



Long v. Pennsylvania Board of Probation and Parole

2006 | Cited 0 times | Supreme Court of Pennsylvania | May 3, 2006

Submitted: March 31, 2006

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge, HONORABLE BONNIE BRIGANCE LEADBETTER, Judge, HONORABLE JOSEPH F. McCLOSKEY, Senior Judge.

OPINION NOT REPORTED

MEMORANDUM OPINION

Diane Long (Petitioner) petitions for review of an order of the Pennsylvania Board of Probation and Parole (Board), denying her request for administrative relief with respect to the Board's determination that she serve nine months backtime as a convicted parole violator. We affirm.

On May 9, 2000, Petitioner received an aggregate sentence of one year, three months to four years, eleven months and twenty-nine days, for theft and credit card fraud offenses. Her maximum sentence date was June 5, 2005. On July 16, 2001, she was further sentenced to one to two years on the charge of escape. Her maximum sentence date as to the escape was July 16, 2003. On April 16, 2002, Petitioner was granted parole. However, her parole was later revoked and she was reparaoled on November 5, 2002.

On August 13, 2004, Petitioner was again charged with criminal offenses. As to those charges, she plead guilty to theft of \$200.00 from Nancy Lou Renninger, guilty to forging credit card slips in the amount of \$2,500.00 from Dawn Yurcic, and guilty to forging support checks in the amount of \$290.00 from Dawn Yurcic. Petitioner was sentenced to a term of three to six years on the new criminal convictions.

On November 15, 2004, a warrant to commit and detain Petitioner was issued. It was alleged that Petitioner violated her parole based on her new criminal convictions. While incarcerated, Petitioner was provided with a notice of charges and hearing.

At the parole revocation hearing, Petitioner alleged to have received a letter from Board Chairman William F. Ward, which issued her a final discharge from parole as of July 16, 2003. (Certified Record at 94). As such, Petitioner argued that the Board no longer had jurisdiction over her as to parole matters. As to the new criminal convictions, Petitioner acknowledged that she had been convicted of theft by deception, theft by unlawful taking and forgery.



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Brian Stout, Petitioner's parole agent, provided documents on file with the parole board which indicated that Petitioner's maximum parole date, as to her original sentence, was June 5, 2005. (Certified Record at 74). Petitioner signed this document when she was released on parole April 29, 2002. He also stated that the maximum sentence date listed on Petitioner's order to later re-release her on parole was June 5, 2005. (Certified Record at 77). Petitioner signed this document when she was released on parole on December 29, 2002. The Board thereafter recommitted Petitioner to serve nine months backtime, when available, based on the new criminal convictions.

Petitioner filed an administrative appeal, alleging that the Board did not have jurisdiction to commit her, as she had been discharged from parole. The Board disagreed, noting that while Petitioner completed her sentence on the escape charge as of July 16, 2003, she remained on parole as to her original sentence until June 5, 2005. Thus, her administrative appeal was denied.

Petitioner now appeals to this Court.¹ She alleges that it was error for the Board to exercise jurisdiction over her for crimes she committed after she had been notified that she was discharged from supervision. We disagree.

Petitioner does not dispute that the sentence she received on May 9, 2000, resulted in a maximum sentence date of June 5, 2005. (Petitioner's brief at 4). She instead argues that the letter she was sent, mistakenly discharging her from supervision, prohibits the Board from taking further action against her.

At the parole hearing, Petitioner produced a letter bearing the signature of William F. Ward, Chairman, dated July 21, 2003. The letter issued Petitioner a final discharge as of July 16, 2003. In its brief, the Board questions the authenticity of the letter, claiming that William F. Ward was not a member of the Board after February 14, 2003. (Respondent's brief at 3). However, the record does not contain any evidence in support of this claim.

In *Hughes v. Pennsylvania Board of Probation and Parole*, 512 A.2d 783 (Pa. Cmwlth. 1986), a parolee was informed by his parole officer on May 11, 1984, that his parole was completed. The parole officer was mistaken and parolee actually had two years remaining as to his sentence.

On May 11, 1984, the parolee was arrested and later pled guilty to a drug possession charge. He was then charged with violating his parole. The parolee argued that the Board did not have jurisdiction over him at the time of the drug offense, because he had been informed he was no longer on parole. This Court disagreed and held:

There can be no doubt that a prisoner cannot be discharged from parole prior to the expiration of the maximum term of his sentence, *Commonwealth ex rel. Banks v. Cain*, 345 Pa. 581, 28 A.2d 897 (1942), and there can be no doubt that Petitioner's maximum term here had not expired at the time his new offense was committed. We conclude that the Board did have jurisdiction to take appropriate action



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regarding Petitioner's new offense.

Hughes, 512 A.2d at 784. Additionally, we noted that while a misrepresentation by a parole agent as to parole status could be a valid defense, under a theory of justifiable reliance, for failing to report as required or failing to register a new address, it could not be a defense to committing new criminal acts.

Furthermore, the Governor has the exclusive power to grant pardons and commutations of sentence. Pa. Const. art. 4, §9. The Board has no authority to shorten the length of a parolee's sentence. See *Young v. Pennsylvania Board of Probation and Parole*, 487 Pa. 428, 409 A.2d 843 (1979); *Banks*. Thus, William F. Ward or any other member of the Board was without authority to discharge Petitioner from her sentence, either purposefully or mistakenly, prior to the expiration of her maximum date.

Accordingly, the order of the Board is affirmed.

ORDER AND NOW, this 3rd day of May, 2006, the order of the Pennsylvania Board of Probation and Parole is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

1. Our scope of review of a decision of the Board is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law occurred, or whether constitutional rights were violated. *Cromartie v. Pennsylvania Board of Probation and Parole*, 680 A.2d 1191 (Pa. Cmwlth. 1996).

