

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joey Laron Williams,	:
Petitioner	:
	:
v.	: No. 1412 C.D. 2013
	: Submitted: March 7, 2014
Pennsylvania Board of Probation	:
and Parole,	:
Respondent	:

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: March 26, 2014

Joey Laron Williams petitions for review of the determination of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief from the Board's decision denying him credit on his original sentence for the period of March 30, 2009, to July 16, 2009, when he was housed at the Hazleton Minsec Treatment Center; the period of July 20, 2009, to November 8, 2009, when he was housed at Gaudenzia Siena House; and the period of November 16, 2009, to January 21, 2010, when he was housed at Keystone Correctional Services. We affirm.

Williams is currently housed at the State Correctional Institution – Rockview. He was originally sentenced to a three year, six month to seven year term of imprisonment in a state correctional facility for burglary. The original minimum and maximum dates for this sentence were November 12, 2008, and May 12, 2012.

The Board released Williams on parole on January 11, 2005, to an approved plan. By decision mailed June 13, 2006, the Board recommitted Williams as a convicted parole violator to serve six months backtime. On January 24, 2007, the Board reparaoled Williams to his state detainer sentence.

On March 30, 2009, the Board released Williams on parole to the Hazleton Minsec Treatment Center (Hazleton Minsec), a community corrections facility under contract with the Pennsylvania Department of Corrections (Department). Williams was discharged from the program on July 16, 2009, and transferred to Gaudenzia Siena House (Gaudenzia), another community corrections facility under contract with the Department, where he resided from July 20, 2009, to November 8, 2009. Williams then transferred to Keystone Correctional Services (Keystone), another community corrections facility under contract with the Department, and resided there from November 16, 2009, to January 21, 2010.

Following his release from Keystone, Williams was arrested, convicted and sentenced for a new burglary charge that he committed while on parole. By decision mailed September 21, 2011, the Board recommitted Williams as a convicted parole violator to serve fifteen months backtime. The decision also

recalculated Williams' parole violation maximum date to October 19, 2014; he did not receive credit for the periods of time he was housed at Hazleton Minsec, Gaudenzia and Keystone. On October 19, 2011, Williams objected to the Board's decision denying him credit for the time spent in the community corrections facilities, and the Board conducted evidentiary hearings on his claims for credit.

Williams testified that among the other residents at Hazleton Minsec were pre-release inmates serving sentences for the Department, and that he was subject to the same restrictions on his liberty as those Department inmates serving their sentences. (Certified Record (C.R.) at 57, 68). He stated that he had to be buzzed in and out of the front door and his floor; there were security cameras and monitors in the facility; he was subject to random suspicion-less searches of his person and property; and that an armed Department CERT team strip-searched all of the residents on his floor while he was housed there. (*Id.* at 56-58).

Josine Clark (Clark), a Hazleton Minsec case manager, testified that the center has security measures to keep the doors locked, but that a resident could pull a lever or apply pressure to a door if he wished to leave. (C.R. at 65-66). Clark stated that personnel are not permitted to physically stop a resident from leaving and do not carry weapons or any restraint devices. (*Id.* at 66-67). She testified that parolees are not locked down in their rooms at night; there is no fence or razor wire around the facility; and there are no bars on the windows. (*Id.* at 66). She stated that residents wear street clothes and are not escorted by personnel when they leave or sign out. (*Id.* at 67). Clark testified that parolees who leave and fail to return are called in as parole absconders. (*Id.* at 68).

Williams testified that he was also housed with Department pre-release inmates at Gaudenzia and that both classes of residents had to abide by the same rules. (C.R. at 102, 104). He stated that pre-release inmates actually had greater liberties at Gaudenzia in that they could receive furloughs. (*Id.* at 94-95). He testified that while there were no bars on the windows and no fence around the facility, he was subject to random suspicion-less searches of his person and property. (*Id.* at 94-95). He stated that residents were allowed into the community with permission to look for work or go to work or with passes on the weekend or on days off work. (*Id.* at 95).

James Hemperly (Hemperly), a Gaudenzia program director, testified that the facility is not run by the Department; there is no fence around the property; there are no bars on the windows; and the doors are not locked to prevent the residents from leaving but to keep people from entering the facility. (C.R. at 102). Hemperly stated that personnel are not armed and do not carry any form of restraints. (*Id.* at 102-03). He testified that residents are not handcuffed or shackled nor transported by armed staff when they leave the facility. (*Id.* at 103). He stated that staff does not have the power to detain or restrain residents or prevent them from leaving the facility, and the police are not called and no escape charges are filed if a parolee walks away. (*Id.*).

Williams testified that he was also housed with Department pre-release inmates at Keystone under identical restrictions. (C.R. at 109). He stated that he could not enter or leave the facility without being buzzed in through the front door and that there was a six or seven-foot tall fence around the recreational

yard, but there was no fence around the entire facility. (*Id.* at 108-09). He testified that he was subject to random suspicion-less searches of his person or property while at the facility. (*Id.* at 109).

Craig Williams (Williams), a Keystone facilities director, testified that the fence around the recreational yard did not have razor wire. (C.R. at 111). Williams stated that residents could leave the facility to go to work and they could be signed out for leisure time or utility time to go to the store. (*Id.*). He testified that parolees were never handcuffed by staff and staff did not have the authority to physically detain or restrain residents. (*Id.*) He stated that residents who failed to return are not charged with escape, and if a parolee wanted to leave the facility, a staff member would open the door and let him leave. (*Id.* at 111-12). He noted that the inmate handbook indicates that any resident is subject to search at any time for any reason. (*Id.* at 113).

On April 3, 2013, the Board issued a decision denying Williams' request for credit for the time he resided at Hazleton Minsec, Gaudenzia and Keystone. The Board found as fact that residents were able to leave the facilities without permission and "that although doors were locked, they were only locked to keep outsiders from coming in, not to prevent residents from leaving if they chose to do so...." (C.R. at 117). The Board also found that there were no bars on the windows and no razor wire around the facilities; staff was prohibited from stopping a resident from leaving; staff did not carry restraining devices or weapons; residents were not escorted on or off the properties; residents were given passes to leave the facilities; residents were permitted to wear street clothes;

residents could maintain employment and address treatment issues in the community; and residents could obtain social passes. (*Id.*). The Board found that while the facilities' representatives testified that parolees and pre-release inmates were treated the same way and were afforded basically the same privileges, "the primary difference was that if a parolee walked away from the facility the State Parole Office was contacted. If a pre-release inmate walked away, the police were notified and escape charges were initiated." (*Id.*).

The Board noted that Williams' primary reason for disputing the credit due was due to the search by the Department CERT employees that he was subjected to at Hazleton Minsec, and that Clark did not contest that a search took place, but that he was not present when it occurred. (*Id.* at 118). The Board explained that Williams believed that the search was inappropriate and the equivalent of what he experienced in prison. (*Id.*). The Board also noted that Clark testified that all residents were subject to random searches for security reasons, and that a special condition of Williams' parole required him to cooperate fully with staff, abide by all program rules and regulations, and that he could not leave the program until successfully discharged by treatment staff. (*Id.*).

Based on the foregoing, the Board concluded that Williams did not meet his burden of showing that the specific characteristics of Hazleton Minsec, Gaudenzia and Keystone constituted restrictions on his liberty sufficient to warrant credit on his recomputed backtime and to persuade the Board of that fact. (C.R. at

118). Williams submitted a request for administrative relief that the Board denied and he filed the instant appeal of the Board's decision.¹

Williams argues that the Board erred in failing to grant credit for the time he spent at Hazleton Minsec, Gaudenzia and Keystone because he met his burden of proving that the restriction of his liberty at those community corrections facilities was sufficient to warrant credit on his parole violation maximum date. Specifically, Williams argues that he proved that he suffered the same if not higher restrictions as the pre-release inmates serving their sentences at those facilities, and that he was subject to a random suspicion-less search by the Department CERT team while housed at Hazleton Minsec that a parole agent could not perform if he was "at liberty" on parole.²

¹ This Court's scope of review is limited to determining whether constitutional rights were violated, whether the adjudication was in accordance with law, and whether necessary findings of fact were supported by substantial evidence. *Adams v. Pennsylvania Board of Probation and Parole*, 885 A.2d 1121, 1122 n.1 (Pa. Cmwlth. 2005). It is the exclusive province of the Board as fact finder to assess the credibility of witnesses and assign the appropriate weight to their testimony and, in exercising this function, the Board is free to reject even uncontradicted testimony. *Detar v. Pennsylvania Board of Probation and Parole*, 890 A.2d 27, 28 n. 2 (Pa. Cmwlth. 2006).

² See Section 6153(d) of the Code which provides, in pertinent part:

(d) Grounds for personal search of offender.—

(1) A personal search of an offender may be conducted by an agent:

(i) if there is a reasonable suspicion to believe that the offender possesses contraband or other evidence of violations of the conditions of supervision;

(Footnote continued on next page...)

Section 6138(a)(2) of the Prisons and Parole Code (Code) provides, in pertinent part, that a parolee who is recommitted as a convicted parole violator “shall be reentered to serve the remainder of the term which the parolee would have been compelled to serve had the parole not been granted and ... shall be given no credit for the time at liberty on parole.” 61 Pa. C.S. §6138(a)(2). While “at liberty on parole” is not defined in the Code, our Supreme Court has held that “at liberty” does not mean freedom from all types of confinement. *Cox v. Pennsylvania Board of Probation and Parole*, 507 Pa. 614, 619, 493 A.2d 680, 683 (1985). A convicted parole violator who seeks credit on his original sentence for time spent in a halfway house bears the burden of showing that the specific characteristics of the program constitute restriction of liberty sufficient to warrant credit on the original sentence. *Id.*

(continued...)

(ii) when an offender is transported or taken into custody;

(iii) upon an offender entering or leaving the securing enclosure of a correctional institution, jail or detention facility.

(2) A property search may be conducted by an agent if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.

(3) Prior written approval of a supervisor shall be obtained for a property search absent exigent circumstances. No prior approval shall be required for a personal search.

61 Pa. C.S. §6153(d)(1), (2), (3).

Inexplicably, we do not defer to whether the Department considers the facility to be a prison; instead, we make our own determination. Two factors are considered in determining whether a halfway house or group home is sufficiently restrictive so as to be equivalent to incarceration: (1) whether the facility is locked or secured; and (2) whether a resident is able to leave the facility without being restrained or escorted. *Meleski v. Pennsylvania Board of Probation and Parole*, 931 A.2d 68, 73 n.4 (Pa. Cmwlth. 2007), *appeal denied*, 596 Pa. 736, 945 A.2d 173 (2008); *Figueroa v. Pennsylvania Board of Probation and Parole*, 900 A.2d 949, 952-53 (Pa. Cmwlth. 2006). These matters are evaluated on a case-by-case basis. *Torres v. Pennsylvania Board of Probation and Parole*, 861 A.2d 394, 397 (Pa. Cmwlth. 2004).

As noted above, in the instant case, the Board made the following relevant findings of fact:

- residents at the facilities were able to leave the facilities without permission;
- although the doors to the facilities were locked, they were only locked to keep outsiders from coming in and not to prevent residents from leaving if they chose to do so;
- there were no bars on the windows and no razor wire around the facilities;
- staff was prohibited from stopping a resident from leaving;
- staff did not carry restraining devices or weapons;
- residents were not escorted on or off the premises;

- residents were given passes to leave the facilities;
- residents could maintain employment and address treatment issues in the community and could obtain social passes; and
- while parolees and pre-release inmates were treated the same way and were afforded basically the same privileges, the primary difference was that if a parolee walked away from the facility the parole office was contacted and if a pre-release inmate walked away, the police were notified and escape charges were filed.

(C.R. at 117).

The foregoing findings support the Board's determination that Williams is not entitled to credit for the time periods he resided at Hazleton Minsec, Gaudenzia and Keystone because the conditions were not sufficiently restrictive so as to be equivalent to incarceration. *See, e.g., Harden v. Pennsylvania Board of Probation and Parole*, 980 A.2d 691, 698 (Pa. Cmwlth. 2009) ("Facilities are not prison-like if they lack fences or have fences with gates that open from the inside; have doors and windows locked from the outside, not the inside, to prevent entry not exit; lack guards stationed to prevent residents from leaving; and do not attempt to use physical force by staff members to stop an inpatient from leaving."); *Figueroa*, 900 A.2d at 952-53 ("Although the doors to the center are locked, this is only to prevent unauthorized visitors from entering, not to prevent the residents from leaving. Staff members do not physically restrain the residents, nor are the residents charged with escape if they leave the facility. According to the Center's unit manager, the residents are, in fact, permitted to leave unescorted during the black-out period to attend to personal business....")

(footnote omitted); *Meehan v. Pennsylvania Board of Probation and Parole*, 808 A.2d 313, 317-18 (Pa. Cmwlth. 2002) (“[A]s the Board noted, Meehan was not locked in and could have walked right out the door. Nobody at [the facility] would have been authorized to stop him. In addition, a parolee who left [the facility] would not be considered an escapee, but a parole absconder.”).

Moreover, the fact that Williams was subject to a random suspicionless search for security reasons while housed at Hazleton Minsec does not convert his stay there into confinement for purposes of credit.³ As noted by the Board, as a special condition of his parole, Williams agreed to obey all the established rules of the community corrections residency and actively participate in the community corrections residency until successfully discharged, and he consented to follow all Department rules and regulations, and all rules, regulations and directives of the Hazleton Minsec facility. (C.R. at 19, 25). As also noted by the Board, Clark testified that all residents of the facility, including pre-release prisoners and parolees, were subject to random searches for security reasons. (*Id.* at 69). Such a requirement as a special condition of parole does not transform Williams’ residency at Hazleton Minsec into confinement for purposes of credit. *See, e.g., Detar*, 890 A.2d at 31.

³ Williams does not argue that his consent to such a search under the foregoing special conditions was either unknowing or involuntary or that a search conducted pursuant to such special conditions violates his constitutional rights. *See Samson v. California*, 547 U.S. 843, 855-57 (2006) (holding that a parolee’s consent to searches “by a parole officer or other peace officer at any time of the day or night, with or without cause” as a statutory condition of parole does not violate the Fourth Amendment’s protection against unreasonable searches and seizures). As outlined above, he merely argues that the search conducted pursuant to those special conditions transformed his residency at Hazleton Minsec from “at liberty” on parole to confinement for purposes of credit. *See* Brief for Petitioner at 18.

Accordingly, the Board's determination is affirmed.

DAN PELLEGRINI, President Judge

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ORDER

AND NOW, this 26th day of March, 2014, the determination of the Pennsylvania Board of Probation and Parole dated August 5, 2013, is affirmed.

DAN PELLEGRINI, President Judge