

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sergio Polanco,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 213 C.D. 2025
	:	Submitted: May 12, 2026
Pennsylvania Parole Board,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER

FILED: October 19, 2026

Sergio Polanco (Petitioner) seeks review of an Order of the Pennsylvania Parole Board (Board), issued January 14, 2025, which dismissed Petitioner's challenge to its November 9, 2023 Order that recommitted Petitioner as a convicted parole violator (CPV) for 24 months from June 8, 2022, and recalculated Petitioner's parole violation maximum sentence date to January 1, 2031. Appointed counsel for Petitioner, David Crowley (Counsel), filed an Application for Withdrawal of Appearance (Application to Withdraw) and a *Turner*¹ Letter. Also before the Court is the Board's Application for Summary and Special Relief (Application to Quash), arguing that this Court lacks jurisdiction because Petitioner should have filed his Petition for Review (Petition) by February 13, 2025, and did not do so. Upon review,

¹ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988).

the Board's Application to Quash is denied because we conclude we have jurisdiction over this matter under these circumstances. Additionally, because Counsel did not meet the technical requirements of *Turner*, we deny his Application to Withdraw without prejudice and order Counsel to either file another application that complies with *Turner* or submit a brief on the merits within 30 days of the issuance of this Order.

I. BACKGROUND

Petitioner was originally sentenced in January 2001 to 14 to 28 years for convictions for drug manufacturing/sale/delivery/possession with intent to distribute, criminal conspiracy, criminal use of a communications facility, and 2 counts of corrupt organizations, with a minimum date of January 7, 2014, and a maximum date of January 7, 2028. (Certified Record (C.R.) at 1, 3.) He was granted parole on October 31, 2013, and was released on January 21, 2014, to an Immigration and Customs Enforcement (ICE) deportation detainer. (*Id.* at 5, 7-8.) On or about February 4, 2014, ICE deported Petitioner. (*Id.* at 16, 18.) Law enforcement arrested him on federal charges on November 29, 2018, and the Board was notified of the arrest on May 29, 2019. (*Id.* at 12, 16, 18.) He was then convicted on October 17, 2019, and served time in federal prison in Brooklyn, New York while he awaited sentencing. However, Petitioner was “released in error” on “pre-trial service supervision,” which the Board discovered on December 3, 2021. (*Id.* at 12, 16, 18.) The Department of Corrections (DOC) issued a Warrant to Commit and Detain against Petitioner for violation of parole on January 7, 2022. (*Id.* at 11.) He was arrested on March 17, 2022, in New York on DOC's warrant, and Petitioner was returned to State Correctional Institution (SCI) Smithfield on March 23, 2022. (*Id.* at 18.)

The Board notified Petitioner of his upcoming revocation hearing based on his new federal criminal convictions on May 5, 2022. (*Id.* at 12-13.) The Board held Petitioner's revocation hearing on May 21, 2022, at which a Parole Agent submitted documents pertaining to Petitioner's federal conviction, which he did not dispute, to the record. (*Id.* at 23-39, 41-51.) On June 8, 2022, the Board issued its decision to recommit Petitioner as a CPV for 24 months when available, and mailed it to Petitioner at SCI Benner Township, where Petitioner had been transferred. (*Id.* at 71-72.) At some point, Petitioner was transferred back to New York, where he was confined in a federal facility.

The Board issued a new decision on November 9, 2023, following Petitioner's sentencing on his new federal convictions, reaffirming Petitioner's recommitment as a CPV and stating it would grant him credit for his time spent at liberty on parole and would consider him for reparole on or after March 17, 2024. (*Id.* at 73-74.) The Board also recalculated Petitioner's parole violation maximum date to January 1, 2031, giving him credit for 1,887 days, reflecting the time he spent at liberty on parole. (*Id.* at 74-76.) The Board mailed the November 9, 2023 decision to Petitioner at Metropolitan Detention Center, Brooklyn in New York City. (*Id.*) The decision advised Petitioner that he had the right to appeal the decision and to an attorney but did not provide any contact information to an appropriate public defender. (*Id.* at 74.) Instead, the decision advised Petitioner that the appeal form "and the names and addresses of all chief public defenders in the Commonwealth [were] available upon request from the SCI Parole Office" and to contact the public defender in the county where he was detained if he wanted a public defender's assistance appealing the decision. (*Id.*)

On November 27, 2024, after Petitioner returned to DOC custody, the Board mailed a determination to Petitioner at SCI Benner Township denying him parole and requiring him to serve his maximum sentence, January 1, 2031. (*Id.* at 77.) The determination also said Petitioner could apply for parole again in accordance with Section 6139 of the Prisons and Parole Code (Code), 61 Pa.C.S. § 6139. (*Id.*)

Petitioner filed for administrative review on or about December 23, 2024, specifically challenging the November 27, 2024 decision denying him parole and asserting that the Board improperly revoked his parole and extended his judicially imposed sentence to January 1, 2031, for improper reasons. (*Id.* at 78-88.) The Board received Petitioner's petition for administrative review on January 7, 2025. On January 14, 2025, the Board dismissed Petitioner's petition for administrative review as being an untimely request for relief from the November 9, 2023 decision recommitting Petitioner as a CPV and recalculating his maximum date. (*Id.* at 105-06.) The Board stated in its denial that per Section 73.1 of the Board's Regulations, 37 Pa. Code § 73.1, Petitioner needed to have filed his petition for administrative review challenging the recalculation of his maximum date within 30 days of the Board's November 9, 2023 decision. (*Id.* at 104-05.) Additionally, the Board held that Petitioner could not appeal the November 27, 2024 decision denying him parole. (*Id.*) At the bottom of the Order, the Board advised that an appeal had to be filed with this Court within 30 days of the mailing date, and that "[a]ny request for a public defender should be sent directly to the Public Defender's Office in the county where you currently reside." (*Id.* at 106.) The Order also included a list of public defenders' offices and contact information by county, including Centre County, where Petitioner was incarcerated. (*Id.* at 107.) The Board mailed its Order to Petitioner at SCI Benner Township on January 14, 2025. (*Id.* at 104-05.)

The deadline for filing an appeal from the Board’s January 14, 2025 Order was February 13, 2025, but Petitioner did not file a Petition with this Court until February 18, 2025. (Petition.) Petitioner did, however, mail a “Motion for [Extension] of Time” of the February deadline (Extension Motion) to the Board, which it received on February 7, 2025, claiming he could not secure counsel. (C.R. at 108-10.) Therein, Petitioner indicates that he was “timely seeking to appeal [the January 14, 2025] decision,” and was filing this document to “[p]reserve the right to appeal as timely.” (*Id.* at 108-09.) The Board dismissed the Extension Motion via letter mailed on February 18, 2025, because Petitioner was “contest[ing] the final adjudication mailed to [him] on January 14, 2025,” and that this “challenge [wa]s not authorized and it [could not] be accepted.” (*Id.* at 111.) The Board further stated in its letter that if Petitioner “wish[ed] to challenge the [January 14, 2025] decision in question, [he] may do so by filing a petition for review with Commonwealth Court, as indicated in the previous response.” (*Id.*) Notably, at the time the Board mailed its letter, the time for challenging the January 14, 2025 Order had passed.

As stated, Petitioner filed the Petition with this Court on February 18, 2025. On June 25, 2025, the Board filed the Application to Quash, arguing that this Court lacks jurisdiction because the Petition was untimely and asking that this Court stay proceedings until it disposed of the Application. (Application to Quash.) Petitioner, by and through his attorney, filed an Answer to the Board’s Application, requesting this Court to deny the Board’s Application to Quash and to grant a stay for another 30 days. (Answer to Application to Quash.) This Court issued an order requiring the parties to submit appellate briefs on the Application to Quash on July 10, 2025.

On August 8, 2025, Counsel filed the Application to Withdraw. He also filed a No-Merit or *Turner* Letter on the same date. He served Petitioner with a copy of

both filings. On August 14, 2025, this Court ordered Counsel to serve a copy of an Order on Petitioner stating Petitioner has the right to obtain counsel who can file a brief on his behalf within 30 days of the Order being issued or to submit a brief without representation from counsel within 30 days and provide proof of service on Petitioner. Counsel filed a Certificate of Service in response to this Court’s August 14, 2025 Order, which stated Counsel had served a copy of the Order to Petitioner, on August 18, 2025.

By Orders dated July 10, 2025, and April 22, 2026, this Court directed that the Application to Quash and Application to Withdraw be resolved along with the merits of the Petition.

II. APPLICATION TO QUASH

In its Application to Quash, the Board argues Petitioner should have filed his Petition by February 13, 2025, and did not do so. (Application to Quash ¶¶ 9-10.)² The Board concludes by asserting that there is no excuse for the untimely filing and that Petitioner’s case should therefore be dismissed due to lack of jurisdiction over an untimely filing. (*Id.* ¶¶ 11-12.)

² The Board also argues it properly dismissed Petitioner’s original appeal from the November 9, 2023 revocation as untimely. (Application to Quash ¶¶ 7-8.) Petitioner’s Answer to the Board’s Application to Quash counter-argues that the Court should not enforce the deadline to file an appeal from the November 9, 2023 decision because the Board “fail[ed] to provide contact information for the public defender responsible for assisting him.” (Answer to Application to Quash ¶ 6 (citing *Smith v. Pa. Bd. of Prob. & Parole*, 81 A.3d 1091 (Pa. Cmwlth. 2013)).) Petitioner argues the Board failed to provide him with contact information for a public defender since he was detained in New York, and there was no SCI Parole Office, much less a Pennsylvania public defender’s office, in the county of his detention. (*Id.* ¶¶ 5-6.) He also argues the failure of the Board to provide Petitioner with that information means, per *Smith*, that its dismissal of Petitioner’s challenge to the recalculation of his maximum date was erroneous. (*Id.* ¶ 7.) These arguments go to the merits of the Petition and thus may only be addressed if we dismiss the Board’s Application to Quash, thereby determining we have jurisdiction to address the merits of this appeal.

Petitioner's Answer to the Board's Application to Quash contends that the Board was obligated to transfer Petitioner's Extension Motion, which reflected Petitioner's intention to appeal to this Court, when he improperly filed that appeal with the Board. (Answer to Application to Quash ¶ 8.) Had the Board transferred the Extension Motion, he argues this Court could have treated that motion as a petition for review, and Petitioner's appeal would have been timely.

"A petition for review of a quasijudicial order, or an order appealable under [] any [] provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order." Pennsylvania Rule of Appellate Procedure 1512(a)(1), Pa.R.A.P. 1512(a)(1). The 30-day deadline for appeals is jurisdictional. *See St. Clair v. Pa. Bd. of Prob. & Parole*, 493 A.2d 146, 154 (Pa. Cmwlth. 1985).

There is no dispute that Petitioner filed his Petition with this Court 5 days after the 30-day deadline. However, Petitioner argues that he filed an Extension Motion before the expiration of the 30-day deadline, albeit with the Board, not this Court. (Answer to Application to Quash ¶¶ 8-9.) Petitioner maintains that if the Extension Motion is treated as an appeal to this Court, it would have complied with the 30-day deadline and thus would be timely. According to Petitioner, consistent with *Shovel Transfer & Storage, Inc. v. Pennsylvania Liquor Control Board*, 689 A.2d 910, 912 (Pa. 1997), the Board should have transferred his Extension Motion to this Court, as his Extension Motion was not a second appeal to the Board but rather reflected his intent to appeal the January 14, 2025 Order to this Court. (Answer ¶ 8.)

Section 5103 of the Judicial Code provides that

[i]f an appeal **or other matter** is taken to or brought in a court or magisterial district of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial

district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth. A matter which is within the exclusive jurisdiction of a court or magisterial district judge of this Commonwealth but which is commenced in any other tribunal of this Commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth where it shall be treated as if originally filed in the transferee court or magisterial district of this Commonwealth on the date when first filed in the other tribunal.

42 Pa.C.S. § 5103(a) (emphasis added).

Here, the Extension Motion was a request to extend the time to file an appeal that still related to Petitioner's desire to appeal the Board's January 14, 2025 Order, which extension request should have been filed with this Court. As stated, the Board recognized that Petitioner was seeking, in this communication, to challenge its Order, and it should have transferred the Extension Motion to this Court for consideration pursuant to Section 5103(a) of the Judicial Code. Although the Court cannot extend the time for filing an appeal, *see* Pennsylvania Rule of Appellate Procedure 105(b), Pa.R.A.P. 105(b),³ had the request for an extension of time been properly transferred to this Court, the Court could have, consistent with practice, treated the transferred Extension Motion as a defective communication relating to an appeal. In those situations, the Court preserves the filing date and permits the filing of a proper petition for review within a designated period of time, typically 30 days. Here, Petitioner filed his Petition with this Court on February 18, 2025, 11 days after filing the Extension Motion. The Board's failure to transfer the Extension Motion was, in effect, a breakdown in the administrative process that prevented the

³ Rule 105(b) states, relevantly, "the court may not enlarge the time for filing . . . a petition for review" Pa.R.A.P. 105(b).

filing of a timely appeal through this process, and Petitioner acted with reasonable diligence in filing his Petition and the Board has not expressed how it is prejudiced by any delay. Accordingly, under the principles of *nunc pro tunc* relief, this Court has jurisdiction over Petitioner's appeal. *Smith v. Pa. Bd. of Prob. & Parole*, 81 A.3d 1091, 1094 (Pa. Cmwlth. 2013).

Therefore, this Court has jurisdiction to consider his Petition and Counsel's Application to Withdraw, and it will now do so.

III. APPLICATION TO WITHDRAW

We next consider Counsel's Application to Withdraw. Under *Turner*, Counsel is required to "present[] a 'no-merit' letter detailing the nature and extent of his review and listing **each issue** [P]etitioner wished to have raised, with [C]ounsel's explanation of why those issues were meritless." 544 A.2d at 928 (emphasis added). Counsel then must request permission to withdraw and "send to [P]etitioner: (1) a copy of the [No-Merit] letter/brief; (2) a copy of [C]ounsel's [Application] to [W]ithdraw; and (3) a statement advising [P]etitioner of the right to proceed pro se or by new counsel." *Zerby v. Shanon*, 964 A.2d 956, 960 (Pa. Cmwlth. 2009) (emphasis omitted). Once Counsel satisfies these procedural or technical requirements of *Turner*, this Court will "conduct its own review of the merits of the case." *Id.*

Here, Counsel has submitted the Application to Withdraw, along with proof of service of his *Turner* Letter and Application to Withdraw on Petitioner. (*Turner* Letter at 12-13; Appl. to Withdraw at 4-5.) Additionally, within his Application to Withdraw, Counsel states that he had advised Petitioner of his rights to proceed as self-represented or with new counsel. While Counsel did not provide the Court with the exact documentation of his communication of these rights to Petitioner, the

Application to Withdraw itself expressly states that Petitioner has the right to proceed with new counsel. (Appl. to Withdraw ¶ 3.) Counsel further stated that Petitioner may alternatively “raise any points that he might deem worthy of consideration as required by *Craig v. Pennsylvania Board of Probation and Parole*, . . . 502 A.2d 758 (1985),” in other words, to proceed as self-represented, thereby satisfying this *Turner* requirement. (Appl. to Withdraw ¶ 3.) Additionally, a review of Counsel’s *Turner* Letter reflects Counsel’s detailed review of Petitioner’s case as it sets forth the history of the matter and the Board’s actions as reflected in the Certified Record. Accordingly, we are satisfied that these *Turner* requirements were met.

As to Counsel addressing the issues Petitioner wants to raise,⁴ Counsel’s *Turner* Letter addresses Petitioner’s timeliness claims and his argument that the Board abused its discretion in denying him parole and in denying Petitioner credit for his time spent at liberty on parole. (*Turner* Letter at 9-10.) In his Petition, Petitioner also argues the Board erred in improperly “extending his original [judicially imposed] sentence for more than [three] years” to January 2031, which he says is “capricious and unreasonable,” especially because his new offense “is not a violent one in nature.” (Petition ¶¶ 9-13 (emphasis omitted).)

In his *Turner* Letter, Counsel states the Board could not apply Petitioner’s presentence confinement time in New York to his Pennsylvania sentence, as that confinement time went towards his federal charges. (*Turner* Letter at 10.) However, Counsel does not address Petitioner’s additional claim that the Board abused its

⁴ This Court’s review of the case is limited to “whether the decision was supported by substantial evidence, whether an error of law occurred[,] or whether constitutional rights were violated.” *Brown v. Pa. Bd. of Prob. & Parole*, 184 A.3d 1021, 1023 n.5 (Pa. Cmwlth. 2017) (citation omitted).

discretion in unlawfully extending Petitioner's judicially-imposed original sentence. Counsel also does not address Petitioner's claim that the Board's decision was capricious and unreasonable. Counsel therefore did not comply with the requirements under *Turner*, which obligate him to address **each issue** Petitioner raised, and this Court therefore cannot grant his Application to Withdraw. Consequently, this Court must deny his Application to Withdraw without prejudice and with leave to file a new application to withdraw that complies with *Turner's* requirements or a brief on the merits of Petitioner's claims within 30 days.

IV. CONCLUSION

Because we conclude that this Court has jurisdiction, the Application to Quash is denied. Additionally, since Counsel did not meet all of the technical requirements of *Turner*, this Court denies the Application to Withdraw without prejudice. Counsel shall have 30 days to submit a new application to withdraw that complies fully with the *Turner* requirements or a brief on the merits of Petitioner's claims.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sergio Polanco,	:	
Petitioner	:	
	:	
v.	:	No. 213 C.D. 2025
	:	
Pennsylvania Parole Board,	:	
Respondent	:	

ORDER

NOW, October 19, 2026, upon consideration of Sergio Polanco's (Petitioner) Petition for Review and the applications for relief filed in this matter, the Pennsylvania Parole Board's Application for Summary and Special Relief is **DENIED**, and Petitioner's Appointed Counsel's Application for Withdrawal of Appearance is **DENIED** without prejudice. Appointed Counsel David Crowley is ordered to submit either a new application to withdraw that complies fully with *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) or a brief on the merits of Petitioner's claims within 30 days of the issuance of this Order.

RENÉE COHN JUBELIRER, President Judge