charges for missing curfew.

³ On August 28, 2009, Allen was sentenced to a term of four to eight years for possession of a firearm and concurrently sentenced to a term of three to six years for carrying a firearm without a license. The record does not indicate that a sentence was imposed for carrying firearms in public.

investigator in the time between May the 19th and July the 30th, made nine attempts and received a document on July the 30th, 2009.

Notes of Testimony, August 18, 2009, (N.T.) at 8-10; Certified Record (C.R.) at 70-72. Agent Joe explained that the efforts to obtain the proof of conviction were hampered by the fact that the file was not available as it was still in the common pleas court judge's chambers. N.T. at 10; C.R. at 72. The hearing examiner overruled the objection. N.T. at 11; C.R. at 73. Agent Joe submitted the proof of conviction, dated July 30, 2009, into evidence. N.T. at 12; C.R. at 74.

In a decision recorded September 21, 2009, and mailed September 28, 2009, the Board recommitted Allen to serve his unexpired term of two years, six months, and eighteen days as a convicted parole violator concurrent with the six months backtime as a technical parole violator which was assessed on September 30, 2008.

Allen requested administrative relief and contended that the revocation hearing was untimely.

The Board denied the request for administrative relief:

The Board determined that the August 18, 2009, revocation hearing was timely. After review of this case, the appellate appeal panel agrees. Specifically, the panel determined that the Board was required to hold the hearing within 120 days of the official verification date because Mr. Allen was returned to the jurisdiction of the Department of Corrections prior to his conviction. . . . In this case, official verification of the conviction was received on July 30, 2009 and the hearing was held 19 days later on August 18, 2009. Moreover, there was

ample evidence presented to establish that the Board made a good faith effort to obtain official verification of the conviction despite the fact that there was no duty on the Board to do so. . . . Thus, the revocation was timely. (Citations omitted).

Board Decision, February 3, 2010, at 1; C.R. at 123.

Before this Court, Allen contends that the Board failed to timely hold a revocation hearing within one hundred twenty days of his return to a state correctional facility or official verification of his conviction.⁴

When a parolee alleges that the Board failed to hold a timely revocation hearing, the Board bears the burden of proof. Where the Board fails to meet its burden, the appropriate remedy is the dismissal of the violation charges with prejudice. Taylor v. Pennsylvania Board of Probation and Parole, 931 A.2d 114 (Pa. Cmwlth. 2007).

The Board's regulation, 71 Pa.Code §71.4(1), sets forth the timing of a revocation hearing:

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 the guilty verdict at the highest trial court level except as follows:

(i) If a parolee is confined outside the jurisdiction of the Department of Corrections, such as confinement out-of-State, confinement in a Federal correctional institution or

⁴ Allen initially asserted that he did not receive all credit due him for time served pursuant solely to the Board's warrant. However, he conceded in the argument section of his brief that the proper amount of credit was allocated. Therefore, this Court need not address this issue.

confinement in a county correctional institution where the parolee has not waived the right to a revocation hearing by a panel in accordance with Commonwealth ex rel. Rambeau v. Rundle, 455 Pa. 8, 314 A.2d 842 (1973), the revocation hearing shall be held within 120 days of the official verification of the return of the parolee to a State correctional facility.

(ii) A parolee who is confined in a county correctional institution and who has waived the right to a revocation hearing by a panel in accordance with the Rambeau decision shall be deemed to be within the jurisdiction of the Department of Corrections as of the date of the waiver.

Neither of the exceptions applies here. The Board had the burden of proving that Allen’s hearing was held within one hundred twenty days from the date that the Board received official verification of the conviction. The Board defines “official verification” 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.

Here, with respect to the verification date, Agent Joe testified that the Board did not receive official verification of the conviction until July 30, 2009. The revocation hearing was held on August 18, 2009, well within the required one hundred twenty days.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hakim Allen,	:
	:
Petitioner	:
	:
v.	:
	:
Pennsylvania Board of	:
Probation and Parole,	:
	: No. 316 C.D. 2010
Respondent	:

ORDER

AND NOW, this 20th day of August, 2010, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge