

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tyron Roberson,	:
Petitioner	:
	:
v.	:
	:
Pennsylvania Board of Probation and Parole,	:
Respondent	: No. 691 C.D. 2008
	: Submitted: October 3, 2008

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: November 7, 2008

Tyron Roberson (Roberson) petitions for review of the January 29, 2008 Board of Probation and Parole's (Board) order recommitting him to prison as a convicted parole violator. Roberson claims that his revocation hearing was not held in a timely manner as required by Section 71.4(1) of the Board's regulations, 37 Pa. Code § 71.4(1).

Roberson was released on parole in July 2005. On March 14, 2007, while still on parole, he was arrested on new criminal charges. Roberson was found guilty of the new criminal charges on July 24, 2007, and a parole violation hearing was scheduled for December 14, 2007. The hearing was continued, however, until January 25, 2008 because defense counsel had a conflict. At the January 25, 2008 hearing, Roberson presented two copies of the Criminal Arrest

and Disposition Report (CAD report) which, *inter alia*, indicated the conviction verification date used to determine the timeliness of a revocation hearing. One CAD report showed a verification date of August 1, 2007; the second CAD report showed a verification date of November 2, 2007. Cheryl Hartzell (Hartzell), a parole supervisor,¹ testified that the information on the first copy of the CAD report was inaccurate, but that the second copy had the correct information. The Board found the verification was not received until November 2, 2007, and the hearing was timely. Roberson was recommitted to a state correctional institution as a convicted parole violator for six months. Roberson petitioned this Court for review.²

Section 71.4(1) of the Board's regulations provides: "A revocation hearing shall be held within 120 days from the date the Board received official verification of the plea of guilty"³ Official verification is defined in Section 61.1 of the Board's regulations, 37 Pa.Code § 61.1, 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." When a petitioner alleges that the hearing is untimely, the Board has the burden of proving by a preponderance of the evidence that the hearing was, in fact, timely. *Abbruzzese v. Pennsylvania Bd. of Probation and Parole*, 524 A.2d 1049 (Pa. Cmwlth. 1987).

¹ An Agent Haines was Roberson's parole agent, but he was not present at the revocation hearing, and no reason for his absence was provided.

² "The Court's review of the Board's order is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed or whether the parolee's constitutional rights were violated." *Jackson v. Pennsylvania Bd. of Probation and Parole*, 951 A.2d 1238, 1240 n.2 (Pa. Cmwlth. 2008).

³ There are exceptions to the 120-day limit which are not relevant to the present case.

In the present case, the original CAD report, dated March 14, 2007, showed a verification date of August 1, 2007. Certified Record (C.R.) at 29. The second copy of the CAD report, dated November 2, 2007, showed a verification date of November 2, 2007. C.R. at 34. When asked about the discrepancy, Hartzell testified that Roberson’s parole agent, Agent Haines, made a mistake, and that the paperwork was not obtained until November 2, 2007. C.R. at 53. She further testified: “And . . . they were apologetic for the date, incorrect dates, but they were trying to obtain the Clerk of Courts documents from Philadelphia and were unable to until November 2.” C.R. at 54. Hartzell then presented the conviction documentation to show when the parole agent had received the information. She testified that the documentation was not date-stamped, but it showed a fax date of November 2, 2007. C.R. at 55-56.

“[I]ssues of resolving conflicts in the evidence, witness credibility, and evidentiary weight are properly within the exclusive discretion of the Board, as the ultimate fact-finder, and are not matters for a reviewing court.” *McCauley v. Pennsylvania Bd. of Probation and Parole*, 510 A.2d 877, 879-80 (Pa. Cmwlth. 1986). Even though the Board provided no explanation for the change in the verification date on the original CAD report other than that it was incorrect, it did present a copy of the conviction documentation faxed to the Board on November 2, 2007. Since the Board is the ultimate fact-finder, and it found that Hartzell’s credible testimony was sufficient evidence to determine that the November 2, 2007 fax was the official verification required by the regulation, the order of the Board is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 7th day of November, 2008, the order of the
Pennsylvania Board of Probation and Parole is AFFIRMED.

JOHNNY J. BUTLER, Judge