

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: March 3, 2015)

HECTOR JAIMAN

v.

STATE OF RHODE ISLAND

:
:
:
:
:

C.A. No. P1-94-1478A

DECISION

KRAUSE, J. In this appeal from the Magistrate’s September 19, 2014 Decision, Hector Jaiman continues to complain about the adverse decision by the Parole Board’s hearing officer who determined that there was probable cause to support a finding that Jaiman had failed to complete a residential treatment program. As a result of that probable cause determination, Jaiman was re-imprisoned to await full parole revocation proceedings, which are not the subject of this appeal.

Before the Magistrate, and again in this appeal, Jaiman complains (1) that the timing of his preliminary hearing was fatally flawed; (2) that he was denied his right to confront witnesses at that hearing; and (3) that the hearing officer was impermissibly biased. The Magistrate found those lamentations meritless, and this Court concurs with that sentiment.

* * *

Jaiman was convicted of first-degree murder after a jury trial in March of 2000 and sentenced to life imprisonment. Appeal of that conviction was rebuffed in State v. Jaiman, 850 A.2d 984 (R.I. 2004), and his subsequent appeal from an unsuccessful post-conviction relief application was also rejected. Jaiman v. State, 55 A.3d 224 (R.I. 2012). On February 11, 2013, he was placed at the Phoenix House in Exeter, Rhode Island, a residential facility for substance

abuse and mental health treatment and counseling. Jaiman's eventual release on parole hinged upon his successful completion of the Phoenix House program. He failed.

Within about two months, Jaiman was expelled from the Phoenix House for violating a number of its rules. He was remanded to prison custody and thereafter unsuccessfully challenged his Phoenix House discharge at a preliminary/probable cause hearing. The allegations for which probable cause was ultimately found to expel Jaiman from that facility included (1) tardiness in returning to the premises after having been allowed liberties; (2) writing letters that referenced the proposed sale of drugs to female residents; and (3) the unauthorized possession and use of a cell phone. Although the letters suggesting the sale of contraband were probably the most significant misconduct, the record of the hearing expressly reflects that, "Mr. Jaiman was discharged for the totality of his behavior at the Phoenix House, not just the letters, the totality of his behavior." (Statement of Jaiman's Parole Officer Greg Williams; Decision of Lynne Corry, Interim Hearing Officer.)

Timeliness of Preliminary Hearing

At the outset, Jaiman contends that his preliminary hearing (also referred to as a probable cause hearing) was not timely convened because it transgressed the ten-day statutory window within which to hold such a hearing. G.L. 1956 § 13-8-18.1(d). He offers no claim of prejudice in connection with that professed error.

Dismissal from the Phoenix House resulted in Jaiman's arrest on April 24, 2013, and on that day he was provided with a Preliminary Notice of Parole Violation. That April 24 notice informed him that he could request a preliminary hearing to determine whether there was probable cause to conclude that he had violated the terms of his release to the Phoenix House. It also informed him of his rights at the hearing, including his right to counsel. Jaiman checked the space designated to opt for a hearing and returned the April 24 notice to the parole office.

Thereafter, on April 29, 2013, a Notice of Preliminary Hearing was issued reiterating Jaiman's rights, including his right to have the assistance of an attorney. That April 29 notice scheduled the hearing for May 6, 2013, well within the statutory ten-day period.

By May 6, however, Jaiman had not yet obtained an attorney, and he was granted a continuance to engage one. After counsel was acquired, delays ensued to accommodate Jaiman and his lawyer, and the preliminary hearing was eventually convened on July 16, 2013. As a result of that two-month hiatus between the issuance of the April 29 notice and the hearing, Jaiman claims that the parole revocation charges should be dismissed. The Court disagrees.

Rescheduling Jaiman's hearing to July was largely attributable to accommodating his lawyer's calendar. When delays result from continuances requested by, say, a defendant in a criminal case, those postponements are not counted against the state in the context of speedy trial delays. State v. Shatney, 572 A.2d 872 (R.I. 1990). So, too, where, as here, in proceedings far less restrictive than criminal trial settings, counsel for the parolee requests a continuance, that delay will perforce be charged to the parolee, not the state.

Plainly, Jaiman was ill-prepared to proceed with the hearing on May 6. Postponing it in no way handicapped him. To the contrary, it was to his obvious advantage to reschedule it, thereby affording him time to exercise his right to counsel and properly prepare for the proceeding. Moreover, at that hearing no complaint of inconvenience, detriment or disadvantage from the postponement was even claimed by Jaiman. No witnesses were lost during the interval; no evidence was misplaced or destroyed because of it; and no memories of witnesses faded during the brief period between May and July.

In short, Jaiman suffered no prejudice whatsoever and has never claimed any. See, e.g., People ex rel. Allen v. Warden of George Motcham Det. Ctr., 39 Misc. 3d 546, 551-52, 959

N.Y.S.2d 881, 886 (Sup. Ct. 2013) (refusing to vacate parole warrant, despite untimely notice of preliminary hearing, where petitioner “was given more than reasonable and sufficient time to investigate and prepare for his defense at the preliminary hearing, and suffered no prejudice due to the delay[.]”); People v. Warden, Rikers Island Corr. Facility, 58 A.D.3d 523, 870 N.Y.S.2d 786 (2009) (holding that “failure to comply with the three-day limit for giving notice of parole violations does not affect the right to be restored to parole absent a showing of prejudice”).

Having declined to avail himself of a timely scheduled preliminary hearing, Jaiman is scarcely in a position to complain after it was postponed to accommodate his interests. The Magistrate quite correctly denied Jaiman’s claim on this issue.

Right to Confront Witnesses

Jaiman also complains that he was denied an opportunity to challenge certain witnesses at the preliminary hearing. He says that the Parole Board’s failure to produce the two female residents from the Phoenix House who had received the letters which he had allegedly written, offering to provide narcotics, constituted a violation of his due process rights of confrontation and cross-examination. The contention is groundless.

Regardless of Jaiman’s earlier interest in confronting the women, which he had expressed in a May 12, 2013 letter to Parole Board Chairman Kenneth Walker, once the hearing was convened on July 12, 2013, the state never presented them. After all, they had never said that they actually knew or had personal knowledge that Jaiman had written the letters. More to the point, neither Jaiman nor his attorney ever demanded their presence after the hearing commenced, and Jaiman’s attorney even agreed that their names should not be made part of the record at the hearing. Under such circumstances, Jaiman’s lamentation that he was deprived of his right to confront and cross-examine witnesses is oneiric.

Right to Unbiased Hearing Officer

At the September 5, 2014 hearing before the Magistrate, Jaiman complained that Hearing Officer Lynne Corry was impermissibly biased and should not have been permitted to conduct the preliminary hearing. Jaiman also voices the same imprecation in his appeal to this Court. This allegation, however, was never preserved for appeal. Nothing in the record has been brought to this Court's attention reflecting a demand for Lynne Corry's recusal.¹ Simply because the Magistrate was polite enough to listen to Jaiman's remonstrations at the hearing (and eventually consider its merits in his Decision), does not thereby give life to an issue that was never raised in the first instance. The short – and dispositive – answer to Jaiman's claim is that his failure to raise the issue at the preliminary hearing dooms his attempt to inject it on appeal. Having run afoul of the raise-or-waive rule, Jaiman has forfeited the opportunity at this juncture to raise the issue now. State v. Bouffard, 945 A.2d 305 (R.I. 2008).

Even if this Court were to consider the claim, it would fail. Jaiman invokes Section 13-8-18.1, which provides that a preliminary hearing officer “shall not have had any prior *supervisory* involvement over the alleged violator.” (Emphasis added.) The Magistrate rightly found no history that Corry had ever directly supervised or principally administered Jaiman's parole. At page 4 of his Decision, the Magistrate expressly stated: “No persuasive evidence has been presented that the hearing officer held a supervisory role over the Defendant or recommended to revoke his parole.” “In fact,” he wrote, “at the preliminary revocation hearing, it was established that Parole Officer Greg Williams; Colleen Thompson, Defendant's Primary Counselor at the

¹ In a May 12, 2013 letter to Parole Board Chairman Kenneth Walker, Jaiman requested that parole officer Lisa Blanchette be precluded from acting as the hearing officer. Lynne Corry's name is nowhere mentioned. There was some correspondence between Jaiman and Corry in October of 2013, *after* the preliminary hearing, but there is nothing in it which reflects a claim by Jaiman that Corry should not have presided at the hearing.

Phoenix House; and Fred M. Pierce, Clinical Supervisor of the Phoenix House, made those determinations.” Id. The record before the Magistrate fully supports those findings.

For all of the foregoing reasons, Jaiman’s appeal is denied.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Hector Jaiman v. State of Rhode Island

CASE NO: P1-94-1478A

COURT: Providence County Superior Court

DATE DECISION FILED: March 3, 2015

JUSTICE/MAGISTRATE: Krause, J.

ATTORNEYS:

For Plaintiff: Richard B. Woolley, Esq.

For Defendant: Hector Jaiman, *pro se*