

LARRY D. RUSSELL,)
)
 Petitioner/Appellant,)
)
 VS.)
)
 JUDGE HORACE PIEROTTI, et al.,)
)
 Respondents/Appellees.)

Appeal No.
01-A-01-9601-CH-00028

Davidson Chancery
No. 95-476-III

FILED

August 14, 1996

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CHANCERY COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

THE HONORABLE ROBERT S. BRANDT, CHANCELLOR

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AFFIRMED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
TODD, P.J., M.S.
KOCH, J.

OPINION

Parolee Larry Darnell Russell was arrested for selling crack cocaine in DeSoto County, Mississippi. The Tennessee Board of Paroles subsequently revoked his parole, and he was returned to prison. Mr. Russell filed two petitions for Writ of Certiorari with the Chancery Court of Davidson County, challenging the action of the Board on various grounds. The chancery court dismissed the petitions. Mr. Russell's appeal is before this court solely on the question of whether the decision of the Board of Paroles was based upon improper evidence. We find that it was not, and we affirm the chancery court.

I.

Larry Russell was convicted of rape, and he was sentenced to eighteen years imprisonment. On October 19, 1993 he was released on parole. On March 10, 1994, Mr. Russell was arrested in DeSoto County, Mississippi for selling a rock of crack cocaine to an undercover informant for \$20. The Board of Paroles subsequently initiated parole revocation proceedings against him. Following a hearing on June 23, 1994, Mr. Russell's parole was revoked on the grounds of leaving the state without permission, and failure to report his arrest to his parole officer.

Mr. Russell subsequently filed a Petition for Habeas Corpus with the General Sessions Court of Shelby County. The Petition was dismissed. He then appealed to the Court of Criminal Appeals. Following the dismissal of that appeal for lack of jurisdiction, Mr. Russell filed the two petitions for writ of certiorari which are the subject of this appeal. The chancery court dismissed both petitions on June 30, 1995.

The two petitions repeated the allegations originally stated in the petition for habeas corpus. However, we believe that because of the limited nature of the relief that may be granted under a Writ of Certiorari, see *Powell v. Parole Eligibility Review Board*, 879 S.W.2d 871 (Tenn. App.1994), the only relevant issue before the chancery court was Mr. Russell's challenge to the manner in which the Board of Paroles reached its decision to revoke his parole. In our order of January 31, 1996, we narrowed the issue to the question of whether the Board based its decision upon improper evidence.

II.

Unfortunately, the record of the revocation proceedings is somewhat sparse, and the pro se brief of the appellant is not of much help to us in determining why the evidence that the board based its decision upon should be considered objectionable. Mr. Russell admits that he was in custody in the State of Mississippi, but insists that he was not booked, fingerprinted or photographed.

While an indictment or conviction for any felony or misdemeanor committed during parole constitutes probable cause that the parolee has violated the conditions of his parole in an important respect, Tenn. Code Ann. § 40-28-121(c), the revocation of Mr. Russell's parole was not based on indictment or conviction, but on narrower grounds. Thus Mr. Russell's allegations concerning the lack of an authenticated charging document from the State of Mississippi in no way invalidated the Parole Board's decision.

It is well-established that the full panoply of rights that are due a defendant in a criminal prosecution do not apply in a parole revocation hearing. The Board of Paroles is free to consider evidence that would not be admissible in a criminal trial, and to base its revocation upon a lesser standard of proof than was

required to initially convict. See *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

The appellant has admitted that he was incarcerated in the State of Mississippi, and he has not claimed that he received permission to leave Tennessee, nor that he ever notified his parole officer of his arrest. His own statements, standing by themselves, are probably sufficient to establish the conduct for which his parole was revoked. Leaving the state without permission, and failing to report all arrests to his parole officer are both violations of the conditions that were imposed on Mr. Russell at the time he was released.

Having found a violation, the Board can exercise a great deal of discretion in determining whether the parolee's conduct was sufficiently serious to warrant a revocation of parole. In fact, the legislature has declared that "[t]he board may revoke the probationary parole for any reason satisfactory to it." Tenn. Code Ann. § 40-28-115(e). Under the circumstances of this case, we do not find that the Board based its decision upon improper evidence, nor do we find anything unreasonable or arbitrary in its action.

IV.

The judgment of the trial court is affirmed. Remand this cause to the Chancery Court of Davidson County for any further proceedings consistent with this opinion. Tax the costs on appeal to the appellant.

BEN H. CANTRELL, JUDGE

CONCUR:

HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

WILLIAM C. KOCH, JR., JUDGE

