

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

D'Wayne L. Patrick,	:	
Petitioner	:	
	:	No. 820 C.D. 2025
v.	:	
	:	Submitted: July 24, 2026
Pennsylvania Parole Board,	:	
Respondent	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: August 31, 2026

D'Wayne L. Patrick (Petitioner) has petitioned this Court to review the decision of the Pennsylvania Parole Board (Board), mailed April 22, 2025, which affirmed the rescission of his automatic reparole. After careful review, we affirm.

I. BACKGROUND¹

Petitioner is an inmate currently incarcerated at the State Correctional Institution Fayette (SCI-Fayette). *See* Pet. for Rev., 6/23/25. In 1993, Petitioner was sentenced to 15 to 35 years of incarceration for robbery and burglary, among other crimes stemming from the same incident. *See* Sentence Status Summ., 9/6/06.

¹ Unless otherwise stated, we derive the background from Petitioner's administrative remedies form and the Board's response to Petitioner's submission. *See* Pet'r's Admin. Remedies Form, 3/5/25 (Admin. Remedies Form); Resp. to Admin. Remedies Form, 4/22/25.

He has been released on parole and declared delinquent multiple times, with his most recent delinquency occurring in 2020. *See* Bd. Action, 1/7/20.

Petitioner remained delinquent until December 2024, when the Board issued a warrant for his arrest. *See* Warrant to Commit & Detain, 12/3/24. Petitioner was later arrested in the state of New York and returned to the Pennsylvania Department of Corrections' (DOC) custody. *See* Admin. Remedies Form, Attach. (Notice of Charges & Hr'g).

Following his arrest and during intake at SCI-Smithfield, Petitioner voiced suicidal and homicidal ideations, which prompted DOC staff to place Petitioner in a psychiatric observation cell. *See id.*, Attach. (DOC R., 12/11/24). The next day, while psychiatric staff interviewed him, Petitioner stated that he would "kill any man in his cell." *See id.*, Attach. (DOC Misconduct R., 12/12/24). DOC then charged Petitioner with prison misconduct for threatening another person. *See id.* A hearing examiner held a disciplinary hearing, which Petitioner did not attend, and the examiner found Petitioner guilty of misconduct. *See* DOC Disciplinary Hr'g R., 12/17/24.

The Board, unaware of Petitioner's disciplinary infraction, issued a decision on January 16, 2025, recommitting Petitioner as a technical parole violator (TPV). *See* Bd. Dec., 1/16/25. The Board ordered that Petitioner be placed in a community corrections or other DOC-operated facility for a period not to exceed six months, with automatic reparole available at the conclusion of that period. *See id.*

Shortly thereafter, DOC notified the Board of Petitioner's misconduct. *See* DOC Mem., 1/24/25. Accordingly, the Board issued a second decision, rescinding Petitioner's automatic reparole after determining that his misconduct

constituted “assaultive behavior” under 61 Pa.C.S. § 6138(d)(5).² *See* Bd. Dec., 1/28/25.

On March 3, 2025, Petitioner sought administrative relief from both Board decisions. In response, the Board dismissed his challenge of the January 16 decision as untimely and affirmed the January 28 decision that rescinded his automatic reparole. After preserving the date of Petitioner’s initial filing and directing him to perfect the appeal, this Court then received Petitioner’s timely petition for review. *See* Pet. for Rev.

² Section 6138(d) of the Prisons and Parole Code provides, in relevant part:

Recommitment to correctional facility.--A technical violator recommitted to a State correctional institution or a contracted county jail under subsection (c) shall be recommitted as follows:

....

(3) Except as set forth in paragraph (4) or (5), the offender shall be recommitted for one of the following periods, at which time the offender shall automatically be repared without further action by the [B]oard:

....

(i) For the first recommitment under this subsection, a maximum period of six months.

....

(5) The time limit under paragraph (3) shall not be applicable to an offender who:

(i) committed a disciplinary infraction involving assaultive behavior

....

61 Pa.C.S. § 6138(d).

II. ISSUE

Petitioner presents one issue for this Court's review: whether his conduct put others in "reasonable apprehension of bodily harm" and, thus, warranted rescission of his automatic parole.³ Pet'r's Br. at 4.

III. DISCUSSION⁴

Petitioner asserts that his statement does not constitute assaultive behavior. *See* Pet'r's Br. at 11-14. He offers three arguments in support of this assertion. *See id.* First, according to Petitioner, his remark was an isolated statement made only to healthcare workers during a mental-health evaluation. *See id.* at 12. He next contends that the remark was not accompanied by any violent act "toward[] the people conducting the evaluations or those who were moving him" throughout the facility. *Id.* at 13. Finally, Petitioner argues that "[n]o specific person was threatened." *Id.* at 12 (citing in support *Anderson*, 266 A.3d at 111, and *Malarik v. Pa. Bd. of Prob. & Parole*, 25 A.3d 468, 470 (Pa. Cmwlth. 2011)). Therefore,

³ Petitioner filed his Petition for Review *pro se*, asserting various constitutional claims, including due process and equal protection violations. *See* Pet. for Rev. Counsel later entered an appearance on behalf of Petitioner. *See* Entry of Appearance, 8/15/25. In a brief to this Court, Petitioner raises only a single question – whether Petitioner's statement constitutes "assaultive behavior" – and his argument section addresses only that issue. *See* Pet'r's Br. at 4, 8-14. Because "[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby," Pa.R.A.P. 2116(a), the assertions in Petitioner's *pro se* petition are deemed waived. *See Commonwealth v. Spatz*, 716 A.2d 580, 585 n.5 (Pa. 1998) (holding that failure to develop issue in appellate brief results in waiver). Moreover, Petitioner does not challenge the Board's January 16, 2025, decision recommitting him as a TPV or the Board's dismissal of that request for relief as untimely. *See generally* Pet'r's Br. Thus, any challenge to the Board's January 16 decision is waived. *See Spatz*, 716 A.2d at 585 n.5.

⁴ "This Court's review is limited to determining whether the findings were supported by substantial evidence, whether constitutional rights were violated, or whether the Board committed an error of law." *Anderson v. Pa. Parole Bd.*, 266 A.3d 106, 108 n.3 (Pa. Cmwlth. 2021).

Petitioner concludes, the Board lacked substantial evidence to rescind his automatic reparole. *See id.*

Preliminarily, we note that DOC misconduct reports constitute substantial evidence upon which the Board may rely. *See Anderson*, 266 A.3d at 111; *Lockett v. Pa. Bd. of Prob. & Parole*, 141 A.3d 613, 617 (Pa. Cmwlth. 2016). Here, the DOC's prison misconduct report charged Petitioner with "threatening another person." *See* Admin. Remedies Form, Attach. (DOC Misconduct R., 12/12/24). The hearing examiner also found that Petitioner stated he would "kill any man in his cell." *See* DOC Disciplinary Hr'g R. (crediting the written report of Psychological Services Specialist Baxter). The Board was entitled to rely on these findings as substantial evidence in rescinding Petitioner's automatic reparole, provided that his statement constitutes "assaultive behavior." *See Anderson*, 266 A.3d at 111; *Lockett*, 141 A.3d at 617.

Under the Prisons and Parole Code,⁵ a parolee who commits a disciplinary infraction involving "assaultive behavior" loses eligibility for automatic reparole. *See* 61 Pa.C.S. § 6138(d)(5)(i). The Board's regulations likewise provide that a general condition of parole requires the parolee to refrain from "assaultive behavior." *See* 37 Pa. Code § 63.4(5)(iii).

Neither the statute nor the regulations define the term "assault" or "assaultive behavior." Nevertheless, this Court has established that "[a]ssaultive behavior encompasses a broader category of actions than would the crime of assault, and thus actions that would not constitute a crime may nonetheless be sufficient grounds for revocation of parole." *Jackson v. Pa. Bd. of Prob. & Parole*, 885 A.2d 598, 601 (Pa. Cmwlth. 2005). In the context of parole violations, the Court has cited

⁵ *See* 61 Pa.C.S. §§ 6101-6164.

ordinary dictionary definitions to consider a parolee’s “assaultive behavior,” which may include verbal threats of violence. *See, e.g., Anderson*, 266 A.3d at 109 (quoting *Flowers v. Pa. Bd. of Prob. & Parole*, 987 A.2d 1269, 1272 (Pa. Cmwlth. 2010)).⁶ A verbal threat to inflict bodily harm on a person may constitute assaultive behavior when it places another individual in apprehension of such harm. *See Moore v. Pa. Bd. of Prob. & Parole*, 505 A.2d 1366, 1367-68 (Pa. Cmwlth. 1986) (holding that a parolee’s obscene phone calls threatening to slash, mutilate, and rape the victim were “assaultive in nature” because they would “clearly evoke a reasonable apprehension of bodily harm in any individual”).

However, it is not necessary that the intended recipient hears or perceives the threat. *See, e.g., Anderson*, 266 A.3d at 111 (finding that an inmate’s threat to punch an officer in the mouth, though made only to staff and not directly to the officer, constituted assaultive behavior); *Malarik*, 25 A.3d at 470 (holding that a parolee’s letters soliciting funds from third parties so he could kidnap and execute a judge constituted assaultive behavior); *see also, e.g., Commonwealth v. Simmons*, 56 A.3d 1280, 1284-85 (Pa. Super. 2012), *aff’d*, 91 A.3d 102 (Pa. 2014) (recognizing that communicating a threat to “hospital personnel” rather than the intended victim did not negate the finding of assaultive behavior).⁷

Moreover, an overt act need not accompany the threat. *See, e.g., Moore*, 505 A.2d at 1367-68; *Dunkleberger v. Pa. Bd. of Prob. & Parole*, 573 A.2d

⁶ *Flowers*’ reliance upon the Webster’s Collegiate Dictionary definition of “assault” is useful. It provides:

1a: [A] violent physical or verbal attack . . . [and] 2a: [A] threat or attempt to inflict offensive physical contact or bodily harm on a person . . . that puts the person in immediate danger of or in apprehension of such harm or contact.

See Flowers, 987 A.2d at 1272.

⁷ We may cite to Superior Court opinions for their persuasive value. *See Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

1173, 1175 (Pa. Cmwlth. 1990) (holding that a parolee’s conditional threat to kill his pregnant girlfriend constituted assaultive behavior because, despite no accompanying act, it reflected a “willful offer with force or violence to [harm] another”). Furthermore, the recipient need not actually experience apprehension or testify to any fear as assaultive behavior is determined by the content and nature of the threat itself. *See Anderson*, 266 A.3d at 111; *see also Butterfield v. Pa. Bd. of Prob. & Parole* (Pa. Cmwlth., No. 1030 CD 2010, filed Mar. 31, 2010), slip op. at 4, 2010 WL 9511412, at *2 (holding that a parolee’s threat to shoot a clinical supervisor if he saw the supervisor on the street was assaultive behavior because it demonstrated that he was “inclined toward or disposed to” commit assault “if the opportunity ever arose”).⁸

Here, Petitioner’s argument that the healthcare setting precludes a finding of assaultive behavior is unpersuasive. The content of Petitioner’s threat, rather than the clinical setting in which it was made, controls our analysis. *See Anderson*, 266 A.3d at 111; *Simmons*, 56 A.3d at 1284-85. Petitioner explicitly threatened lethal harm to any person who entered his cell, and it is immaterial that the threat was not heard directly or perceived firsthand by an intended recipient. *Cf. Malarik*, 25 A.3d at 470. Because Petitioner expressed a willingness to inflict harm that would certainly place another person in apprehension of bodily harm, neither the setting nor the audience precludes a finding of assaultive behavior. *See Anderson*, 266 A.3d at 111; *Malarik*, 25 A.3d at 470.

Next, Petitioner’s argument that his remark cannot be assaultive behavior because it was unaccompanied by an overt act misconstrues the controlling legal standard. Whether the parolee acted in furtherance of his words is irrelevant.

⁸ We can cite as persuasive unpublished decisions of this Court filed after January 15, 2008. *See Pa.R.A.P. 126(b)*; 210 Pa. Code § 69.414(a).

See Moore, 505 A.2d at 1367-68. In this case, Petitioner’s statement is conditioned upon another person entering his cell. *See* DOC Disciplinary Hr’g R. Even without an accompanying act, this conditional statement clearly represents a “willful offer with . . . violence to [] hurt [] another,” thus supporting a finding of assaultive behavior. *Dunkleberger*, 573 A.2d at 1175. The absence of any physical act or violent behavior does not eliminate the assaultive nature of Petitioner’s statement. *See id.*; *Moore*, 505 A.2d at 1367-68.

Finally, Petitioner’s argument that a threat must identify a specific target lacks support. The absence of a specifically named recipient does not preclude a determination that the nature of the remark itself is assaultive. *See Anderson*, 266 A.3d at 111; *Butterfield*, 2010 WL 9511412, at *2. Petitioner’s statement applies broadly to any inmate, officer, or staff member who may choose or be required to enter his cell. *See* DOC Disciplinary Hr’g R. A threat of fatal harm directed at “anyone” reflects a general “inclinat[ion] or disposit[ion] to commit assault” if the circumstances in the threat occur. *See Butterfield*, 2010 WL 9511412, at *2. Here, the breadth and severity of Petitioner’s remark would reasonably place any person entering Petitioner’s cell in great apprehension of bodily harm. *See Anderson*, 266 A.3d at 111. Because the Board need not establish that any specific recipient actually experienced or testified to apprehension, the absence of a specified victim does not diminish the threatening nature of Petitioner’s remark or prevent the finding that his statement constitutes assaultive behavior. *See id.*

Petitioner’s reliance on *Anderson* and *Malarik* is misplaced. Neither case imposes a requirement that the target of the threat be specifically identified. *See Anderson*, 266 A.3d at 111; *Malarik*, 25 A.3d at 470. In each case, this Court treated the parolee’s statement as assaultive because of the statement’s violent

content and its inherent ability to evoke reasonable apprehension of bodily harm, not because the threatened individual was named or because an identified recipient actually experienced apprehension. *See Anderson*, 266 A.3d at 111; *Malarik*, 25 A.3d at 470. Petitioner's statement would certainly place any individual entering his cell in apprehension of bodily harm. Consequently, his remark constitutes assaultive behavior.

IV. CONCLUSION

For these reasons, substantial evidence supports the Board's determination that Petitioner committed assaultive behavior under 61 Pa.C.S. § 6138(d)(5)(i), and the Board was entitled to rely on the DOC's misconduct charge in reaching its conclusion. *See Anderson*, 266 A.3d at 111; *Lockett*, 141 A.3d at 617. Accordingly, the Board's decision is affirmed.

LORI A. DUMAS, Judge

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v.	:	
	:	
Pennsylvania Parole Board,	:	
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ORDER

AND NOW, this 31st day of August, 2026, the Pennsylvania Parole Board's decision, mailed April 22, 2025, is AFFIRMED.

LORI A. DUMAS, Judge