

SUPREME COURT OF OREGON

Gordon v. Board of Parole & Post-Prison Supervision, 343 Or. 618

175 P.3d 461 (2007) · No. SC S054400; CA A121972 · Decided December 28, 2007

SUMMARY

The Oregon Supreme Court reviewed a parole board order deferring Dennis Leroy Gordon’s initial parole release date for two years based on a finding of severe emotional disturbance. The court considered which parole rules applied after Gordon’s election between Oregon’s discretionary and matrix systems and whether the board acted inconsistently with its rules and prior practices. It reversed the Court of Appeals and remanded the matter to the Board of Parole and Post-Prison Supervision for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	De Muniz, C.J.; Gillette, J.; Durham, J.; Balmer, J.; Kistler, J.; Walters, J.
JURISDICTION	Oregon
DECIDED	December 28, 2007
DOCKET	SC S054400; CA A121972
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioner sought judicial review of a final order of the Board of Parole and Post-Prison Supervision deferring his parole release date. The Oregon Court of Appeals affirmed without opinion, and the Oregon Supreme Court granted review.
STANDARD OF REVIEW	Under ORS 144.335(3) and ORS 183.482(8), the court reviews agency orders for legal error, abuse of discretion, inconsistency with an agency rule, officially stated agency position, or prior agency practice without an adequate explanation, and lack of substantial evidence.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential.
PARTIES	Dennis Leroy Gordon v. Board of Parole and Post-Prison Supervision

TOPICS

judicial review of agency action

administrative procedure act

administrative law

standard of review

statutory interpretation

PRACTICE AREAS

administrative law

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appellate procedure

QUESTIONS PRESENTED

1. Whether the Board's June 2003 order, which applied the rules in effect when Gordon first elected matrix treatment in 1984, was inconsistent with the Board's prior policy or practice of applying the rules in effect at the time of an inmate's most recent matrix election.
2. Whether the Board adequately explained that change in policy or practice under ORS 183.482(8)(b)(B).
3. Whether the appropriate remedy was remand to permit the Board to provide a rational, fair, and principled explanation for its departure from its prior practice.

HOLDINGS

1. The June 2003 order was inconsistent with the Board's prior officially stated policy and practice of applying the rules in effect when a discretionary-system inmate elected matrix treatment, which the Board had previously applied to Gordon's 1988 election.
2. The Board failed to provide a rational, fair, or principled explanation for changing from its prior practice of applying the rules in effect at the time of Gordon's 1988 election to a policy applying the rules in effect at his first election in 1984.
3. The case must be remanded to the Board to permit it, if possible, to provide a rational, fair, and principled explanation for departing from its prior practice of applying the rules associated with Gordon's 1988 election.

KEY QUOTATIONS

"The standards of review set out in ORS 183.482(8) reflect a legislative policy, embodied in the APA, that decisions by administrative agencies be rational, principled, and fair, rather than ad hoc and arbitrary." (175 P.3d at 469)

"We hold that the June 2003 order, reflecting the board's "policy" to use the rules in effect at the time of an inmate's first election, is inconsistent with a prior board practice and that the board has not offered a rational, fair, or principled explanation for the inconsistency." (175 P.3d at 471)

FACTUAL BACKGROUND

Gordon committed murder and rape in 1975 and was sentenced under Oregon's former discretionary parole system. He later elected to be treated under the matrix system in 1984, withdrew that election in 1985, and elected matrix treatment again in 1988. The Board initially treated the 1988 election as controlling and applied the rules then in effect, but in its 2003 final order changed course and applied the rules in effect at the time of Gordon's first, 1984 election, thereby upholding a two-year deferral of his 1999 parole release date.

PROCEDURAL HISTORY

The Board deferred Gordon's parole release date in 1999 and issued several subsequent orders offering different rationales for the deferral. In June 2003, the Board issued a final order applying the rules in effect when Gordon first elected matrix treatment in 1984, rather than the rules in effect when he most recently elected matrix treatment in 1988. The Court of Appeals affirmed without opinion. The Oregon Supreme Court reversed and remanded to the Board for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Board of Parole and Post-Prison Supervision to permit the Board, if it can, to provide a rational, fair, and principled explanation for departing from its prior practice of relying on Gordon's 1988 election and the rules then in effect.

CASES CITED

- Gordon v. Board of Parole, 207 Or. App. 435, 142 P.3d 125 (2006)
- Hamel v. Johnson, 330 Or. 180, 187, 998 P.2d 661 (2000)
- Weidner v. Armenakis, 154 Or. App. 12, 959 P.2d 623 (1998)
- Merrill v. Johnson, 155 Or. App. 295, 964 P.2d 284, rev. den., 328 Or. 40, 977 P.2d 1170 (1998)
- Peek v. Thompson, 160 Or. App. 260, 980 P.2d 178, rev. dismissed, 329 Or. 553, 994 P.2d 130 (1999)
- Martin v. Board of Parole, 327 Or. 147, 957 P.2d 1210 (1998)
- Drew v. PSRB, 322 Or. 491, 499-500, 909 P.2d 1211 (1996)
- Green v. Hayward, 275 Or. 693, 552 P.2d 815 (1976)
- The Home Plate, Inc. v. OLCC, 20 Or. App. 188, 190, 530 P.2d 862, 863 (1975)
- State v. Orueta, 343 Or. 118, 127, 164 P.3d 267 (2007)
- Romer v. Evans, 517 U.S. 620, 631, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996)
- Gordon v. Hill, 189 Or. App. 363, 76 P.3d 150 (2003), rev. den., 339 Or. 280, 120 P.3d 1224 (2004)