

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gary Abell, :
 :
 Petitioner :
 :
 v. : No. 1705 C.D. 2007
 : Submitted: April 25, 2008
 Pennsylvania Board of Probation and :
 Parole, :
 Respondent :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE FLAHERTY

FILED: July 16, 2008

Gary Abell (Petitioner) petitions for review from the August 7, 2007 decision of the Pennsylvania Board of Probation and Parole (Board) which dismissed his petitions for administrative review of the Board's decision mailed April 4, 2007, as moot. The Board, thereafter, filed a motion with our court to quash Petitioner's appeal. We quash Petitioner's appeal.

Petitioner was constructively reparaoled from his original ten year sentence on May 21, 2003, having a maximum release date of May 25, 2008. At that same time, Petitioner began serving a four year sentence imposed due to a conviction for which he was recommitted as a direct violator. On October 19, 2005, the Board paroled Petitioner from this four year sentence.

On January 9, 2007, Petitioner pled guilty to a crime punishable by imprisonment that was committed during the period of reparole from his original ten year sentence.

In a decision mailed April 4, 2007, the Board recommitted Petitioner as a convicted parole violator and recalculated his parole violation maximum date to December 1, 2011. On April 13 and 18, 2007, Petitioner requested administrative review of the recommitment order. Petitioner stated that the Board's calculation of his parole violation maximum date was incorrect.

In a decision mailed August 6, 2007, the Board modified its action mailed April 4, 2007, and recalculated Petitioner's parole violation maximum date from December 1, 2011 to November 22, 2011.

On August 7, 2007, the Board responded to Petitioner's requests for administrative review of the decision mailed April 4, 2007. The Board referred to the decision mailed August 6, 2007, which recalculated Petitioner's maximum release date and stated that: "the Board decision mailed April 4, 2007 has been REVERSED in regards to the December 1, 2011 max date and your petitions for administrative review are hereby DISMISSED AS MOOT." Board Decision, at 1.

On September 5, 2007, Petitioner filed an administrative appeal of the recalculation order mailed August 6, 2007. On September 6, 2007, Petitioner petitioned our court for review of the Board's decision mailed August 7, 2007, which denied Petitioner's administrative appeal of the Board's decision mailed April 4, 2007.¹ The Board, thereafter, filed a motion before our court to quash Petitioner's appeal.

¹ Our review is limited to determining whether the Board's findings are supported by substantial evidence, are in accordance with the law, and whether constitutional rights have been **(Footnote continued on next page...)**

We first address the Board's motion to quash Petitioner's appeal. The Board contends that due to its decision of August 7, 2007, which reversed the Board's decision mailed April 4, 2007, the order of April 4, 2007, no longer exists and, therefore, Petitioner's appeal is moot. The Board further contends that Petitioner, having sought review of the decision mailed August 7, 2007 before this court, prohibits the Board from acting on Petitioner's request for administrative review of the August 6, 2007 decision, by Pa. R.A.P. 1701(a). The Board states that it can only act on such petition if our court quashes Petitioner's appeal.

In the present controversy, Petitioner has petitioned our court for review of the Board's decision of August 7, 2007 which dismissed his request for administrative review of the recalculation order mailed April 4, 2007, as moot, due to the fact that on August 6, 2007, the Board had determined that it was wrong and had recalculated Petitioner's parole violation maximum date.

The question before our court is whether Petitioner's appeal is moot. Petitioner was requesting review of a decision that had been modified by a later decision. The proper procedure, which Petitioner did follow, was to request administrative review of the decision mailed August 6, 2007, that had been modified, as Petitioner's issue with the decision mailed April 4, 2007, had been addressed by the modification order of August 6, 2007. The decision mailed April 4, 2007, is no longer the ruling in relation to Petitioner's appeal.

(continued...)

violated. Krantz v. Pennsylvania Board of Probation and Parole, 483 A.2d 1044 (Pa. Cmwlth. 1984). This court will interfere with the Board's exercise of administrative discretion where it has been abused or exercised in an arbitrary or capricious manner. Green v. Pennsylvania Board of Probation and Parole, 664 A.2d 677 (Pa. Cmwlth. 1995).

An actual case or controversy must exist at all stages of the review process, not merely when the case is initiated. In re Gross, 476 Pa. 203, 382 A.2d 116 (1978). An issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect. In re D.A., 801 A.2d 614 (Pa. Super. 2002). As the decision mailed April 4, 2007, has been modified and does not contain Petitioner's current maximum release date, any order that we would enter would be meaningless, as the decision mailed April 4, 2007 is no longer in effect.

Accordingly, we must quash Petitioner's petition for review before our court.

JIM FLAHERTY, Senior Judge

