

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christian Gagnon,	:	
Petitioner	:	
	:	No. 353 C.D. 2025
v.	:	
	:	Submitted: June 16, 2026
Pennsylvania Parole Board,	:	
Respondent	:	

BEFORE: HONORABLE LORI A. DUMAS, Judge
HONORABLE STELLA M. TSAI, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: August 17, 2026

Christian Gagnon (Gagnon) has filed a petition for review of the decision issued by the Pennsylvania Parole Board (Board) on February 28, 2025, revoking his parole. Gagnon contends that the Board failed to hold a preliminary hearing. We affirm, albeit on other grounds.

I. BACKGROUND¹

Gagnon was convicted of various offenses and sentenced, with a maximum sentence date of April 14, 2028. Eventually, the Board reparaoled Gagnon in 2023. In April 2024, the Board declared Gagnon delinquent. The Board eventually ordered Gagnon to complete a program at Kintock, a community corrections facility, as a special parole condition.

In August 2024, an incident between Gagnon and Kintock's staff

¹ We glean the facts from the record, which we state in the light most favorable to the Board as the prevailing party. *See Cinram Mfg., Inc. v. Workers' Comp. Appeal Bd. (Hill)*, 975 A.2d 577, 583 (Pa. 2009) (*Cinram*); *Kerr v. Pa. State Bd. of Dentistry*, 960 A.2d 427, 435 (Pa. 2008).

prompted the Board to charge Gagnon with two technical parole violations. Kintock discharged Gagnon, and the Board detained him at a state correctional institution (SCI). Tr., 11/26/24, at 7-8, 18, 42 (unpaginated).

The record does not reflect whether Gagnon waived a preliminary hearing, nor is it clear whether a preliminary hearing occurred.² The record, however, does reflect Gagnon's request for a panel hearing. Req. for a Panel Hr'g Executed, 9/6/24. The form document also provides for a waiver of a preliminary hearing and waiver of a panel hearing, neither of which are executed. *See id.* The Board held a violation hearing in November 2024, at which Gagnon elected to represent himself; standby counsel was present but did not participate.

Turning to the Kintock incident, a parole agent testified that when she entered the lobby, Gagnon appeared intoxicated and off-balance, "was slurring his words," and wanted to fight a manager. Tr. at 12, 16. Kintock's director corroborated the incident, noting that Gagnon was "loud and confrontational," and "making . . . threatening statements, saying that he wanted to kill one of us or that he wanted to fight us and things" *Id.* at 27-30. Gagnon refused to comply with instructions to be searched before entering Kintock, then left without authorization. Both witnesses acknowledged they did not see how the incident began. *Id.* at 17, 35, 37-38.

Kintock's director also testified that she provided surveillance video to Gagnon, which, as far as she knew, depicted the incident. She explained she had not watched the video because she was present for the incident. Gagnon countered that his standby counsel said to Gagnon "that you're providing all other video other than the incident that occurred." *Id.* at 43. Kintock's director reiterated that she sent the

² The Board argues that Gagnon "waived his right to a preliminary hearing" but concedes that the "certified record filed in this case does not contain" the waiver. Bd.'s Br. at 7-8.

video, but Gagnon relayed that standby counsel had said “there’s nothing in there.” *Id.*³

Gagnon also asserted a violation of due process. While questioning a witness, he argued that he had been entitled to a hearing before returning to prison. *Id.* at 20-21. The Board objected, reasoning that the purpose of the violation hearing was to prove that Gagnon had violated two technical conditions of his parole. *Id.* at 21. The Board represented: “It sounds like [Gagnon is] arguing that he didn’t have a preliminary hearing, but we have documentation that he waived his first level hearing and requested a violation hearing.” *Id.* Gagnon retorted: “That hearing is before a hearing examiner, and I was already recommitted to SCI Smithfield. I did not have a hearing before that. . . . I wasn’t given the opportunity to have that hearing” before the Board. *Id.* The hearing examiner suggested that Gagnon should focus on whether he had violated the conditions of his parole. *Id.* at 21-22.

On the merits, Gagnon denied engaging in assaultive behavior, testifying that he had been “assaulted by a staff member” and “tortured by their staff,” yet “handled [him]self pretty civilized.” *Id.* at 76. The Board, he argued, had “no evidence” that he had engaged in assaultive behavior or violated the technical

³ The transcript does not reflect any on-the-record communications from standby counsel to Gagnon. *See also* Tr. at 55 (reflecting that standby counsel spoke only once on an unrelated administrative issue). Turning to the hearing, we quote the exchange:

[Kintock’s director]. I did provide the video.

[Gagnon. Standby counsel] says that you’re providing all other video other than the incident that occurred.

A. As far as I know, what we sent was the incident that - .

Q. [Standby counsel] says there’s nothing in there.

Tr. at 43. The parole agent then insisted Gagnon could have subpoenaed the video; Gagnon countered that he did. *Id.* at 43-44. Gagnon subsequently testified that if he had a “district level” hearing, he would have “requested Kintock to provide the video footage to prove [his] case.” *Id.* at 76. He reiterated that he “would like the video” to prove his case. *Id.* at 81. Although a video was produced, Gagnon apparently believes another video exists.

conditions of his parole. *Id.* at 80. Gagnon asserted that he was sent to “an SCI without due process.” *Id.* at 83 (“I’m a parolee, not an inmate.”). He maintained that any technical violations were *de minimis*, that they warranted transfer to another community corrections center, and that the Board should not have recommitted him to an SCI. *Id.* at 80. The Board found that Gagnon had committed both technical violations and recommitted him as a technical parole violator. Bd. Decision, 12/9/24.

Gagnon timely filed for administrative relief, alleging a violation of various federal constitutional rights, including his right to due process. Admin. Remedies Form, 12/23/24, at 1. In elaborating on his due process claim, Gagnon claimed it was “unconstitutional to make an accusation [and] throw that person back in prison [without] due process of law.” *Id.* at 3. Gagnon did not expressly allege that the Board had failed to hold a preliminary hearing. *Id.* at 1-8. The Board affirmed in part, reasoning that sufficient evidence existed that Gagnon violated two technical conditions of his parole. Resp. to Admin. Remedies, 2/28/25, at 1-2 (summarizing the evidence). The Board granted relief in part by correcting Gagnon’s maximum sentence date.⁴ *Id.* at 2.

Gagnon timely petitioned this Court for review. His appointed counsel then filed an amended petition for review.

II. ISSUES

Gagnon contends that the Board violated his “due process rights by failing to afford him a preliminary hearing after detaining him for alleged technical parole violations.” Gagnon’s Br. at 2.

⁴ Subsequently, the Board issued a decision rescinding Gagnon’s automatic reparole. Notice of Bd. Decision, 3/12/25. That decision is not relevant to this appeal.

III. DISCUSSION⁵

A. Waiver

Gagnon claims that the Board did not hold a preliminary hearing within 14 days of his arrest for technical parole violations. Gagnon's Br. at 9-10. Rather, he asserts that three and a half months passed before he received a hearing. *Id.* at 20 (characterizing the delay as "nearly four months"). In Gagnon's view, the absence of a preliminary hearing deprived him of the opportunity to request that the Board preserve the video. *Id.* Yet, Gagnon maintains that he did not waive his right to a preliminary hearing. *Id.* at 13 (citing Req. for a Panel Hr'g Executed, 9/6/24). In his view, because this request contained an unexecuted waiver of a preliminary hearing, it necessarily reflects that he had not authorized "a waiver of his preliminary hearing." *Id.* (suggesting further that no one inquired into whether he wanted a hearing for nearly a month after his arrest). He requests that this Court dismiss the parole violations. *Id.* at 10.

The Board counters that Gagnon waived the issue by failing to raise it in his administrative appeal. Bd.'s Br. at 7. The Board points out that its appellate decision did not address any preliminary hearing waiver issue. *Id.* at 8-9. In the Board's view, the record is "silent about the events surrounding his preliminary hearing waiver" because Gagnon did not raise the issue in his administrative appeal or in his *pro se* petition for review. *Id.* at 10. The Board explains that Gagnon conflated the process required for detaining "a suspected parole violator," with the process for recommitting a person found to have violated parole. *Id.* at 11.

⁵ Our standard of review is limited to determining whether the Board committed an error of law, whether its findings are supported by substantial evidence, and whether its decision violated constitutional rights. 2 Pa.C.S. § 704. We may affirm on any grounds evident of record and read all decisions against their facts. *Toland v. Pa. Bd. of Prob. & Parole*, 344 A.3d 744, 758 n.19 (Pa. 2025); *Maloney v. Valley Med. Facilities, Inc.*, 984 A.2d 478, 485-86 (Pa. 2009).

Generally, “requiring a parolee to raise all claims before the administrative fact finder in order to preserve them for administrative appellate review is consistent with the appellate process in civil and criminal cases.” *Goods v. Pa. Bd. of Prob. & Parole*, 912 A.2d 226, 233 (Pa. 2006). *Goods* addressed when a parolee must raise the timeliness of an administrative parole revocation hearing, holding that a parolee need not raise the issue at the hearing level and may raise it for the first time on appeal to the Board. *Id.* at 227, 233; accord *Jacobs v. Pa. Bd. of Prob. & Parole*, 958 A.2d 1110, 1117 (Pa. Cmwlth. 2008) (holding, similarly, that 2 Pa.C.S. § 703(a) “requires that an issue must be raised at some point to the Board before we may address it on appeal,” *e.g.*, at either the hearing or administrative appeal level). A parolee must raise the issue at some point before the Board because “the Board bears the burden of proving by a preponderance of the evidence that the hearing was timely.” *Goods*, 912 A.2d at 235 (citation modified). The same principle governs a preliminary hearing. *See id.*

Here, at the violation hearing, Gagnon’s objection rested on his belief that he had a guaranteed Board hearing prior to being recommitted to prison. Tr. at 20. The Board construed Gagnon’s argument as referring to his right to a preliminary hearing, which the Board contended Gagnon waived. *Id.* at 21. Because the record does not reflect any waiver of Gagnon’s right to a preliminary hearing, we reject the Board’s contention. Further, because Gagnon raised the issue at the violation hearing, he preserved the issue even if he did not raise it again in his administrative appeal. *See Goods*, 912 A.2d at 233.

B. Entitlement to Relief

1. Arguments

Gagnon contends that the Board’s failure to hold a preliminary hearing

entitles him to dismissal of his technical parole violations. According to Gagnon, he need not show prejudice to be entitled to relief. Gagnon's Br. at 14-15 (distinguishing *McKenna v. Pa. Bd. of Prob. & Parole*, 782 A.2d 1105 (Pa. Cmwlth. 2001), which declined to recognize prejudice *per se*). Per Gagnon, the *McKenna* parolee had a preliminary hearing five days past the deadline and conceded his violations; in contrast, Gagnon waited three and a half months and did not concede any violations. *Id.* at 15. Nevertheless, Gagnon maintains that he was prejudiced by the absence of the preliminary hearing. *Id.* at 17. In his view, if the Board had held a preliminary hearing, then Gagnon could have sought an order preserving Kintock's surveillance video. *Id.* Such video, per Gagnon, would have corroborated his account that he was assaulted and bolstered his credibility. *Id.* at 18-19. He asserts that "the footage was no longer available by the time of the violation hearing" *Id.* at 20 (citing Tr. at 43-44).⁶

The Board counters that under "longstanding precedent," a parolee "cannot complain of a deficiency in the preliminary hearing after the final recommitment hearing has been held." Bd.'s Br. at 12-13 (quoting *Hobson v. Pa. Bd. of Prob. & Parole*, 556 A.2d 917, 918 (Pa. Cmwlth. 1989), and distinguishing *McKenna*). Moreover, the Board maintains that Gagnon has misrepresented the record, that he in fact received the video, and that the video offered nothing exculpatory. *Id.* at 13. Nothing of record, per the Board, establishes that any "video was lost as a result of the passage of time." *Id.* at 13-14 (citing Tr. at 43-44). The Board adds that Gagnon neither subpoenaed additional video nor sought a continuance, and that two witnesses established his violations at the violation hearing. *Id.* at 14.⁷

⁶ We quoted the exchange above.

⁷ Simply, the parties construe the disputed exchange differently. Gagnon construes the

2. Legal Standards

Notwithstanding any defect at the preliminary hearing stage, we will not disturb a parolee's recommitment after a violation hearing has occurred. *Hobson*, 556 A.2d at 918. The *Hobson* parolee alleged that the hearing officer at his preliminary hearing was not impartial. *Id.* This Court rejected that allegation on its merits and alternatively reasoned that "even if the preliminary hearing were defective, the petitioner cannot complain of a deficiency in the preliminary hearing after the final recommitment hearing has been held." *Id.* (citing, *inter alia*, *Whittington v. Pa. Bd. of Prob. & Parole*, 404 A.2d 782, 783 (Pa. Cmwlth. 1979) (*en banc*), as precluding relief to a parolee who did not challenge the delay in holding the preliminary hearing before the final hearing). *Hobson* thus affirmed the parolee's recommitment as a technical parole violator. *Id.* at 919.

This Court reached the same result when the Board recommitted a parolee as a technical parole violator who had challenged the timeliness of his preliminary hearing. *Donnelly v. Pa. Bd. of Prob. & Parole*, 457 A.2d 145, 146 (Pa. Cmwlth. 1983). *Donnelly* noted the parties disputed whether the preliminary hearing was timely. *Id.* The record reflected a timely preliminary hearing, but the parolee asserted otherwise. *Id.* *Donnelly* reasoned that even if the hearing was untimely, the parolee was due no relief "because he has already been recommitted after a Board violation hearing." *Id.* (citations omitted); accord *Loach v. Pa. Bd. of Prob. & Parole*, 57 A.3d 210, 213 (Pa. Cmwlth. 2012) (holding that "a deficiency at a preliminary parole revocation hearing cannot be alleged after a final parole revocation hearing occurs" (citation omitted)).⁸

testimony as establishing unproduced, spoliated video. The Board maintains it produced the correct video and nothing of record establishes any lost video.

⁸ Cf. *Commonwealth v. Sanchez*, 82 A.3d 943, 984 (Pa. 2013) (stating, "once a defendant has gone to trial and has been found guilty of the crime or crimes charged, any defect in the

Turning to *McKenna*, this Court considered whether the Board’s failure to hold a preliminary hearing within 14 days entitled a parolee to dismissal of his technical violations. *McKenna*, 782 A.2d at 1106. A hearing examiner held the parolee’s preliminary hearing five days late and found probable cause for the violations. *Id.* The parolee then admitted to the violations at a subsequent violation hearing, and the Board recommitted him. *Id.*

The parolee appealed, contending “his due process rights were violated by the Board’s failure to follow its regulations requiring that a preliminary hearing be conducted within fourteen days” *Id.* *McKenna* declined to apply “a *per se* prejudicial rule . . . in cases of Board delay in conducting preliminary hearings.” *Id.* at 1107. *McKenna* reasoned that “an illegal detention does not, in and of itself, vitiate a subsequent recommitment, just as an illegal arrest or detention does not void a subsequent conviction.” *Id.* (citation modified). Accordingly, to obtain relief, a parolee must demonstrate that the Board’s delay caused him prejudice. *Id.* Because the parolee had “not averred nor otherwise demonstrated a deprivation or prejudice caused by the Board’s delay,” and had conceded the violations, *McKenna* affirmed the parolee’s recommitment. *Id.*

In challenging recommitment, a parolee may raise evidentiary issues. *See, e.g., Grello v. Pa. Bd. of Prob. & Parole*, 477 A.2d 45, 47 (Pa. Cmwlth. 1984) (reversing a recommitment where the Board relied solely on hearsay evidence). However, the mere assertion that exculpatory evidence has been lost or destroyed is insufficient to justify relief. *See, e.g., Price v. Pa. Bd. of Prob. & Parole*, 863 A.2d

preliminary hearing is rendered immaterial”); *Commonwealth v. Dixon*, 276 A.3d 794, 799 (Pa. Super. 2022) (“It is well settled that when, at trial, the Commonwealth proves the offense beyond a reasonable doubt, any defects at a preliminary hearing regarding the sufficiency of the evidence are considered harmless.” (citation modified)). We may cite to Superior Court decisions for their persuasive value. *In re Gun Range, LLC*, 311 A.3d 1242, 1248 n.8 (Pa. Cmwlth. 2024) (*en banc*).

173, 177 (Pa. Cmwlth. 2004) (rejecting a petitioner’s spoliation claim in the absence of any evidence to support that claim); *cf. Commonwealth v. Snyder*, 963 A.2d 396, 405 (Pa. 2009) (requiring more than a “mere assertion” to support “an allegation that destroyed evidence was exculpatory”).⁹ Without more, such an assertion is conjecture; it does not establish that the evidence existed and was materially exculpatory. *Cf. generally Commonwealth v. Sneed*, 45 A.3d 1096, 1116 (Pa. 2012).

3. Discussion

Here, Gagnon is due no relief because the Board held a final violation hearing to resolve whether he would be recommitted for violating technical conditions of his parole. *See Loach*, 57 A.3d at 213 (explaining that because a preliminary hearing resolves probable cause to detain, a final violation hearing would cure any defect therein); *Hobson*, 556 A.2d at 918 (same). The *Donnelly* and *Hobson* parolees challenged their preliminary hearings (timeliness and partiality of the hearing examiner), but the Board recommitted each as a technical parole violator after a final violation hearing. *See Donnelly*, 457 A.2d at 146; *Hobson*, 556 A.2d at 918; *accord Loach*, 57 A.3d at 213. Unlike those parolees, Gagnon challenged the complete absence of any preliminary hearing. But like those parolees, Gagnon was recommitted following a final violation hearing. *See Donnelly*, 457 A.2d at 146; *Hobson*, 556 A.2d at 918; *accord Loach*, 57 A.3d at 213. It follows that because Gagnon had a final violation hearing at which the Board met its burden of proving technical violations, we affirm his recommitment. *See Donnelly*, 457 A.2d at 146; *Hobson*, 556 A.2d at 918; *accord Loach*, 57 A.3d at 213; *cf. Sanchez*, 82 A.3d at 984.

Gagnon is due no relief for a second, independent reason: he has not

⁹ *Cf. also Commonwealth v. Tedford*, 960 A.2d 1, 30-31 (Pa. 2008) (explaining that because the defendant never saw the evidence purportedly withheld by the prosecution, the defendant could not “affirmatively demonstrate exculpability”).

shown prejudice. *See McKenna*, 782 A.2d at 1107. Because *McKenna* requires that showing, we reject Gagnon's initial contention that no showing was required. *See id.*; Gagnon's Br. at 14-15. Gagnon's alternative contention that he showed prejudice also fails. Gagnon's Br. at 17. We reject Gagnon's unsubstantiated assertion that the allegedly unproduced video was, in fact, exculpatory. *See Snyder*, 963 A.2d at 405 (explaining that a conclusory allegation that destroyed evidence was exculpatory is insufficient); *Tedford*, 960 A.2d at 30-31. Kintock's director testified that she provided a video that, as far as she knew, depicted the incident. Only Gagnon's secondhand account of standby counsel's remark suggests otherwise. *See* Tr. at 43. Regardless, the director and the parole agent testified to their firsthand observations substantiating the technical violations. Tr. at 12, 16, 27-30. So, any effect the alleged video would have had on the hearing is speculative. On this record, Gagnon has not demonstrated entitlement to relief.

IV. CONCLUSION

Accordingly, we affirm the Board on other grounds. *See Toland*, 344 A.3d at 758 n.19. Although we decline to find Gagnon waived the issue, he is due no relief.

LORI A. DUMAS, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christian Gagnon,	:	
Petitioner	:	
	:	No. 353 C.D. 2025
v.	:	
	:	
Pennsylvania Parole Board,	:	
Respondent	:	

ORDER

AND NOW, this 17th day of August, 2026, we AFFIRM the decision entered by the Pennsylvania Parole Board on February 28, 2025.

LORI A. DUMAS, Judge