

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Larry W. Martin, :
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 Petitioner :
 :
 v. : No. 612 C.D. 2010
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 Pennsylvania Board of : Submitted: July 22, 2011
 Probation and Parole, :
 :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: August 31, 2011

Larry W. Martin (Martin) petitions for review of an order of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief from the Board's decision recommitting him to serve twelve months back time as a technical parole violator. We affirm.

Martin is serving a series of sentences resulting from multiple guilty pleas in Lehigh County to charges of rape, involuntary deviate sexual intercourse,

burglary, theft, and receiving stolen property.¹ The cumulative sentences therefrom range from 10 to 40 years, with a minimum date of September 4, 2002, and a maximum date of September 4, 2032. By Board order dated August 1, 2008, Martin was paroled to a community corrections residency for a minimum of six months, with an actual release date of August 4, 2008.

On January 29, 2009, Martin was charged with a technical parole violation of a special condition of his parole, namely for an unsuccessful discharge from a sex offender treatment program. On June 11, 2009, the Board held a panel parole violation hearing at which Martin chose to represent himself. Before the Board, Martin argued at length, *inter alia*, regarding the inaccuracy of his conviction and sentencing reports, and about the treatment he received as a result of those inaccuracies while on parole at the community corrections residency, Forensic Treatment Services. Martin further testified that while on parole, he went to a Pennsylvania Senator's office seeking assistance with what he perceived as his unfair treatment. Martin further argued that he had received retaliation for his visit to the Senator's office, as well as retaliation for his permitted relationship with a fiancée, from his parole agent, from Forensic Treatment Services, and from the staff at Allentown Community Corrections Center. This alleged retaliation, Martin argued,

¹ Martin's sentences were entered on September 11, 1995, and September 28, 1995.

resulted in his discharge from Forensic Treatment Services and arrest for technical parole violation later that same day. Following its receipt of testimony and evidence in the hearing, the Board, by Decision dated July 10, 2009, recommitted Martin as a technical parole violator to serve 12 months back time for his violation of parole Condition 7.² Martin's parole violation maximum date was set as September 4, 2032.

Martin thereafter filed a timely *pro se* request for administrative relief with the Board. Martin requested a reversal of the Board's July 10, 2009, Decision, and a reinstatement of his parole with release to an out-of-state parole plan. By notice dated March 22, 2010, the Board denied Martin's administrative appeal. Martin subsequently filed a timely *pro se* Petition for Review of the Board's Decision with this Court, and Attorney Kent D. Watkins was appointed to represent him.

This Court's review of a Board order is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. Walker v. Pennsylvania Board of Probation and Parole, 729 A.2d 634 (Pa. Cmwlth. 1999). Martin's issues in this matter have been reordered, and consolidated, in the interests of clarity.³

² Martin was returned to a state correctional institution on January 29, 2009, pending his hearing on the technical parole violation.

³ Martin has consolidated the multiple arguments presented in his Petition for Review in his brief to this Court. To the extent that several of the issues originally raised in Martin's Petition for

(Continued....)

Martin first argues that the Board relied upon untrue information regarding Martin's original offenses. Namely, Martin argues that the Order to Release on Parole/Reparole document mistakenly lists multiple rape and involuntary deviate sexual intercourse (IDSI) charges, when in fact Martin was sentenced for only one rape and one IDSI charge, and the remaining charges are for one charge of receiving stolen property, and multiple burglaries and theft. As the Board notes, however, Martin simply misreads the Parole/Reparole, and sentencing, documents. The multiple listings for his single rape and IDSI charges are in fact all identified as the same charge, with the same information/indictment number, which are merely repeated for purposes of showing the consecutive and/or concurrent nature of the sentences with Martin's other multiple charges. A comparison of Martin's Department of Corrections Sentence Status Summary, the accuracy of which Martin does not dispute, with the Order to Release on Parole/Reparole, reveals that both list one charge of rape, one charge of IDSI, forty-eight charges of burglary, three charges of theft, and one charge of receiving stolen property. See Original Record (O.R.) at 1-3, 11-12. As such, Martin's argument on this point is without merit.

Martin next argues that substantial evidence does not support the Board's revocation of Martin's parole. As support for this argument, Martin cites to a

Review have not been addressed within his brief, those issues are waived. Aveline v. Pennsylvania Board of Probation and Parole, 729 A.2d 1254 (Pa. Cmwlth. 1999) (issues not raised, or developed, within a party's brief are waived for appellate review).

confiscated letter authored by him in which, Martin asserts, he innocuously expressed an opinion regarding his Forensic Treatment Services forensic counselor Kristen Welter that was not lewd, suggestive, or demeaning. Additionally, Martin cites to the results of a polygraph test purporting to show that Martin had an impermissible relationship with a female. Martin argues that this evidence shows merely his areas of maladjustment, and his shifting of blame in failing to take responsibility, that are not bases for finding a violation of his parole terms but are merely the deficient areas for which he was to be receiving treatment at Forensic Treatment Services. Martin argues that this evidence is insufficient to support a conclusion that he violated his parole conditions. Martin, however, does not address additional evidence of record that does support a conclusion of such a violation.

Martin's parole conditions included the following:

OUT-PATIENT SEX OFFENDER TREATMENT IS A
SPECIAL CONDITION OF YOUR PAROLE
SUPERVISION UNTIL THE TREATMENT SOURCE
AND/OR PAROLE SUPERVISION STAFF DETERMINE
IT IS NO LONGER NECESSARY...

* * *

YOU SHALL OBEY THE RULES OF YOUR SEX
OFFENDER TREATMENT PROGRAM —
MANDATORY.

O.R. at 15. The rules of Martin's sex offender treatment program at Forensic Treatment Services included the following:

19. I understand that it is my responsibility to inform the staff if I am beginning a new dating relationship. Preferably this should take place prior to a relationship being established.

* * *

23. I understand that if I fail to inform the treatment team of, or purposely keep important information from them, this could be construed as lying to them by omission.

Id. at 136. Martin acknowledged his agreement to, and understanding of, Forensic Treatment Service's rules when he signed a Treatment Contract and Informed Consent. Id. at 137.

During the hearing on Martin's parole violation, his Forensic Treatment Services counselor testified that Martin said that he was meeting a woman, whom he had hugged and kissed. Id. at 70. Martin subsequently told his counseling team that he was looking only for friendship from the relationship with the woman, then changed his story and stated that he wanted to end all communications with her, and then subsequently stated he was no longer in a relationship with her. Id. at 70, 73, 98. In the subsequent weeks, Martin submitted a request to visit the woman's residence while using a different name for her, and then admitted, when confronted, that he was referring to the same woman. Id. at 73-75. Subsequently, Martin denied that he was sexually involved with the woman, and then – *prior* to being administered any polygraph test – admitted that he was in a romantic and sexual relationship with the

woman. Id. at 81. Martin’s repeated lies about his relationship with the woman became the basis for his discharge from Forensic Treatment Services, which discharge then became the basis for the finding that he had violated his parole terms. Id. at 18, 82-83. The above evidence constitutes substantial evidence⁴ supporting the Board’s revocation of Martin’s parole.⁵

Next, Martin argues that the special condition which he was found to have violated – that Martin shall successfully complete sex offender treatment at Forensic Treatment Services - is vague and unenforceable.⁶ Additionally, Martin argues that the special condition of his completion of the sex offender program was not within his control.⁷ As noted above, Martin failed to successfully complete his sex offender treatment program at Forensic Treatment Services when he was

⁴ Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion of law. Price v. Pennsylvania Board of Probation and Parole, 863 A.2d 173 (Pa. Cmwlth. 2004).

⁵ The foregoing analysis of the evidence supporting the Board’s finding of Martin’s parole violation renders irrelevant and meritless Martin’s arguments that he was somehow prejudiced by the purportedly errant characterization of his single rape and IDSI charge as multiple charges, that he was retaliated against for his contact with his Senator’s office, and that he was retaliated against for an alleged “permissible” relationship with the woman at issue.

⁶ Any condition of parole “cannot be so vague that men of common intelligence must guess at its meaning.” Woodling v. Pennsylvania Board of Probation and Parole, 537 A.2d 89, 90 (Pa. Cmwlth. 1988).

⁷ Where a parolee fails to satisfy a parole condition over which the parolee alleges no control, the Board must show that the parolee was at fault in proving the violation. Hudak v. Pennsylvania Board of Probation and Parole, 757 A.2d 439 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 565 Pa. 657, 771 A.2d 1291 (2001).

discharged on the basis of his repeated dishonesty about his relationship with a woman, as set forth in the program's clear and unambiguous rules, which dishonesty Martin admitted in part. O.R. at 18, 70, 73-75, 81-83, 98, 136-137. Forensic Treatment Service's requirement of honesty - both directly, and through all lack of omission - is clear on its face, and is not so vague that a man of common intelligence must guess at its meaning. Woodling. Further, Martin's repeated dishonesty to the Forensic Treatment Services' staff, as well as the relationship with the woman at issue upon which the dishonesty was founded, were completely and solely within Martin's control. Hudak. As such, Martin's argument on this issue is without merit.

Martin next argues that the Board's decision is based upon fabricated evidence, namely, the testimony of Forensic Treatment Services forensic counselor Kristen Welter, and Parole Agent Anthony Mondello. However, Martin's argument on this issue amounts to a mere attack on the credibility determinations of the Board in the hearing on Martin's parole violation. The Board, as the ultimate fact-finder in a parole violation hearing, evaluates witness credibility, resolves conflicts in the evidence, and assigns evidentiary weight; this Court will not review those determinations in our appellate function. Flowers v. Pennsylvania Board of Probation and Parole, 987 A.2d 1269 (Pa. Cmwlth. 2010). As such, Martin's argument on this issue is without merit.

Martin next argues that the Board denied him an opportunity to present a defense at his violation hearing, and that he was denied a chance to cross-examine the witnesses against him. While Martin fails to develop any specific argument in support of this issue, our review of the transcript of proceedings in the violation hearing, as a whole, reveals that Martin participated fully in every phase of the hearing, including presenting evidence and defenses on his own behalf, offering his own testimony, and fully cross examining all of the witnesses presented against him. O.R. at 40-124. As such, Martin's argument on this issue is without merit.

Martin next argues that the Board imposed an excessive recommitment period for his parole violation. The record, however, belies Martin's argument. Martin was sentenced to serve twelve months back time for his violation of parole condition seven (failure to successfully complete sex offender treatment at Forensic Treatment Services). Id. at 142. Section 75.3 of Title 37 of the Pennsylvania Code, 37 Pa. Code §75.3, provides for a presumptive range of three to eighteen months for a violation of a special condition of parole. As the Board's imposition of backtime for Martin's violation of a special condition is within the presumptive range, this Court will not review it. Price v. Board of Probation and Parole, 781 A.2d 212 (Pa. Cmwlth. 2001).

Martin next argues that he was denied the right to counsel at his violation hearing. Again, the record flatly belies Martin's assertion. Prior to the

commencement of his violation hearing, Martin signed a Waiver of Representation by Counsel form, acknowledging therein that he had been fully advised of his right to be represented by counsel, appointed if needed, and waiving that right of his own volition. O.R. at 125. At the beginning of his hearing, Martin's waiver signing was again acknowledged, and Martin was again questioned as to his understanding of his waiver; Martin again acknowledged his understanding. Id. at 44-46. As such, Martin's argument on this issue is without merit.

Accordingly, we affirm.

JAMES R. KELLEY, Senior Judge

