



Lepre v. Pennsylvania Board of Probation and Parole

2004 | Cited 0 times | Supreme Court of Pennsylvania | August 25, 2004

Submitted: July 16, 2004

OPINION NOT REPORTED

MEMORANDUM OPINION

Gerald S. Lepre, Jr., petitions for review of a determination of the Pennsylvania Board of Probation and Parole (Board) that denied Lepre's Petition for Administrative Relief. Lepre's Petition sought relief from a decision and order of the Board recommitting Lepre as a technical parole violator founded on the Board's finding that Lepre had failed to successfully complete a condition of his parole. We affirm.

On March 29, 2000, Lepre was sentenced by the Court of Common Pleas of Lackawanna County to serve a term of four years, nine months to ten years, for the offense of robbery. Lepre's maximum expiration date was set as May 1, 2008.

On April 7, 2003, the Board paroled Lepre, imposing as a special condition of that parole a requirement that he reside at a community corrections center, and further requiring that Lepre avoid discharge from that program prior to his successful completion thereof. In accordance therewith, Lepre, upon his parole, took up residence at the Scranton Catholic Services (SCS) group residential home.

On June 9, 2003, Lepre was detained by the Board and charged with a failure to satisfy the special conditions of his parole requiring his residence at SCS and requiring his avoidance of discharge therefrom. A violation hearing was subsequently held before the Board on September 10, 2003, at which Lepre appeared and was represented by counsel.

By Board determination dated October 29, 2003, Lepre was recommitted as a technical parole violator and ordered to serve six months backtime at a state correctional institution. Lepre thereafter filed a request for administrative relief with the Board, which denied said request by determination dated March 4, 2004. Lepre now timely petitions this Court for review of the Board's determination.

In reviewing a determination of the Board, our scope of review is limited to a determination of whether there has been an error of law, whether the Board's findings are supported by substantial evidence, and whether any constitutional rights have been violated. *Ward v. Board of Probation and*



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Parole, 538 A.2d 971 (Pa. Cmwlth. 1988). Substantial evidence as required to support the Board's findings is such evidence that a reasonable mind might accept as adequate to support a conclusion. Johnson v. Board of Probation and Parole, 706 A.2d 903 (Pa. Cmwlth. 1998).

Lepre presents one general question for our review: whether the Board erred by failing to support its determination that Lepre violated his parole with substantial, admissible evidence.

In its decision to recommit Lepre, the Board concluded that he had violated the conditions of his parole by failing to successfully complete the community corrections center program. Original Record (O.R.) at 79. The Board cited, as support for its conclusion, Lepre's own testimony, and the testimony of his parole agent, Christopher Merritt, who had testified before the Board at Lepre's violation hearing. Id.

Lepre first argues that no admissible evidence was presented before the Board to support its finding that Lepre was discharged from the SCS program. However, the record in this case clearly reveals that Lepre himself submitted to the Board a written statement entitled "Facts and Related History of Technical Violation Arrest" that itself admits, in at least two distinct places, that Lepre was discharged from SCS. O.R. at 75, 76. Notwithstanding the fact that Lepre does not address this evidence in his brief to this Court, these admissions by Lepre himself, admitted into evidence before the Board, constitute substantial admissible evidence that Lepre was discharged from the program in violation of his parole special conditions, and Lepre's argument on this point therefore must fail.¹

Next, Lepre argues that no testimony was presented by the Board as to any violation Lepre may have made of the SCS's program rules. However, Lepre's parole agent, Christopher Merritt, testified that Lepre had admitted to him that, in violation of the SCS's rules, Lepre was not at his assigned work station on June 5, 2003. O.R. at 42-43, 50-51. Further, Irene Clark of SCS testified that Lepre was not at his approved work station on June 5, 2003, as required by SCS rules. O.R. at 44-49.

It is well established that a parole agent's testimony as to an admission by a parolee to acts that would constitute a parole violation, while constituting hearsay, are admissible as an admission against the parolee's own interests, and can indeed support a Board conclusion that a parolee has violated the conditions of his parole. Ward, 538 A.2d at 973-974. As such, Lepre's arguments on this point must fail.²

Accordingly, we affirm.

ORDER

AND NOW, this 25th day of August, 2004, the Determination of the Pennsylvania Board of Probation and Parole, dated March 4, 2004, at Parole No. 778-BR, is affirmed.



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JAMES R. KELLEY, Senior Judge

1. Given the clear, undisputed evidence of record supporting the Board's finding that Lepre was discharged from SCS, we need not address Lepre's argument on this point that other evidence establishing the fact of his discharge was inadmissible hearsay.
2. Given the clear, undisputed evidence of record supporting the Board's finding that Lepre failed to successfully complete his stay at SCS due to his discharge therefrom, we need not address Lepre's argument on this point that other evidence establishing the fact of his discharge and concomitant violation was inadmissible hearsay, and/or was never admitted before the Board.

