

COMMONWEALTH COURT OF PENNSYLVANIA

Robb William Pataski v. Pennsylvania Board of Probation and Parole

No. 584 C.D. 2019 (Pa. Commw. Ct. Jan. 7 2020) (memorandum opinion) · No. 584 C.D. 2019 · Decided
January 7, 2020

SUMMARY

The Commonwealth Court of Pennsylvania denied without prejudice counsel's application to withdraw from representing Robb William Pataski in his challenge to the Pennsylvania Board of Probation and Parole's revocation decision. The court held that counsel's Turner letter was inadequate because it failed to substantively address two issues raised in the petition for review concerning time credits and street-time credit. Counsel was directed to file an amended application and no-merit letter or an advocate's brief within 30 days.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Ellen Ceisler; Renée Cohn Jubelirer; Patricia A. McCullough
JURISDICTION	Pennsylvania
DECIDED	January 7, 2020
DOCKET	584 C.D. 2019
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of the Pennsylvania Board of Probation and Parole's decision affirming its recommitment and maximum-date recalculation order. Counsel sought to withdraw from the appeal by filing an Application to Withdraw and a Turner no-merit letter.
STANDARD OF REVIEW	The court first reviews whether counsel's Turner no-merit letter satisfies the required technical elements. Only when the letter adequately identifies and explains each issue may the court review the substantive merits of the petition for review.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Robb William Pataski v. Pennsylvania Board of Probation and Parole

TOPICS

[appellate procedure](#)[parole](#)[administrative law](#)[criminal procedure](#)

PRACTICE AREAS

administrative law

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parole

criminal procedure

QUESTIONS PRESENTED

1. Whether counsel's Turner no-merit letter adequately addressed each issue Pataski sought to raise in the petition for review.
2. Whether counsel should be permitted to withdraw from representation when the Turner letter failed to substantively analyze two issues identified in the petition for review.

HOLDINGS

1. A no-merit letter must explain the nature and extent of counsel's review, identify each issue the petitioner wishes to raise, and explain why each issue lacks merit. Counsel's letter was inadequate because it failed to substantively address the two time-credit issues raised in the petition for review.

KEY QUOTATIONS

“A no-merit letter must include an explanation of ‘the nature and extent of counsel’s review and list each issue the petitioner wished to have raised, with counsel’s explanation of why those issues are meritless.’” (at 5)

“However, in the event the letter fails on technical grounds, we must deny the request for leave to withdraw, without delving into the substance of the underlying petition for review, and may direct counsel to file either an amended request for leave to withdraw or a brief on behalf of their client.” (at 5)

FACTUAL BACKGROUND

Pataski was serving Pennsylvania sentences when he was released on parole in 2005. After he was declared delinquent and later convicted of armed robbery and handgun-related offenses in Maryland and burglary offenses in Pennsylvania, he was returned to Pennsylvania custody in 2018. The Board recommitted him as a convicted parole violator, imposed 30 months of backtime, and recalculated his maximum parole violation date as April 8, 2021. In his petition for review, Pataski challenged credit for time served on the Board's warrant and credit for street time, while counsel's Turner letter addressed only the presumptive backtime-range issue.

PROCEDURAL HISTORY

The Board recommitted Pataski as a convicted parole violator, imposed 30 months of backtime, and recalculated his maximum parole violation date. After the Board affirmed its decision on administrative review, Pataski filed a petition for review in the Commonwealth Court. Counsel filed an Application to Withdraw and a Turner letter, but the court found the letter technically inadequate because it did not address two issues identified in the petition for review. The court denied withdrawal without prejudice and directed counsel to file an amended application and no-merit letter or an advocate's brief within 30 days.

DISPOSITION

other

REMAND INSTRUCTIONS

Counsel's Application to Withdraw was denied without prejudice. Counsel was directed to file, within 30 days, either an amended Application to Withdraw accompanied by a proper Turner no-merit letter or an advocate's brief in support of the Petition for Review.

CASES CITED

- Commonwealth v. Wrecks, 931 A.2d 717, 722 (Pa. Super. 2007)
- Commonwealth v. Porter, 728 A.2d 890, 893 & n.2 (Pa. 1999)
- Commonwealth v. Finley, 479 A.2d 568 (Pa. Super. 1984)
- Zerby v. Shanon, 964 A.2d 956, 960 (Pa. Cmwlth. 2009)
- Commonwealth v. Turner, 544 A.2d 927, 928 (Pa. 1988)
- Commonwealth v. Blackwell, 936 A.2d 497, 499 (Pa. Super. 2007)
- Hughes v. Pa. Bd. of Prob. & Parole, 977 A.2d 19, 25 n.2 (Pa. Cmwlth. 2009)
- Reale v. Pa. Bd. of Prob. & Parole, 512 A.2d 1307, 1310 (Pa. Cmwlth. 1986)
- Seilhamer v. Pa. Bd. of Prob. & Parole, 996 A.2d 40, 43 n.4 (Pa. Cmwlth. 2010)
- Anders v. California, 386 U.S. 738 (1967)
- Commonwealth v. Santiago, 978 A.2d 349, 353-55 (Pa. 2009)