

COMMONWEALTH COURT OF PENNSYLVANIA

Gilberto Melendez v. Pennsylvania Parole Board

Melendez · No. 929 C.D. 2021 · Decided March 9, 2023

SUMMARY

The Pennsylvania Commonwealth Court affirmed the Pennsylvania Parole Board’s denial of Gilberto Melendez’s administrative appeals and granted appointed counsel’s application to withdraw under Turner/Finley. The court held that Melendez’s challenge to his recommitment as a convicted parole violator was untimely, his challenge to the 2011 denial of credit for time spent at liberty on parole was both untimely and waived, and the Board’s denial of reparole was not subject to appellate review.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Lori A. Dumas; Patricia A. McCullough; Michael H. Wojcik
JURISDICTION	Pennsylvania
DECIDED	March 9, 2023
DOCKET	929 C.D. 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Melendez petitioned for review of the Pennsylvania Parole Board's decision denying his requests for administrative relief. His appointed counsel filed an application to withdraw under the Turner/Finley procedure, and Melendez filed a pro se brief raising additional issues.
STANDARD OF REVIEW	Review of a Parole Board determination is limited to whether the Board committed an error of law, whether its findings are supported by substantial evidence, and whether its decision violated constitutional rights.
PRECEDENTIAL VALUE	unpublished and not reported
PARTIES	Gilberto Melendez v. Pennsylvania Parole Board

TOPICS

administrative law

judicial review of agency action

appellate procedure

exhaustion of remedies

due process

PRACTICE AREAS

administrative law

appellate procedure

parole and probation

QUESTIONS PRESENTED

1. Whether appointed counsel satisfied the Turner/Finley requirements for withdrawal and whether the appeal lacked merit.
2. Whether the Board properly rejected as untimely Melendez's challenge to the recommitment order and imposition of backtime.
3. Whether Melendez could obtain review of the Board's 2011 determination denying credit for time spent at liberty on parole.
4. Whether Melendez's challenge to the recommitment order was waived because it was not properly raised before the Board or in the petition for review.
5. Whether the Board's denial of reparole was subject to appellate or administrative review.
6. Whether the Board's treatment of the recommitment and out-of-state charges violated procedural due process or other constitutional rights.

HOLDINGS

1. Appointed counsel satisfied the technical Turner/Finley requirements, and the court's independent review confirmed that Melendez's appeal lacked merit; counsel was therefore permitted to withdraw.
2. The Board properly rejected Melendez's administrative challenge to the recommitment order as untimely because it was filed more than thirty days after the order was mailed.
3. The court lacked jurisdiction to consider the challenge because it was facially untimely, and the issue was also waived because Melendez did not raise it before the Board or in his petition for review.
4. The Board's denial of reparole was not subject to appellate review or administrative relief because a parole-denial decision is not an adjudication.

KEY QUOTATIONS

"If Counsel satisfies these technical requirements, we must then conduct our own review of the merits of the case." (3)

"The Pennsylvania Supreme Court has held that there is no right to appellate review from a Parole Board decision denying parole under either the Administrative Agency Law or the Federal Constitution, since the decision does not constitute an adjudication." (7)

FACTUAL BACKGROUND

Melendez was sentenced in 1996 to seven to twenty-six years of incarceration and was later paroled, recommitted, and convicted of new charges. After his 2018 reparole, he was declared delinquent and arrested in Florida on new charges and for a parole violation. The Board recommitted him as a convicted parole violator,

recalculated his maximum date, and later denied him parole. Melendez filed administrative challenges, including a challenge to the recommitment more than a year after the order was mailed.

PROCEDURAL HISTORY

The Board denied Melendez's administrative challenges to a parole denial and to a recommitment order. The Commonwealth Court instructed him to obtain new counsel or proceed pro se, after which he filed a pro se brief. The court independently reviewed the merits, granted appointed counsel's application to withdraw, and affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988)
- Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988) (en banc)
- Zerby v. Shanon, 964 A.2d 956, 960 (Pa. Cmwlth. 2009)
- Young v. Pa. Bd. of Prob. & Parole, 189 A.3d 16, 18 n.3 (Pa. Cmwlth. 2018)
- Wagner v. Pennsylvania Board of Probation & Parole, 522 A.2d 155, 157 (Pa. Cmwlth. 1987)
- McCullough v. Pa. Bd. of Prob. & Parole, 256 A.3d 466, 471 (Pa. Cmwlth. 2021)
- Smith v. Pa. Bd. of Prob. & Parole, 81 A.3d 1091, 1094 (Pa. Cmwlth. 2013)
- McCaskill v. Pa. Bd. of Prob. & Parole, 631 A.2d 1092, 1094-95 (Pa. Cmwlth. 1993)
- Chesson v. Pa. Bd. of Prob. & Parole, 47 A.3d 875, 879 (Pa. Cmwlth. 2012)
- Rogers v. Pa. Bd. of Prob. & Parole, 724 A.2d 319, 322-23 (Pa. 1999)