

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wilbert Taveras Payano, :  
Petitioner :  
 :  
v. : No. 258 C.D. 2025  
 : Submitted: June 16, 2026  
Pennsylvania Parole Board, :  
Respondent :

BEFORE: HONORABLE ANNE E. COVEY, Judge  
HONORABLE STACY WALLACE, Judge  
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE WALLACE

FILED: October 28, 2026

Wilbert Taveras Payano (Payano) petitions for review (Petition) of a February 18, 2025 order (Order) of the Pennsylvania Parole Board (Board), dismissing as untimely Payano's appeal from a decision recommitting him as a convicted parole violator (CPV) to serve the remainder of his original maximum sentence without possibility of parole. Payano's appointed counsel (Counsel) submitted a *Turner* letter<sup>1</sup> advising the Court the appeal lacks merit, along with an Application for Withdrawal of Appearance (Application). After review, we grant the Application and affirm the Order.

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

## **I. Facts and Procedural History**

On February 4, 2019, Payano pled guilty in the Montgomery County Court of Common Pleas to a violation of the Controlled Substance, Drug, Device, and Cosmetic Act.<sup>2</sup> Certified Record (C.R.) at 1. That court sentenced Payano to a minimum term of incarceration of 4 years and 6 months, and a maximum term of 15 years. *Id.*

On December 17, 2019, the Board paroled Payano to the custody of United States Immigration and Customs Enforcement (ICE) for removal from the United States, pursuant to 61 Pa.C.S. § 6143. *Id.* at 4. The notice of parole informed Payano if he re-entered the United States illegally he would be recommitted to serve the remainder of his maximum term without the possibility of parole. *Id.* at 27. Payano acknowledged receipt of that notice. *Id.* at 26.<sup>3</sup>

On March 3, 2020, Payano was deported to the Dominican Republic. *Id.* at 24. On April 3, 2023, the Board charged Payano with a parole violation after agents of the United States Department of Homeland Security arrested him in Philadelphia in possession of seven kilograms of fentanyl. *Id.* Payano waived counsel and a hearing, and admitted the parole violation, in writing. *Id.* at 20-22.

On April 19, 2023, the Board recommitted Payano as a technical parole violator. *Id.* at 45. On August 23, 2023, the Board modified that decision and re-paroled Payano pending resolution of the criminal charges against him. *Id.* at 48.

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<sup>2</sup> Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. §§ 780-101 - 780-144.

<sup>3</sup> The statute under which the Board initially paroled Payano allowed the Board, in its discretion, to parole him to the custody of ICE for removal. 61 Pa.C.S. § 6143(a), (b). The same provision required the Board, if it later determined Payano re-entered the country illegally after that initial parole and removal, to recommit him to serve the remainder of his maximum term of incarceration, without possibility of parole. 61 Pa.C.S. § 6143(d).

On November 29, 2023, Payano pled guilty in federal court to one count of an indictment charging illegal re-entry into the United States after deportation, in violation of 8 U.S.C. § 1326(a) and (b)(1), which sentenced him to 21 months of incarceration. *Id.* at 58. The Board then issued a notice of charges and parole revocation hearing based on this conviction. *Id.* at 49. Payano again waived counsel and hearing, and admitted the parole violation, in writing. *Id.* at 51.

On August 26, 2024, the Board recommitted Payano as a CPV to serve the remainder of his maximum term pursuant to 61 Pa.C.S. § 6143. *Id.* at 82. On August 29, 2024, the Board mailed that decision to Payano. *Id.*

On November 12, 2024, Counsel filed an appeal to the Board on Payano's behalf. *Id.* at 84-85. The appeal form acknowledged Payano did not appeal within the 30-day period allowed by regulation. *Id.*; see 37 Pa. Code. § 73.1. It asserted the Board should permit Payano to appeal *nunc pro tunc* because he did not receive the decision until October 23, 2024, and because he speaks little or no English and did not understand the implications of the decision until another inmate explained it to him. C.R. at 84-85. Payano requested an evidentiary hearing on the request to appeal *nunc pro tunc*. *Id.* at 85.

On February 18, 2025, the Board dismissed Payano's appeal on the ground it was not timely submitted. *Id.* at 86-87.

Counsel filed the Petition on March 4, 2025, but then submitted a *Turner* letter on July 15, 2025, indicating Counsel concluded the appeal lacked merit. *Turner* Letter (Letter), 7/15/2025, at 1. Counsel concluded Payano did not timely submit his appeal to the Board and could not establish grounds to appeal *nunc pro tunc*. *Id.* at 4-6. Counsel further indicated that even if the Board allowed a *nunc pro tunc*

appeal no basis existed on the merits to seek relief from the Board’s decision. *Id.* at 6-7.

## **II. *Turner* Letter and Application to Withdraw**

Before considering the merits of Payano’s appeal, we must first address Counsel’s Letter and Application. Where court-appointed counsel believes the petitioner’s case lacks merit, this Court may permit counsel to withdraw from the representation if counsel submits a *Turner* letter that “detail[s] the nature and extent of . . . [counsel’s] review and list[s] each issue the petitioner wished to have raised, with counsel’s explanation of why those issues . . . [are] meritless.” *Turner*, 544 A.2d at 928. Further, we must confirm counsel satisfied the following procedural requirements: (1) counsel notified the petitioner of the request to withdraw; (2) counsel provided the petitioner with a copy of the *Turner* letter; and (3) counsel advised the petitioner of his right to retain new counsel or file a brief on his own behalf. *Miskovitch v. Pa. Bd. of Prob. & Parole*, 77 A.3d 66, 69 (Pa. Cmwlth. 2013). Where counsel satisfies these procedural requirements, we conduct an independent review of the issues and, if we concur in counsel’s assessment, we may grant counsel leave to withdraw. *Hont v. Pa. Bd. of Prob. & Parole*, 680 A.2d 47, 48 (Pa. Cmwlth. 1996).

Counsel satisfied the technical *Turner* requirements in this case. The Letter sets forth the relevant factual and procedural history. Letter at 2-3. It explains that Counsel reviewed the certified record and supplemental record, and his notes of his meetings with Payano, as well as written correspondence. *Id.* at 1. The Letter further indicates after that Counsel concluded “the issues raised in the administrative appeal and petition for review lack merit and . . . there exists no legal basis to challenge the Board[’s] determinations . . . .” *Id.* Counsel analyzes the issues Payano raised in his

appeal and discusses the record facts and applicable law, explaining the basis for Counsel’s conclusion that the appeal lacks merit. *Id.* at 4-7. The certificate of service attached to the letter confirms Counsel provided a copy to Payano, and the Application verifies Counsel informed Payano of his right to retain new counsel or file a brief on his own behalf to “raise any points that he might deem worthy of consideration . . . .” Application, ¶ 3.

As Counsel complied with *Turner’s* requirements, we now independently review the merits of the Petition.

### **III. Discussion**

In reviewing the Board’s decision, we are limited to determining whether constitutional rights have been violated, whether an error of law has been committed, or whether the necessary findings of fact are supported by substantial evidence. *Gibson v. Pa. Bd. of Prob. & Parole*, 3 A.3d 754, 755 n.1 (Pa. Cmwlth. 2010) (citing Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704).

Payano had 30 days to appeal the Order. 61 Pa.C.S. § 6113(d)(1). The appeal needed to “be received at the Board’s Central Office within 30 days of the mailing date of the Board’s order.” 37 Pa. Code § 73.1(a)(1); *Cadogan v. Pa. Bd. of Prob. & Parole*, 541 A.2d 832, 833 (Pa. Cmwlth. 1988). Timeliness of the appeal is jurisdictional, therefore, the Board lacks power to consider an untimely appeal. *Ayers v. Pa. Bd. of Prob. & Parole*, 565 A.2d 1257, 1258 (Pa. Cmwlth. 1989).

The Board’s decision was mailed to Payano on August 29, 2024. C.R. at 82. Payano’s appeal was not received by the Board – indeed, was not sent – within 30 days of that date. *Id.* at 84-85. Payano did not dispute the appeal was late under the regulation but sought leave to appeal *nunc pro tunc*. *Id.* The Order dismissed Payano’s appeal as untimely because it was not submitted within 30 days after the

mailing of the decision, implicitly rejecting Payano’s request for leave to appeal *nunc pro tunc* and his plea for a factual hearing on that request. *Id.* at 86-87. We review the Board’s decision to refuse *nunc pro tunc* relief for abuse of discretion. *See Muma v. Dep’t of Health, Div. of Nursing Care Facilities*, 223 A.3d 742, 754 (Pa. Cmwlth. 2019); *Washington v. Pa. Bd. of Prob. & Parole* (Pa. Cmwlth., No. 22 C.D. 2009, filed Oct. 21, 2009), slip op. at 8 n.3.<sup>4</sup>

Payano asserted two grounds for allowance of a *nunc pro tunc* appeal. First, he alleged he did not receive the Order until October 23, 2024. C.R. at 84. Mere allegation of non-receipt does not constitute a legally sufficient basis for *nunc pro tunc* appeal. *Cadogan*, 541 A.2d at 834 (“Petitioner contends that there was no proof he actually received notice of the Board’s decision. However, there is nothing in this case indicating that notice was not properly sent. . . . The mere allegation of a failure to receive notice is not sufficient cause for allowing a *nunc pro tunc* appeal.”).

Second, Payano asserted he speaks little or no English and did not understand the implications of the Order until another inmate explained it to him. C.R. at 84-85. This allegation also does not constitute a legally adequate justification for untimely appeal. *See Basnet v. Unemployment Comp. Bd. of Rev.*, 284 A.3d 263, 268-70 (Pa. Cmwlth. 2022) (Nepali-speaking claimant could not meet the “heavy burden” of justifying *nunc pro tunc* relief because she did not show she resorted to available sources of assistance); *see also Williamson v. Dep’t of Transp., Bureau of Driver Licensing*, 129 A.3d 597, 601-02 (Pa. Cmwlth. 2015) (appellant’s failure to understand clear and straightforward language in notice did not constitute grounds for *nunc pro tunc* appeal; party is charged with knowledge of information

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<sup>4</sup> We may rely upon this memorandum opinion for its persuasive value. *See City of Phila. v. 1531 Napa, LLC*, 333 A.3d 39, 47 n.6 (Pa. Cmwlth. 2025).

unequivocally communicated by notice); *Finney v. v. Unemployment Comp. Bd. of Rev.*, 472 A.2d 752, 753 (Pa. Cmwlth. 1984) (claimant's asserted inability to understand the proper procedure did not warrant *nunc pro tunc* appeal).

Furthermore, any delay in filing the appeal cannot be attributed to any difficulties Payano might have had with the English language. Under his putative timeline, it only took 19 days after Payano says he first saw the decision to enlist counsel for assistance with the filing of his appeal. The alleged language barrier is not the issue here, but rather the lack of evidentiary support for his allegation that he did not receive the final decision until October 23, 2024.

Because the appeal did not assert grounds sufficient to justify a *nunc pro tunc* appeal, the Board did not abuse its discretion by refusing one – or by refusing a hearing on the request for one. *Marconi v. Ins. Dep't*, 641 A.2d 1240, 1242 (Pa. Cmwlth. 1994) (hearing required only if party asserts grounds that if proven would justify *nunc pro tunc* appeal).

#### **IV. Conclusion**

For the reasons stated in this Memorandum Opinion, we grant the Application and affirm the Order.

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STACY WALLACE, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                            |                     |
|----------------------------|---------------------|
| Wilbert Taveras Payano,    | :                   |
| Petitioner                 | :                   |
|                            | :                   |
| v.                         | : No. 258 C.D. 2025 |
|                            | :                   |
| Pennsylvania Parole Board, | :                   |
| Respondent                 | :                   |

**ORDER**

**AND NOW**, this 28th day of October 2026, the Application for Withdrawal of Appearance as Counsel, filed by Petitioner's appointed counsel, the Centre County Public Defender's Office, by and through David Crowley, Esquire, Chief Public Defender of Centre County, Pennsylvania, is **GRANTED**, and the Order of the Pennsylvania Parole Board, dated February 18, 2025, is **AFFIRMED**.

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STACY WALLACE, Judge