

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stephen J. Pilarski,
Appellant- Plaintiff,

v.

Indiana Parole Board,
Appellee-Defendant.

February 15, 2023

Court of Appeals Case No.
22A-MI-1418

Appeal from the Miami Circuit
Court

The Honorable Timothy P. Spahr,
Judge

Trial Court Cause No.
52C01-2202-MI-104

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

- [1] Stephen J. Pilarski appeals the Miami Circuit Court’s denial of his petition for a writ of habeas corpus.¹ Pilarski raises four issues for our review, which we consolidate and restate as whether the trial court erred when it denied his petition. We affirm.

Facts and Procedural History

- [2] In April 1992, Pilarski struck one-year-old A.E. “five or six times in the face because she was moaning and groaning.” *Pilarski v. State*, 635 N.E.2d 166, 168 (Ind. 1994). A.E. died from her injuries. The State charged Pilarski with murder, and a jury found him guilty. The trial court then sentenced him to sixty years in the Department of Correction.
- [3] In July 2018, the Indiana Parole Board (“the Board”) released Pilarski on parole. Pursuant to his release, the Board required Pilarski to comply with several conditions of parole, including the following:

Rule 2: “I will make every effort to remain gainfully employed and I understand that I must obtain written permission from my

¹ Pilarski’s petition for writ of habeas corpus challenged the sufficiency of the evidence supporting the Indiana Parole Board’s revocation of his parole, alleged that the revocation violated his due process rights, and alleged that the revocation violated his right to be free from an *ex post facto* law. Although Pilarski nominally asserted that those alleged violations entitled to discharge from incarceration entirely, the substance of his arguments implied that he should be re-released on parole. As such, his petition was likely a petition for post-conviction relief. See *Hobbs v. Butts*, 83 N.E.3d 1246, 1250 (Ind. Ct. App. 2017). But the difference is of no consequence here; whether styled as petition for a writ of habeas corpus or a petition for post-conviction relief, Pilarski’s challenge to the revocation of his parole was properly filed in a court in the county in which he was incarcerated. See Ind. Code § 34-25.5-2-2 (2021); Ind. Post-Conviction Rule 1(2). Accordingly, for the sake of easier reading, we simply refer to Pilarski’s petition as he styled it.

supervising officer prior to changing my employment or residence.”

Rule 9(a): “I will allow my supervising officer or other authorized officials . . . to visit my residence and place of employment at any reasonable time.”

Appellee’s App. Vol. 2, p. 13. Pilarski further agreed to Rule 10, which stated that he would “abide by any special conditions imposed by the [Board].” *Id.* And the Board imposed the following special conditions: “You must submit to a substance abuse evaluation and follow all recommendations”; “You must not use, consume, or possess illegal controlled substances, alcohol, or beverages containing alcohol”; and, “You must not frequent or be present at any establishment whose main business purpose is the selling, distribution, serving, [or] drinking of alcoholic beverages[.]” *Id.* at 59.

[4] In November 2019, Pilarski completed a substance-abuse evaluation at Sycamore Springs, which recommended that Pilarski “attend and complete intensive outpatient treatment.” *Id.* at 23. Pilarski did not attend or complete any such treatment. In December, Pilarski was supposed to be living at an address in Lafayette. However, on December 10, Pilarski “left his approved residence” and “his whereabouts were unknown.” *Id.* When his parole agent and another agent attempted to visit his home on December 11 and December 12, Pilarski “failed to answer his door to admit [the] officers[.]” *Id.* Another officer managed to communicate with Pilarski via telephone on December 12;

Pilarski “appeared intoxicated” during that conversation “and stated he was about to purchase another 12[-]pack of beer.” *Id.*

[5] Thereafter, Pilarski’s parole officer filed a report with the Board alleging that Pilarski had violated Rule 2, Rule 9(a), and the special conditions of his release. After several failed attempts to serve an arrest warrant on Pilarski, in early February 2020 officers were able to locate him and arrest him.

[6] Pilarski waived a preliminary hearing before the Board. *See* Appellant’s App. Vol. 2, p. 121. In March, the Board held a recorded fact-finding hearing on Pilarski’s alleged parole violations. Pilarski denied violating any conditions of his parole. However, the Board concluded otherwise, relying on, among other things, his parole officer’s notes of officers’ interactions, or attempted interactions, with Pilarski. For his part, Pilarski admitted to having consumed beer and to saying he might purchase a twelve-pack of beer, but he asserted that the latter statement was a joke. The Board revoked Pilarski’s parole and directed him to serve the balance of his sentence. The Board twice denied Pilarski parole in separate hearings thereafter.

[7] In February 2022, Pilarski filed his petition for a writ of habeas corpus. According to Pilarski, he was entitled to immediate release from incarceration because the Board violated his due process rights when it revoked his parole in March 2021. Pilarski also asserted that the Board’s decision was not supported by sufficient evidence and violated his right to be free from an *ex post facto* law. The State moved for a summary disposition on Pilarski’s petition and

designated the Board's decision and the evidence considered by the Board in that decision. The trial court granted the State's motion for summary disposition, and this appeal ensued.

Standard of Review

- [8] Pilarski appeals the trial court's summary denial of his petition for a writ of habeas corpus. Under [Indiana Post-Conviction Rule 1\(4\)\(g\)](#):

The court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court may ask for oral argument on the legal issue raised. If an issue of material fact is raised, then the court shall hold an evidentiary hearing as soon as reasonably possible.

We review the grant of a motion for summary disposition the same way we review the entry of summary judgment in a civil matter. See [Brown v. State](#), 131 N.E.3d 740, 742 (Ind. Ct. App. 2019), *trans. denied*. As with summary judgment, we apply a de novo standard of review. *Id.* "Summary disposition should be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." [Komyatti v. State](#), 931 N.E.2d 411, 415-16 (Ind. Ct. App. 2010) (quotation marks omitted).

Discussion and Decision

1. Due-Process Arguments

[9] On appeal, Pilarski first asserts that the Board’s revocation of his parole violated his due-process rights for a number of reasons. In particular, he asserts that the Board: (1) failed to inform him of the evidence that would be used against him; (2) did not provide him with an opportunity to confront or cross-examine witnesses against him; (3) did not “do [its] due diligence to investigate” the allegations fully, Appellant’s Br. at 15; (4) was not impartial in determining the credibility of Pilarski’s parole officer and his evidence; and (5) denied him his right to a preliminary hearing.

[10] Pilarski’s first, second, and fourth arguments are not supported by citations to the record or authority and are not supported by cogent reasoning. The Board’s evidence used against him is clear in the record on appeal; Pilarski attended the final revocation hearing but did not challenge the witnesses or offer exculpatory evidence; and Pilarski cites no authority for his proposition that the Board cannot rely on evidence submitted by a parole officer. Pilarski’s assertions to the contrary in his habeas petition and on appeal are self-serving and not supported by the record or authority. We reject those arguments accordingly.

[11] Similarly, Pilarski’s third argument has no support in Indiana law. [Indiana Code section 11-9-1-2\(b\)\(1\)](#) states that the Board “*may* . . . conduct inquiries, investigations, and reviews” (Emphasis added.) The Board acted within its

discretion in investigating and reviewing the allegations against Pilarski as it did.

- [12] And Pilarski’s fifth argument, that the Board denied him his right to a preliminary hearing, has not been preserved for appellate review. Pilarski did not raise this purported error in his habeas petition; he therefore may not raise it on appeal in the first instance. Regardless, the record shows that Pilarski waived his right to a preliminary hearing on the alleged parole violations. *See* Appellant’s App. Vol. 2, p. 121. Accordingly, the designated evidence supports the trial court’s entry of summary disposition on Pilarski’s due-process arguments.

2. Sufficiency of the Evidence

- [13] Pilarski also argues that insufficient evidence supported the revocation of his parole because parole officers misrepresented his statements to them about purchasing “another” twelve-pack of beer. Appellant’s Br. at 21-24. But “[p]roof of any one violation is sufficient to revoke a defendant’s probation.” *Brooks v. State*, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998), *trans. denied*. And Pilarski admitted to consuming alcohol while on parole, which was in violation of his special conditions.² Therefore, the trial court properly entered summary disposition for the Board on this allegation in Pilarski’s petition.

² Pilarski goes on to challenge the sufficiency of the evidence supporting his violations of Rule 2 and Rule 9(a), but his arguments are merely requests for the reviewing court to reweigh the evidence, which is not permitted.

3. Ex Post Facto Law

[14] Last, Pilarski asserts that the Board's revocation of his parole violated his right to be free from an *ex post facto* law. We are unable to discern the merits of Pilarski's argument on this issue or how legal authority might support it. We therefore conclude that this argument is waived for not being supported by cogent reasoning, and we affirm the trial court's judgment as to this issue. [Ind. Appellate Rule 46\(A\)\(8\)\(a\)](#).

Conclusion

[15] For all of the above-stated reasons, we affirm the trial court's summary denial of Pilarski's petition for a writ of habeas corpus.

[16] Affirmed.

May, J., and Bradford, J., concur.