

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles Miller, :
Petitioner :
 :
v. : No. 455 C.D. 2009
 : Submitted: October 9, 2009
Pennsylvania Board of Probation :
and Parole, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: December 11, 2009

Charles Miller (Miller) petitions for review of an adjudication of the Pennsylvania Board of Probation and Parole (Board) affirming his parole revocation. Miller argues that the record does not contain substantial evidence to support the Board's factual findings that he committed numerous technical parole violations. We dismiss his petition for review as moot because even if we find in Miller's favor on his appeal, we cannot order any relief because he has already served the recommittal time he challenges.

On October 2, 2008, Miller appeared before a panel at SCI-Pittsburgh for a parole revocation hearing based upon six alleged technical parole violations.¹

¹ The charged technical parole violations included:
(Footnote continued on the next page . . .)

Miller waived his right to representation by counsel. The parole officer assigned to Miller's case, Agent Turtzer-Kelley, appeared for the Commonwealth.

At the hearing, Miller admitted to using cocaine, which was a technical violation of Condition No. 5A of his parole, which prohibited the use of controlled substances. He denied committing the other five technical parole violations.

Agent Turtzer-Kelley testified regarding Miller's alleged violation of Condition No. 2, which required him to live at the home of his sister, Jean Morris. Agent Turtzer-Kelley testified that when she visited Miller's approved residence on May 15, 2008, she saw none of Miller's belongings and learned from Morris that Miller no longer resided there. Agent Turtzer-Kelley also testified that Miller admitted to her on May 20, 2008, that he no longer lived at his approved residence.

In response, Miller testified that he did not sleep in the room where Agent Turtzer-Kelley had been and that all of his belongings were in a closet downstairs near his bedroom. Miller denied admitting to Agent Turtzer-Kelley that he no longer resided at his sister's residence. Miller also called Morris as a witness.

(continued . . .)

- (1) Miller no longer resided at his approved residence and failed to properly obtain permission to change such residence (referred to as Condition No. 2);
- (2) Miller failed to attend weekly meetings of Breaking Barriers, a rehabilitation program (Condition 3A);
- (3) Miller tested positive for and admitted to using cocaine (Condition No. 5A);
- (4) Miller failed to submit to his weekly urinalysis for over three weeks (Condition No. 7);
- (5) Miller failed to report weekly to parole supervision staff at the East Allegheny Supervision Unit (Condition No. 7);
- (6) Miller violated his curfew, which required him to be at his approved residence between 8:00 p.m. and 6:00 a.m. daily (Condition No. 7).

She corroborated Miller's testimony regarding the location of his belongings in her home and denied telling Agent Turtzer-Kelley that Miller no longer lived with her.

The panel next considered Condition No. 3A, which required Miller to attend weekly "Breaking Barrier" meetings. The parole officer who ran that rehabilitation program testified that Miller failed to attend meetings on both May 7 and May 14, 2008. Agent Turtzer-Kelley entered into evidence the attendance sheets from those meetings that showed Miller to be absent.

In response, Miller testified that he was hospitalized on May 7 and May 14, 2008, and, therefore, could not attend the meetings. He introduced his medical records from those dates, but the Board sustained the Commonwealth's objection to admission of those records because they could not be authenticated. In order to corroborate his testimony that he was hospitalized on May 7 and May 14, Miller presented Morris's testimony that she took Miller to the hospital on those days and that she had advised the Probation and Parole Office in Harrisburg that Miller would miss the meetings.

Finally, the panel considered Miller's alleged violation of Condition No. 7. The violation of Condition No. 7 consisted of three separate counts.

In the first count, the Board considered Miller's alleged failure to submit to urinalysis. The Commonwealth explained that it had no urinalysis results from Miller for any of the days he was required to submit a urine specimen. Miller testified that he was hospitalized on those dates and, therefore, could not provide the necessary urine samples.

In the second count, the Board considered Miller's alleged failure to report weekly to parole supervision staff at the East Allegheny Supervision Unit. Agent Turtzer-Kelley entered into evidence the admission log from the East

Allegheny Supervision Unit, which had no entries for Miller during the relevant time period.

In the third count, the Board considered Miller's alleged curfew violation. Agent Turtzer-Kelley testified, once again, that Miller admitted to her on May 20, 2008, that he no longer lived at his approved residence. Agent Turtzer-Kelley reasoned that if Miller no longer lived at his approved residence, he automatically violated his curfew, which required him to be at his approved residence between 8:00 p.m. and 6:00 a.m. daily. Further, Agent Turtzer-Kelley "received several alerts from the electronic monitor indicating several violations" of Miller's curfew. Notes of Testimony, October 2, 2008, at 37; Certified Record at 107.

On November 12, 2008, the Board issued a decision finding that Miller had committed all six technical parole violations. The Board based these findings on Miller's admissions to Agent Turtzer-Kelley; on Agent Turtzer-Kelley's testimony; and on the visitor logs from the East Allegheny Supervision Unit that were submitted into evidence. The Board recommitted him for a 15-month period. Because Miller received credit for time served, the 15-month recommittal period was set to expire in August 2009.

Miller appealed, requesting administrative relief from the Board. In his appeal, Miller requested that his total recommittal period be reduced to six months, which was the period of his recommitment attributed to his violation of condition 5A, *i.e.*, his admitted use of cocaine. Miller contended that the Board's findings that he committed the other five technical parole violations were not based on substantial evidence.

After review, the Board unanimously affirmed the revocation of Miller's parole. Miller now petitions for this Court's review, arguing that the Board erred in

finding that substantial evidence supports the Board's finding that he committed the five other technical parole violations. In his petition for review, Miller asks this Court to: (1) reverse the Board's denial of his request for a reduction in his recommittal time from 15 to six months; (2) reverse the Board's decision to recommit Miller as a parole violator; and (3) order Miller's parole be reinstated.

As a threshold matter, we first consider the Board's argument that this Court should dismiss Miller's petition for review because it is now moot. The Board reasons that Miller's request to have his 15-month recommittal reduced to six months cannot be granted. Miller has already served the entire 15-month recommittal period. The Board does not specifically address Miller's other prayers for relief, *i.e.*, that this Court reverse the Board's recommitment order and reinstate his parole. Nevertheless, we agree with the Board that Miller's appeal is moot.

If the issues raised in a petition for review can no longer be redressed by a favorable judicial decision, the issue is moot. *Mistich v. Pennsylvania Board of Probation and Parole*, 863 A.2d 116, 119 (Pa. Cmwlth. 2004) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Courts will not enter a judgment to which no effect can be given. *Britt v. Department of Public Welfare*, 787 A.2d 457, 460 n.5 (Pa. Cmwlth. 2001).

All of the prayers for relief in Miller's petition for review are rendered moot by the fact that he has already served his full 15-month recommitment period. His request that this Court reverse the Board's recommitment order is moot because a favorable decision would have no effect; Miller cannot receive a credit for any of the 15 months he served because Miller has no present prison sentence against which to credit that time. Similarly, Miller's request for a reduction of his recommittal time from 15 to six months cannot be granted because he has already served the full 15

months. A favorable decision by this Court would, therefore, have no effect. Accordingly, Miller's appeal is dismissed.²

MARY HANNAH LEAVITT, Judge

² In light of our disposition, we need not consider the merits of Miller's petition and whether the Board's findings on the other technical parole violations were supported by substantial evidence.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles Miller,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 455 C.D. 2009
	:	
Pennsylvania Board of Probation	:	
and Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 11th day of December, 2009, the petition for review filed by Charles Miller in the above-captioned matter is DISMISSED as moot.

MARY HANNAH LEAVITT, Judge