

SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania v. Todd Daniel Hoover

No. 25 MAP 2019 · No. No. 25 MAP 2019 · Decided May 19, 2020

SUMMARY

This is a concurring opinion by Justice Donohue in Commonwealth v. Hoover, an appeal concerning the rescission of an early-release order from an intermediate punishment sentence. The opinion addresses the trial court's authority and abuse of discretion, the constitutional implications of rescinding the order, and whether the certified record supported the trial court's action.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Donohue
JURISDICTION	Pennsylvania
DECIDED	May 19, 2020
DOCKET	No. 25 MAP 2019
DISPOSITION	other
PROCEDURAL POSTURE	Hoover appealed the rescission of an order granting him early release from an intermediate punishment sentence. The Supreme Court of Pennsylvania considered the appeal from the Superior Court's affirmance of the Lycoming County Court of Common Pleas order.
STANDARD OF REVIEW	Abuse of discretion. The court explains that discretion requires the exercise of judgment, wisdom, and skill to reach a dispassionate conclusion within the framework of the law.
PRECEDENTIAL VALUE	Published concurring opinion in a Pennsylvania Supreme Court case; the concurrence joins the Opinion Announcing the Judgment of the Court but contains separate reasoning.
PARTIES	Todd Daniel Hoover v. Commonwealth of Pennsylvania

TOPICS

[criminal procedure](#)[appellate procedure](#)[standard of review](#)[due process](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by rescinding the September 29, 2017 order granting Hoover early release from his intermediate punishment sentence.
2. Whether the trial court could rely on facts and a docketed record concerning the events leading to rescission of the early-release order.

HOLDINGS

1. The rescission of Hoover's early-release order was an abuse of discretion because it violated his constitutional rights and was not a decision made within the framework of the law.
2. The certified record contained support for the trial court's rescission of the early-release order; the absence of a record of the off-the-record proceedings did not preclude appellate review because the relevant October 12, 2017 order and related transcript were docketed.

KEY QUOTATIONS

“Regarding the ‘abuse of discretion’ standard of review, this Court has explained that the term ‘discretion’ imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion, within the framework of the law, and is not exercised for the purpose of giving effect to the will of the [trial] judge.” (1)

“The defendant was released approximately a year early. Although a petition for reconsideration is pending before Judge Butts, this Court would ask that Judge Butts would vacate the order immediately in order that the defendant can be replaced onto supervision, and be placed on a TAD unit as a condition of his supervision.” (2)

FACTUAL BACKGROUND

Hoover was serving a five-year intermediate punishment sentence that began on August 13, 2013. On September 29, 2017, Judge Butts entered an order releasing him early from supervision. Later that evening, Hoover was arrested and charged with another DUI. After a revocation hearing, Judge Lovecchio determined that Hoover technically was not under supervision when the new DUI allegedly occurred and asked Judge Butts to vacate the early-release order and return Hoover to supervision. Judge Butts relied on the docketed order and related record in rescinding the early-release order.

PROCEDURAL HISTORY

The Lycoming County Court of Common Pleas entered an order rescinding an earlier order that had granted Hoover early release from intermediate punishment supervision. The Superior Court affirmed the common pleas court's order on August 31, 2018. The Supreme Court of Pennsylvania granted review at No. 25 MAP 2019, and Justice Donohue filed a concurring opinion joining the Opinion Announcing the Judgment of the Court.

DISPOSITION

other

CASES CITED

- Commonwealth v. Gill, 206 A.3d 459, 466 (Pa. 2019)
- Commonwealth v. Widmer, 744 A.2d 745, 753 (Pa. 2000)

OPINION

PER CURIAM.

[J-96-2019] [OAJC: Todd, J.] IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT COMMONWEALTH OF PENNSYLVANIA,; No. 25 MAP 2019 Appellee: Appeal from the Order of Superior: Court at No. 1893 MDA 2017 dated: August 31, 2018 Affirming the Order v.: dated October 26, 2017, filed: October 31, 2017, of the Lycoming: County Court of Common Pleas, TODD DANIEL HOOVER,; Criminal Division, at No. CP-41-CR-: 2120-2012 Appellant:: ARGUED: November 19, 2019 CONCURRING OPINION JUSTICE DONOHUE DECIDED: May 19, 2020 I join the Opinion Announcing the Judgment of the Court (“OAJC”).

I write separately to speak briefly on two points. First, the question accepted for review was whether the trial court abused its discretion by rescinding the September 29, 2017 order granting Hoover early release from his intermediate punishment sentence (“early release order”). Order, 2/27/2019. “Regarding the ‘abuse of discretion’ standard of review, this Court has explained that the term ‘discretion’ imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion, within the framework of the law, and is not exercised for the purpose of giving effect to the will of the [trial] judge.” Commonwealth v. Gill, 206 A.3d 459, 466 (Pa.

2019) (quoting Commonwealth v. Widmer, 744 A.2d 745, 753 (Pa. 2000) (citation omitted)) (emphasis supplied). The OAJC answers the question accepted for review in terms of the trial court’s “authority” to revoke its early release order—an approach that Justice Baer challenges. CDO at 3–5. Given the basis for the OAJC’s analysis and conclusion, certainly Judge Butts abused her discretion by revoking the early release order in a manner that violated Hoover’s constitutional rights.

It cannot be reasonably argued that the decision was within the framework of the law. Second, contrary to Justice Wecht’s conclusion, CO at 1, I find support in the certified record for the trial court’s rescission of the early release order.

The order on appeal and all matters involving the case are filed at the docket in the matter of Commonwealth v. Todd Daniel Hoover, in the Court of Common Pleas of Lycoming County, CP-41-002120-2012. Included in the docket is the order Judge Lovecchio entered on October 12, 2017 and docketed on October 13, 2017.

In his order which resulted from a revocation hearing (the transcript of which is also docketed), Judge Lovecchio stated: AND NOW, this 12th day of October, 2017, following a hearing, the Court is constrained to agree with defense counsel that technically defendant was not under supervision when he allegedly committed the new DUI. A copy of this Order shall be provided to Judge Butts with the following notation: The defendant was released early from supervision by order of Judge Butts on September 29, 2017, which was docketed sometime in the afternoon.

Later that evening the defendant was arrested and charged with yet another DUI. The effective date of defendant's Intermediate Punishment was August 13, 2013, and it was a five (5) year Intermediate Punishment sentence.

The defendant would not have maxed out on the Intermediate Punishment until August 13 of 2018. The defendant was released approximately a year early. Although a petition for reconsideration is pending before Judge Butts, this Court would ask that Judge Butts would vacate the order immediately in order that the defendant can be replaced onto supervision, and be placed on a TAD unit as a condition of his supervision.

[J-96-2019] [OAJC: Todd, J.] - 2 Order, 10/13/2017, at 1 (emphases supplied). Judge Butts relied on that court record when she entered the order at issue. See Rule 1925(a) Opinion, 1/11/2018, at 2, 4. While I do not condone the off the record proceedings in this case, it is inaccurate to state that the lack of a record here precludes our review. Further, unlike Justice Wecht, I do not believe that Hoover relies on this defect as a basis for this appeal.

His challenge is to reliance on facts not of record (i.e., non-existent) at the time the early release order was entered, not the lack of a record of the proceedings giving rise to this appeal. [J-96-2019] [OAJC: Todd, J.] - 3