

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: May 15, 2014)

PETER D'AMBRUOSO

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v.

P.M. No. 2012-5340

A.T. WALL, R.I. PAROLE BOARD,
STATE OF RHODE ISLAND

DECISION

LANPHEAR, J. This matter came on for trial before the Court on a request for post-conviction relief of Mr. D'Ambruoso's conviction in case number P2-2007-1642. When Mr. D'Ambruoso represented himself and with court-appointed counsel, his requests for relief have never been a model of clarity. He focuses on his limited rights to be heard at proceedings before the Parole Board. In an attempt to address all pending issues, the Court will discuss both the travel and the issues raised.

I

Findings of Fact

On March 4, 2007, Mr. D'Ambruoso pled nolo contendere to a charge of possession of a controlled substance. Magistrate Keough of this Court, now retired, accepted his plea and sentenced Mr. D'Ambruoso to six years at the Adult Correctional Institutions with nine months to serve and the remainder to be a suspended sentence, running with probation. Mr. D'Ambruoso received credit for time that he had served since March 22, 2007.

During the next two years, Mr. D'Ambruoso was presented three times for having violated the terms of his sentence. In March of 2009, Mr. D'Ambruoso admitted to violating the terms of his sentence, but he is not contesting the violation or the sentencing on the violation.

At some point, Mr. D'Ambruoso was paroled from his time to serve.¹ In the spring of 2012, Mr. D'Ambruoso was informed that his parole was being revoked. He first requested a hearing before the Parole Board in June of 2012, but the board released him into the community on June 22, 2012. In July 2012, Mr. D'Ambruoso was informed his parole was revoked again. This time he specifically executed a document waiving his right to a preliminary hearing. A full hearing on the merits was therefore scheduled before the board in August 2012. In August 2012, his parole was revoked and his case was continued for consideration to February 2013. The Parole Board also declared that as Mr. D'Ambruoso had violated the terms of his parole, he failed to meet the conditions of his release. Therefore, approximately two years was added to his sentence, in accord with his parole agreement.

In January 2013, Mr. D'Ambruoso was released on parole once again, with electronic monitoring. Eight months later, Mr. D'Ambruoso was alleged to have tested positive for cocaine at The Providence Center. He was again incarcerated until the Parole Board released him into a halfway program in October 2013. In November or December 2013, another detention warrant issued claiming that Mr. D'Ambruoso was not reporting to The Providence Center for treatment. Mr. D'Ambruoso was later released.² He was not incarcerated at the time of the court hearing in February 2014.

¹ It appears that Mr. D'Ambruoso has been sentenced to time to serve in ten or more criminal cases, including subsequent possession cases. At no point did Mr. D'Ambruoso establish that the parole was granted or revoked in the case which is the subject of his post-conviction relief.

² Most of this travel is extracted from the sworn, unrefuted testimony of Mr. Degnan, an employee of the Department of Corrections Parole Board.

II

Analysis

It is challenging, at best, to determine precisely what Mr. D'Ambruoso's claims for post-conviction relief are. He seems to focus his arguments on the failure of the Parole Board to provide him with a hearing and with the addition of time to his sentence by the Parole Board. The Court will attempt to address each of his arguments.

A

Alleged Constitutional Violations

First, in his complaint of October 2012, Mr. D'Ambruoso states, generally, that his sentence in case number P2-2007-1642 on March 22, 2007 was in violation of the United States Constitution. On May 4, 2007, Mr. D'Ambruoso pled nolo contendere to a charge of possession of a controlled substance. He was sentenced to a six-year sentence, with nine months to serve. When he pled, the magistrate presumably reviewed his Constitutional rights, including his entitlement to a trial by jury. Mr. D'Ambruoso did not question the sentence until five years later and failed to address it at the hearing or in his memorandum. Mr. D'Ambruoso references no specific Constitutional violations and appears to have withdrawn this argument at the time of hearing. Accordingly, Mr. D'Ambruoso has failed to meet his burden of proof to establish any violation justifying relief from his trial, violation or sentence.

B

Other Alleged Infractions

Second, at the December 2013 hearing before this Court, Mr. D'Ambruoso claimed that the Parole Board did not afford a hearing to him for rescinding a warrant, and, therefore, the time to serve restarted on or about January 14, 2014. A warrant, of course, is issued for an arrest

when a defendant or prisoner cannot be located, normally when he does not appear at a scheduled hearing.

Mr. D'Ambruoso has an extended history with the Department of Corrections. According to Mr. Degnan's uncontroverted testimony,³ Mr. D'Ambruoso had been released on parole, but a warrant was issued for his having allegedly violated the terms of a "no contact" order. He was released with electronic monitoring in June of 2012. Although a Parole Board hearing had been scheduled for later that year, it did not go forward as Mr. D'Ambruoso was again placed on community release. On June 13, 2012, Mr. D'Ambruoso signed an agreement indicating that his parole would be restarted if he violated the terms of his release. While that agreement was not in evidence before the Court, there was never a question of its contents or that Mr. D'Ambruoso executed the document.

In July of 2012, Mr. D'Ambruoso was alleged to have violated his parole at the Kent County Courthouse and was incarcerated again. The Parole Board voted to revoke his parole⁴ and scheduled him for another hearing in February of 2013. However, in January 2013, Mr. D'Ambruoso was released, obviating the need for the February 2013 hearing. Eight months later, Mr. D'Ambruoso tested positive for cocaine. He was released from incarceration to a "halfway back" program in October 2013. In November 2013, a Parole Board warrant was issued for Mr. D'Ambruoso as he failed to report to The Providence Center for random drug screening. Again, Mr. D'Ambruoso was released on community confinement with electronic

³ The facts listed herein are from the criminal file and the uncontroverted and credible testimony of Mr. Degnan.

⁴ According to Mr. Degnan's uncontested testimony, this revocation restarted Mr. D'Ambruoso's parole.

monitoring, but he warranted on December 7, 2013, testing positive for cocaine.⁵ Again, he was released to a “halfway” program.

Mr. D’Ambruoso claims that he was denied a hearing which prevented the Parole Board from restarting his parole. He has failed to demonstrate that he requested a hearing, that he was denied a hearing, or even which “restart” he is referencing. Again, it is Mr. D’Ambruoso’s burden to establish the elements of his case, but he failed to meet his burden of proof.

C

Other Issues of Note

Mr. D’Ambruoso’s post trial memorandum only recites his numerous prior sentences and referrals to drug treatment. He acknowledges that he was guilty of the original charge, but he seems to ask the Court for leniency. It is inappropriate to resentence Mr. D’Ambruoso or to overrule the Parole Board without justification. Even at the trial, Mr. D’Ambruoso acknowledged testing positive for cocaine while on parole, noting, “I will do anything to get out [of incarceration].”

While these points may justify harsh actions on the part of the Parole Board, the Parole Board was lenient and helpful to Mr. D’Ambruoso’s attempts to reform. It was not harsh, but attempted to release Mr. D’Ambruoso to community confinement again and again. Regardless of Mr. D’Ambruoso’s repeated infractions, he failed to establish any violation justifying relief from his trial, violation or sentence. He failed to meet even a minimal burden of proof.

⁵ Mr. D’Ambruoso, when incarcerated, was provided with a Parole Board hearing. Obviously, he filed this request for relief in 2012. His arguments that he was denied a hearing in 2013 are emblematic of his confusing, shifting requests for relief.

III

CONCLUSION

Mr. D'Ambruoso's request for post-conviction relief is denied, and the clerk is directed to enter final judgment in favor of the State and against Mr. D'Ambruoso on all counts.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: D'Ambruoso v. A.T. Wall, et al.

CASE NO: P.M. No. 2012-5340

COURT: Providence County Superior Court

DATE DECISION FILED: May 15, 2014

JUSTICE/MAGISTRATE: Lanphear, J.

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