

COMMONWEALTH COURT OF PENNSYLVANIA

Eric Cummings v. Pennsylvania Parole Board

No. 281 C.D. 2022 (Pa. Cmwlth. June 6 2023) (Commonwealth Court of Pennsylvania 2023) · No. No. 281 C.D. 2022 · Decided June 6, 2023

SUMMARY

The Pennsylvania Commonwealth Court affirmed the Pennsylvania Parole Board’s dismissal of Eric Cummings’ challenge to his sentence and credit calculations as untimely. The court held that Cummings was required to challenge the Board’s 2019 recommitment order within 30 days and that the applicable statute required service of the original sentence before the new sentence imposed for an offense committed while on parole. The court also granted appointed counsel’s application to withdraw after independently concluding that the appeal lacked merit.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Stacy Wallace; Patricia A. McCullough; Anne E. Covey
JURISDICTION	Pennsylvania
DECIDED	June 6, 2023
DOCKET	No. 281 C.D. 2022
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of the Pennsylvania Parole Board's dismissal of Cummings's challenge to his parole sentence calculations as untimely; appointed counsel sought leave to withdraw under the no-merit-letter procedure.
STANDARD OF REVIEW	Review is limited to whether constitutional rights were violated, an error of law was committed, or the necessary findings of fact are supported by substantial evidence.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Eric Cummings v. Pennsylvania Parole Board

TOPICS

- parole
- appellate procedure
- administrative law
- judicial review of agency action
- sentencing

PRACTICE AREAS

administrative law

parole

appellate procedure

sentencing

criminal procedure

QUESTIONS PRESENTED

1. Whether appointed counsel should be permitted to withdraw after filing a no-merit letter satisfying the requirements of *Commonwealth v. Turner*.
2. Whether the Parole Board properly dismissed Cummings's challenge to the recommitment order as untimely under 37 Pa. Code § 73.1.
3. Whether the Parole Board was required to treat Cummings's new sentence as concurrent with the remaining balance of his original sentence and whether it properly awarded his claimed credit.

HOLDINGS

1. Counsel satisfied the technical requirements for withdrawal by detailing the case review, identifying the issues Cummings wished to raise, explaining why the issues lacked merit, and advising Cummings of his rights; the court therefore granted the application to withdraw.
2. The Parole Board properly dismissed Cummings's challenge because 37 Pa. Code § 73.1 requires a petition for administrative review to be received within 30 days of the mailing of the Board's decision, and that deadline is jurisdictional.
3. The Parole Board was not required to treat Cummings's new state sentence as concurrent with the balance of his original sentence or parole backtime because Pennsylvania law requires the balance of the original sentence to be served before the new sentence begins.
4. Cummings's substantive credit challenge lacked merit because the record showed that the Parole Board awarded credit for the 35 days ordered by the sentencing court.

KEY QUOTATIONS

“Thus, a sentencing judge does not have the authority to order a new state sentence run concurrently to a parolee’s backtime on an original sentence.” (7)

“Because Cummings did not file a timely appeal of the Recommitment Order, which set forth his new parole violation maximum sentence date and necessarily adjusted the date on which he would begin serving his New Sentence, Cummings waived any challenges to the credits afforded and the calculation of the new expiration date.” (8)

FACTUAL BACKGROUND

Cummings was serving original Pennsylvania sentences when he was paroled in 2015. After committing new offenses while on parole, he received a new state sentence, and the Parole Board recommitting him as a convicted parole violator, denied him credit for time spent at liberty on parole, and recalculated his parole-violation maximum date as December 23, 2021. Cummings later argued that the new sentence should run concurrently with his original sentences and that he had not received proper jail-time credit, but he waited nearly three years after the recommitment order to seek administrative review.

PROCEDURAL HISTORY

The Parole Board recommitted Cummings as a convicted parole violator and mailed its recommitment order on April 19, 2019, calculating a parole-violation maximum date of December 23, 2021. Cummings did not challenge that order until January 27, 2022, when he sought recalculation of credit and enforcement of a sentencing order directing his new sentence to run concurrently with prior sentences. The Board treated the correspondence as an untimely petition for administrative review and dismissed it. The Commonwealth Court independently reviewed the merits after considering counsel's application to withdraw, granted withdrawal, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Turner, 544 A.2d 927, 928-29 (Pa. 1988)
- Hont v. Pa. Bd. of Prob. & Parole, 680 A.2d 47, 48 (Pa. Cmwlth. 1996)
- Commonwealth v. Wrecks, 931 A.2d 717, 722 (Pa. Super. 2007)
- Gibson v. Pa. Bd. of Prob. & Parole, 3 A.3d 754, 755 n.1 (Pa. Cmwlth. 2010)
- McCaskill v. Pa. Bd. of Prob. & Parole, 631 A.2d 1092, 1095 (Pa. Cmwlth. 1993)
- Martin v. Pa. Bd. of Prob. & Parole, 840 A.2d 299, 302 (Pa. 2003)
- Rivenbark v. Pennsylvania Board of Probation & Parole, 501 A.2d 1110 (Pa. 1985)
- Krantz v. Pa. Bd. of Prob. & Parole, 484 A.2d 1044, 1047 (Pa. Cmwlth. 1984)
- Kerak v. Pa. Bd. of Prob. & Parole, 153 A.3d 1134 (Pa. Cmwlth. 2016)
- Harris v. Pa. Bd. of Prob. & Parole, 393 A.2d 510 (Pa. Cmwlth. 1978)