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CRIMINAL LAW: EXCEEDING AUTHORITY BY DEFERRING THE PAROLE REVOCATION HEARING

Summary

The Nevada Board of Parole is required to conduct a hearing within sixty days of a parolee returning to the custody of the Nevada Department of Corrections (NDOC) for a parole violation.² However, there is an exception to rule for parolees with new criminal charges that are not returned to the NDOC until after their new charges have been adjudicated.³ The Nevada Supreme Court considered whether the exception could be applied when a parolee was returned to NDOC prior to the new charges receiving a formal judgment. This Court affirmed the decision of the lower court to credit the respondent for the time he spent incarcerated on his new charges. The Court declared that the Parole Board exceeded its authority by permitting the respondent to remain in the custody of NDOC without a revocation hearing for over a year until his new charges were adjudicated.

Background

Originally, Breck Smith was convicted for being a habitual criminal. However, Smith was eventually released on parole. While on parole he was incarcerated for a new attempted burglary charge by the Clark County Sheriff Department. The Division of Parole and Probation claimed that the new criminal charges established probable cause for the continued detention of Smith. A warrant was issued on April 11, 2018 for Smith to be returned to NDOC. Even though NDOC retained custody of Smith, his hearing for the violation was deferred for over a year. The hearing officially occurred after he entered a plea on the new criminal charges. The parole hearing ultimately resulted in the board deciding to revoke Smith's parole for a year.

In response, Smith filed a petition for a writ of habeas corpus. He contended that the state law did not permit the Parole Board to defer the parole revocation beyond sixty days after he had been returned to the custody of NDOC. The lower court agreed that the Parole Board exceed its authority by continuing the hearing until the new charges were adjudicated. On appeal, the State argued that there was an exception to the statutory rule that permitted the Parole Board to defer the hearing until after a plea had been entered into on the new charges.

Discussion

The Nevada Supreme Court affirmed the lower court's decision to credit the extra time that Smith had been incarcerated because the Parole Board had exceeded its authority in deferring the revocation hearing after Smith was returned to the custody of NDOC. When a warrant is executed to bring a parolee into custody, this triggers a fundamental loss of liberty that requires a revocation

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² NEV. REV. STAT. § 213.1517(3).

³ NEV. REV. STAT. § 213.1517(4).

hearing.⁴ Due process demands that a parolee in custody receive a hearing within a reasonable amount of time.⁵ The Nevada Legislature has determined that a reasonable amount time to conduct a parole hearing is within sixty days of a parolee being returned to the custody of NDOC.⁶ One exception to the rule is that the Parole Board may defer the hearing sixty days after the parolee has been returned to NDOC custody upon the final adjudication of new charges.⁷ This Court determined that the exception applied only when the return to the custody of NDOC occurred after the new charges had received a final judgment. Therefore, the exception was not applicable when a parolee is returned to NDOC prior to the adjudication on new charges.

In this case, a warrant was issued to return Smith to the custody of NDOC prior to an adjudication on the new charges. The Parole Board did not provide Smith with a revocation hearing for over a year. The board waited until after Smith entered a plea on the new charges. The Nevada Supreme Court decided that Smith should have had a revocation hearing within sixty days of being in the custody of NDOC. The board violated Smith's due process right to have a revocation hearing within a reasonable amount of time.

Conclusion

Overall, the Nevada Supreme Court concluded that the district court properly ruled that the Parole Board exceeded its authority in returning Smith to NDOC custody for over sixty days without a revocation hearing. The exception to the statute requiring a hearing to be held within sixty days of being detained by NDOC was not applicable to this matter. The exception to the general rule may only be used when the parolee is detained by NDOC after there has been a final adjudication on a new charge. Ultimately, the Court held that Smith should be provided with credit for the time he spent incarcerated without a revocation hearing.

⁴ *Moody v. Daggett*, 429 U.S. 78, 87 (1976).

⁵ *Morrissey v. Brewer*, 408 U.S. 471, 487–88 (1972).

⁶ NEV. REV. STAT. § 213.1517(3).

⁷ NEV. REV. STAT. § 213.1517(4).