

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Donald Lee Taylor v. Marvin Plumley, Warden

No. No. 12-1211, Supreme Court of Appeals of West Virginia (October 4, 2013)

SUMMARY

The West Virginia Supreme Court of Appeals dismissed as moot Donald Lee Taylor’s appeal from the denial of his habeas corpus petition challenging the Parole Board’s denial of parole. The appeal became moot because Taylor was released on parole before the appellate decision.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 4, 2013
DOCKET	No. 12-1211
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner appealed the Randolph County Circuit Court's denial of his petition for a writ of habeas corpus challenging the West Virginia Parole Board's denial of parole.
STANDARD OF REVIEW	The Court considered the applicable standard of review, the parties' briefs, and the record; the appeal was resolved on mootness grounds.
PRECEDENTIAL VALUE	Memorandum decision; likely nonprecedential under the West Virginia Rules of Appellate Procedure
PARTIES	Donald Lee Taylor v. Marvin Plumley, Warden, Huttonsville Correctional Center

TOPICS

- mootness
- appellate procedure
- state post-conviction relief

PRACTICE AREAS

- appellate procedure
- post-conviction relief
- parole

QUESTIONS PRESENTED

1. Whether Taylor's appeal from the denial of parole was rendered moot when he was released on parole while the appeal was pending.

HOLDINGS

1. Taylor's release on parole rendered moot his appeal challenging the April 2012 denial of parole because a decision would no longer provide effective relief concerning that denial.

KEY QUOTATIONS

“Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court.” (1)

FACTUAL BACKGROUND

Taylor was serving a life sentence with the possibility of parole after a first-degree murder conviction. The Parole Board denied parole based on the serious nature of the offense, prior probation and bond violations, four recent prison disciplinary convictions, and 138 disciplinary write-ups. The Board stated that he would be re-interviewed in April 2013, and Taylor was released on parole on May 28, 2013.

PROCEDURAL HISTORY

The Parole Board denied Taylor parole on April 23, 2012. Taylor filed a habeas petition in the Circuit Court of Randolph County on April 27, 2012; the circuit court denied it on September 21, 2012. He appealed on October 17, 2012, but was released on parole on May 28, 2013, while the appeal was pending.

DISPOSITION

dismissed

CASES CITED

- State ex rel. Lilly v. Carter, 63 W. Va. 684, 60 S.E. 873 (1908)
- State ex rel. McCabe v. Seifert, 220 W. Va. 79, 640 S.E.2d 142 (2006)

OPINION

Donald Lee Taylor v. Marvin Plumley, Warden

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

Donald Lee Taylor,

FILED

October 4, 2013 Petitioner Below, Petitioner RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

vs) No. 12-1211 (Randolph County 12-C-72) Marvin Plumley, Warden, Huttonsville Correctional Center, Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Donald Lee Taylor, appearing pro se, appeals the order of the Circuit Court of Randolph County, entered September 21, 2012, that denied his petition for writ of habeas corpus that alleged the West Virginia Parole Board abused its discretion in denying him parole. Respondent Warden, by counsel Steven R. Compton, filed a summary response. Petitioner filed a reply. The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds that petitioner's appeal is moot. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. Petitioner was convicted of first degree murder and sentenced to a life term in prison with the possibility of parole. On April, 23, 2012, the Parole Board denied parole because of the serious nature of petitioner's offense, his past probation and bond violations, his convictions on four prison disciplinary violations within the past year, and his 138 disciplinary "write-ups" while incarcerated. In denying parole, the Parole Board noted that petitioner would be re-interviewed in April of 2013. On April 27, 2012, petitioner filed a petition for writ of habeas corpus that alleged the West Virginia Parole Board abused its discretion in denying him parole. The circuit court denied the petition on September 21, 2012. On October 17, 2012, petitioner appealed the denial of his petition to this Court. On appeal, petitioner seeks his release from prison. Respondent counters that petitioner cannot show that the Parole Board arbitrarily denied him parole in April of 2012. The Division of Corrections has informed this Court that petitioner was released on parole on May 28, 2013. Petitioner's release on parole renders his appeal of the April of 2012 denial of parole moot. "Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court.' Syl. pt. 1, State ex rel. Lilly v. Carter, 63 W.Va. 684, 60 S.E. 873 (1908)." Syl. Pt. 1, State ex rel. McCabe v. Seifert, 220 W.Va. 79, 640 S.E.2d 142 (2006). Accordingly, the Court dismisses as moot petitioner's appeal. Dismissed as Moot. ISSUED: October 4, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin Jean Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 2