

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Dennis,	:	
Petitioner	:	
	:	
v.	:	No. 75 C.D. 2025
	:	
Pennsylvania Parole Board,	:	Submitted: May 12, 2026
Respondent	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: August 27, 2026

Michael Dennis (Petitioner) petitions for review of the Pennsylvania Parole Board's (Board) decision, mailed on December 19, 2024, which dismissed as untimely his request for administrative relief from the Board's July 24, 2024 decision (mailed August 1, 2024). Additionally, Kent D. Watkins, Esquire (Counsel), Petitioner's appointed counsel, has filed an Application to Withdraw from representing Petitioner, and the Board has filed a Motion to Quash the Petition as untimely filed. In response to the Board's Motion to Quash, Petitioner contends that he has been denied the right to effective assistance of counsel and that this Court should consider his appeal of the Board's decision *nunc pro tunc*.

Upon review, we (1) deny the Board's Motion to Quash, (2) grant Petitioner *nunc pro tunc* relief for this Petition, (3) deny Counsel's Application to Withdraw, (4) vacate the Board's December 19, 2024 decision (mailed December 19, 2024), and (5) remand the matter to the Board for an evidentiary hearing to determine

whether an administrative breakdown occurred before the Board. If it determines that *nunc pro tunc* relief is appropriate, the Board shall issue a new decision on the merits of Petitioner’s administrative remedies appeal.

Facts and Procedural History

On March 16, 2016, Petitioner entered a guilty plea in the Lehigh County Court of Common Pleas (trial court) to three counts of driving under the influence (DUI). The trial court sentenced Petitioner to an aggregate term of 10 years to 11 years, 30 days’ incarceration with minimum and maximum dates of August 17, 2016, and August 18, 2025, respectively. (Certified Record (C.R.) at 1, 6.)

On September 9, 2023, while on parole, Petitioner was arrested by Pennsylvania State Police in Bethlehem for, among other things, DUI and driving under a suspended or revoked license. The Board was notified of the new charges on September 11, 2023. *Id.* at 38. On April 22, 2024, Petitioner pled guilty in the trial court to DUI – third offense and various traffic offenses. The trial court sentenced him to 60 days’ incarceration to be followed by 12 months of county probation. *Id.* at 39. On July 12, 2024, Counsel entered his appearance at Petitioner’s violation and revocation hearing, at which Petitioner admitted his criminal conviction.¹ *Id.* at 76.

On July 24, 2024, the Board issued a decision (mailed August 1, 2024), recommitting Petitioner as a convicted parole violator (CPV) to serve a recommitment period of six months. While Counsel represented Petitioner at his July 12, 2024 parole revocation hearing, the Board’s recommitment order shows that it was mailed to Petitioner but **does not indicate that the decision was sent to Counsel, as required by the Board’s Rules.** *See* 37 Pa. Code § 71.4(8) (requiring revocation orders for

¹ We note that indigent parolees are entitled to the assistance of counsel at parole revocation hearings and in appealing an adverse decision by the Board. *Bronson v. Pennsylvania Board of Probation & Parole*, 421 A.2d 1021, 1026 (Pa. 1998).

convicted parole violators to be transmitted to the parolee and to counsel of record); *see also Calcagni v. Pennsylvania Board of Probation & Parole*, 582 A.2d 1141, 1143 (Pa. Cmwlth. 1990) (holding that the board’s failure to send the recommitment order to parolee’s attorney in compliance with the regulation constituted “negligence on the part of administrative officials” and directing the board to consider the merits of the parolee’s appeal *nunc pro tunc*). In its decision, the Board granted Petitioner credit for time spent at liberty on parole and calculated his new maximum date as May 22, 2027. C.R. at 75, 100. The Board’s decision informed Petitioner that if he wished to appeal the decision, he must file a request for administrative relief with the Board within 30 days of the mailing date of the decision, July 24, 2024. *Id.* at 101. Therefore, Petitioner had until August 23, 2024, to appeal the Board’s decision.

Petitioner’s Administrative Appeal

The record indicates that Petitioner did not file a response to the Board’s decision until December 3, 2024, when he filed a *pro se* request for administrative relief in which he argued that the Board failed to grant him credit for all the time he spent at liberty on parole. *Id.* at 106.

By decision dated December 19, 2024 (mailed on December 19, 2024), the Board dismissed Petitioner’s administrative appeal as untimely² because it was not filed “within the established 30-day time frame set forth in the Board’s regulation authorizing administrative relief. 37 Pa. Code § 73.1.”³ (C.R. at 108.) On December

² In his untimely request for administrative relief, Petitioner offered no explanation for the lateness of his filing, nor did he request that the Board accept his filing *nunc pro tunc*.

³ Section 73.1(b)(1) and (3) of the Board’s Regulations provide, in pertinent part:

(b) Petitions for Administrative Review.

(1) A parolee . . . may petition for administrative review under this subsection of determinations relating to revocation decisions

(Footnote continued on next page...)

23, 2024, Petitioner filed a second request for relief with the Board raising the same issue. *Id.* at 110. By letter dated January 8, 2025, the Board dismissed the second request as an unauthorized second or subsequent request for relief which could not be accepted. *See* 37 Pa. Code § 73.1(b)(3). (C.R. at 112.)

On January 7, 2025, Counsel sent a letter to the Board, which it received on January 9, 2025. The letter stated, “[p]lease enter my appearance on behalf of the above[-]captioned inmate and notify my office when a decision is entered concerning his *pro se* administrative appeal or a new board action is issued.” (C.R. at 113.) On January 14, 2025, the Board responded to Counsel’s letter, stating, “This is a response to the correspondences received from you on January 9, 2025. Please see that [sic] attached decision that was reached in response to your client’s challenge of the Board’s decision recorded on July 24, 2024. Your correspondence will be made part of the permanent record.” *Id.* at 115. The Board attached to its correspondence a copy of its decision, mailed December 19, 2024, dismissing Petitioner’s Administrative Remedies Appeal as untimely. *Id.* at 116.

Petitioner’s Petition for Review

Petitioner’s Counsel filed a Petition for Review in this Court on January 22, 2025, **two days after the deadline** for filing petitions for review had passed. By

Petitions for administrative review shall be received at the Board’s Central Office within 30 days of the mailing date of the Board’s determination.

. . . .

(3) Second or subsequent petitions for administrative review and petitions for administrative review which are out of time under this part will not be received.

37 Pa. Code § 73.1(b)(1), (3).

per curiam order dated March 4, 2025, this Court directed the parties to address whether the Petition for Review was untimely in their principal briefs or in an appropriate motion.⁴ By letter dated March 6, 2025, Petitioner’s Counsel filed a *Turner* letter⁵ with this Court.

In his *Turner* letter, Petitioner’s Counsel stated that “[a]fter conducting an exhaustive review of the record, **I have concluded that [Petitioner’s] appeal was untimely filed.**” (*Turner* Letter at p. 1.) He also provided a detailed account of the procedural history of Petitioner’s case, but in contrast to the Petition for Review, which Counsel filed and signed, he made no mention of Petitioner’s filing of an Administrative Remedies Form in August of 2024, to which the Board failed to respond. *See id.* at p. 6. He then stated that **both the administrative remedies form and the petition for review were not filed within the 30-day time period and, “[t]herefore, the filings being untimely there are no grounds for appeal.”** *Id.* at 7. Despite the fact that **Counsel himself filed the untimely petition for review**, his *Turner* letter provided no information as to the circumstances surrounding the filing of the petition and the reasons why it may have been untimely filed. We accordingly deny his Application to Withdraw.⁶

⁴ To date, no briefs have been filed in this matter.

⁵ The term “*Turner* letter” refers to the seminal case *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988), in which our Supreme Court “set forth the appropriate procedures for the withdrawal of court-appointed counsel in collateral attacks on criminal convictions.” *Id.* at 927-29. In a *Turner* letter pertaining to a parole violation matter, an attorney seeks leave of court to withdraw representation because “the [violation’s] case lacks merit, even if it is not so anemic as to be deemed wholly frivolous.” *Commonwealth v. Wrecks*, 931 A.2d 717, 722 (Pa. Super. 2007).

⁶ On March 10, 2025, this Court issued a *per curiam* order informing Petitioner that he could, within 30 days after service of the order on Petitioner by Counsel, either (1) obtain substitute counsel at his own expense and have new counsel enter an appearance and file a brief on his behalf; or (2) file a *pro se* brief. On March 19, 2025, Petitioner requested an extension of time to either obtain substitute **(Footnote continued on next page...)**

The Board's Motion to Quash

On February 25, 2026, the Board filed a Motion to Quash the Petition for Review as untimely filed. The Motion noted that Petitioner had neither obtained substitute counsel nor filed a *pro se* brief on the merits. (Motion to Quash, ¶¶ 7-14.) In response to the Board's Motion to Quash, on March 10, 2026, Petitioner filed a *pro se* Reply to the Motion to Quash (Reply) requesting that he be granted *nunc pro tunc* relief because he claimed that the late filing of the Petition for Review was caused by Counsel's error. (Reply, ¶¶ 4-6.) More specifically, Petitioner stated:

1. Upon receipt of the denial letter from the PA Parole Board, mail date 12/19/2024, Petitioner sought out counsel from the Public Defender of Schuylkill County.
2. Kent Watkins, Esquire, responded to Petitioner that Mr. Watkins would file the Petition for Review.
3. Mr. Watkins did file the Petition for Review on or about January 22, 2025.
4. Any delay or untimely filing of the Petition for Review was due to counsel's error and not the Petitioner's error.
5. Petitioner should not be punished for counsel's error in filing a Petition for Review untimely.
6. Petitioner requests that the Court consider granting *Nunc Pro Tunc* Relief in the form of granting the Petition for Review as timely filed.

(*Id.*, ¶¶ 1-6.) Petitioner then argued that because of his Counsel's egregious error, he is conflicted and can no longer represent Petitioner in the instant matter. Petitioner stated that his Counsel should withdraw based on a conflict of interest and that Petitioner should be granted new counsel. Therefore, as relief, Petitioner requested that this Court deny Respondent's Motion to Quash, grant *Nunc Pro Tunc* relief in the

counsel or file his own brief. This Court granted Petitioner's request giving him until May 12, 2025, to comply.

form of deeming the Petition for Review to be timely filed, and appoint new counsel to represent Petitioner with respect to the claims raised in the Petition for Review. *Id.* at ¶¶ 7-10.

On March 20, 2026, this Court issued a *per curiam* order advising the parties that the merits panel would consider the Board’s Motion to Quash and Petitioner’s Reply, along with Counsel’s Application to Withdraw and *Turner* letter.

Discussion⁷

As an initial matter, we must consider whether the Petition for Review was timely filed because “[t]he timeliness of an appeal and compliance with the statutory provisions which grant the right of appeal go to the jurisdiction of the court to hear and decide the appeal.”⁸ *Altieri v. Pennsylvania Board of Probation & Parole*, 495 A.2d 213, 214 (Pa. Cmwlth. 1985); *see also Riverlife Task Force v. Planning Commission of City of Pittsburgh*, 966 A.2d 551, 556-57 (Pa. 2009) (holding that the issue of timeliness “is a threshold question that implicates this Court’s jurisdiction”). Petitions for review of a Board decision related to parole revocation must be received within 30 days after the entry of a Board order denying a petition for administrative review. Pennsylvania Rule of Appellate Procedure (Pa.R.A.P.) 1512(a)(1) also provides that “[a] petition for

⁷ Our standard of review in parole revocation cases is limited to determining whether the Board committed an error of law, whether its findings are supported by substantial evidence, and whether its decision violated constitutional rights. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704.

⁸ Because the issue of whether a court has jurisdiction to review an appeal raises a question of law, our standard of review is *de novo* and our scope of review is plenary. *Pennsylvania Manufacturers’ Association Insurance Company v. Johnson Matthey, Inc.*, 188 A.3d 396, 398 (Pa. 2018).

review of a quasi[-]judicial order . . . shall be filed with the prothonotary of the appellate court *within 30 days* after the entry of the order” (emphasis added).⁹

Petitioner filed his Petition for Review on January 22, 2025, 34 days after the Board’s decision dismissing Petitioner’s request for administrative relief, which was mailed on December 19, 2024. Therefore, the Petition for Review is facially untimely. Pa.R.A.P. 105(b) provides that, as a general matter, “[a]n appellate court . . . may not enlarge the time for filing . . . a petition for review[.]” Pa.R.A.P. 105(b).

In very limited circumstances, however, the 30-day appeal period can be extended to allow for *nunc pro tunc* appeals. The law regarding *nunc pro tunc* appeals is well established. “[F]ailure to timely appeal an administrative agency’s action is a jurisdictional defect; consequently, the time for taking an appeal cannot be extended as a matter of grace or mere indulgence.” *H.D. v. Department of Public Welfare*, 751 A.2d 1216, 1219 (Pa. Cmwlth. 2000) (citations omitted). A *nunc pro tunc* appeal may be allowed only where extraordinary circumstances involving fraud or some breakdown in the administrative process caused the delay in filing, or where non-negligent circumstances related to the petitioner, his or her counsel, or a third party caused the delay. *Cook v. Unemployment Compensation Board of Review*, 671 A.2d 1130, 1131 (Pa. 1996). The party seeking relief has the burden of demonstrating that he meets the requirements for *nunc pro tunc* relief. *Id.* at 1132.

⁹ Pa.R.A.P. 108, which governs the date of entry of orders for timeliness purposes, provides, in pertinent part, as follows:

(a) General Rule.

(1) . . . [I]n computing any period of time under these rules involving the date of entry of an order by a court or any other government unit, the day of entry shall be the day the clerk of the court or the office of the government unit mails or delivers copies of the order to the parties[.]

. . . .

Pa.R.A.P. 108(a)(1).

In Petitioner’s Reply, he asserts that the late filing of the Petition for Review was caused by Counsel’s error and that “Petitioner should not be punished for [C]ounsel’s error in filing a Petition for Review untimely.” (Reply, ¶¶ 4, 5.) However, Petitioner provides no information regarding the circumstances surrounding his retention of Counsel or the filing of his Petition for Review. Petitioner simply requests that this Court “consider granting *nunc pro tunc* relief in the form of granting the Petition for Review as timely filed.” *Id.*, ¶ 6.

There is no question that Petitioner has a right to effective assistance of counsel when appealing a parole revocation decision of the Board to this Court. *Dorsey v. Pennsylvania Board of Probation & Parole*, 573 A.2d 628, 629 (Pa. Cmwlth. 1990). In *Larkin v. Pennsylvania Board of Probation & Parole*, 555 A.2d 954, 956 (Pa. Cmwlth. 1989), this Court stated that,

[i]f in fact the [p]etitioner did request his attorney to file an appeal, the failure to do so may have constituted ineffectiveness of counsel. And, if the untimeliness of [the p]etitioner’s appeal were the result of some third party’s intervening negligence, then an appeal [*nunc pro tunc*] under these circumstances would be appropriate.

Id. at 957.

In the present case, Petitioner, through Counsel, filed a facially untimely Petition for Review with this Court. After the Petition for Review was filed, this Court directed the parties on March 4, 2025, to address whether the Petition was timely filed. Two days later, Counsel asked to withdraw, stating that both the Petition for Review and the appeal of the Board’s administrative decision were untimely and without merit. Shortly thereafter, on March 10, 2025, this Court issued a *per curiam* order informing Petitioner that he could either obtain substitute counsel at his own expense or file a *pro*

se brief.¹⁰ However, on March 10, 2026, Petitioner filed a reply to the Board’s Motion to Quash in which he asserted that the late filing of the Petition for Review was caused by his Counsel’s error and requested this Court to “consider granting *nunc pro tunc* relief in the form of granting the Petition for Review as timely filed.” (Reply, ¶¶ 4-6.)

We find that Counsel’s failure to both file a timely appeal and respond to this Court’s order directing the parties to address the issue of timeliness are sufficient grounds to entitle Petitioner to *nunc pro tunc* relief before this Court. Because we grant Petitioner’s request for *nunc pro tunc* relief, we now consider the merits of his appeal.

The first issue Petitioner raises in his Petition for Review concerns the Board’s finding that Petitioner’s administrative remedies form was untimely filed. On this issue, Petitioner states:

The [] Board dismissed [P]etitioner’s administrative remedies form postmarked December 6, 2024. [P]etitioner filed an administrative remedies form with the [B]oard in August of 2024 to which the Board failed to respond. The [B]oard did not respond until [P]etitioner filed a subsequent, untimely administrative remedies form dated December 3, 2024, challenging the [B]oard decision dated August 7, 2024.

(Petition for Review, ¶ 6.)

We have held that “[a] delay in filing an appeal that is not attributable to the parolee, such as the intervening negligence of a third-party or a breakdown in the administrative process may be sufficient to warrant *nunc pro tunc* relief.” *Smith v. Pennsylvania Board of Probation & Parole*, 81 A.3d 1091 (Pa. Cmwlth. 2013) (quoting *Larkin*, 555 A.2d at 957-58). Several circumstances have been held to constitute grounds for the allowance of a *nunc pro tunc* appeal in the prison setting. The failure of the Board to serve either the offender or the offender’s counsel of record

¹⁰ Although this Court granted Petitioner nearly six weeks of additional time, until May 12, 2025, he neither obtained new counsel nor filed anything *pro se*.

with a copy of the Board's decision on the offender's administrative appeal or petition for administrative relief constitutes a breakdown in the administrative process entitling the offender to a *nunc pro tunc* appeal. *Calcagni*, 582 A.2d 1141. Similarly, the offender's failure to receive a copy of the Board's administrative appeal or review decision resulting from the Board sending the decision to the wrong address will also serve as grounds for a *nunc pro tunc* appeal. *Moore v. Pennsylvania Board of Probation & Parole*, 508 A.2d 1099 (Pa. Cmwlth. 1986). Even where the Board properly mails the notice of an administrative appeal or review decision, if, as a result of the negligence of prison officials in failing to timely forward the offender's mail, the offender does not receive that decision in time to file a timely appeal, a *nunc pro tunc* appeal will be allowed. *Bradley v. Pennsylvania Board of Probation & Parole*, 529 A.2d 66 (Pa. Cmwlth. 1987).

Here, Petitioner has alleged that he never received a response from the Board to his first, timely filed request for administrative relief. This Court has stated that "[i]f a record has not been sufficiently developed to allow complete appellate review, a remand is appropriate." *McNally v. Pennsylvania Board of Probation & Parole*, 940 A.2d 1289, 1294 (Pa. Cmwlth. 2008).

Instantly, deficiencies in the record before us render it impossible to determine whether Petitioner's allegation concerning the Board's failure to respond to his initial administrative remedies form has arguable merit. We also note that the Board's order revoking Petitioner's parole indicates only that it was sent to Petitioner, not to his Counsel of record, as required by the Board's own rules. Because the record as a whole is insufficient to resolve these issues, we conclude that it is necessary to remand this matter to the Board to hold an evidentiary hearing to determine whether an administrative breakdown occurred, caused by either (1) the Board's failure to send to Counsel a copy of the Board's revocation decision or its decision denying Petitioner's *pro se* administrative remedies form, or (2) the Board's failure to respond

to Petitioner's initial request for administrative relief. If such an administrative breakdown occurred, the Board then must determine whether *nunc pro tunc* relief is appropriate.

Given that Petitioner has alleged, and this Court has found, that Counsel has been ineffective before this Court, we recognize that continued representation of Petitioner by his current Counsel may be problematic. However, our Supreme Court addressed a similar issue by stating that the proper procedure is to permit Petitioner an opportunity to select new counsel in the subsequent proceeding:

[t]he appellant, of course, need not acquire new counsel, for every person has a right to retain counsel of his choice. *Commonwealth v. Robinson*, [] 364 A.2d 665 (Pa. 1976); *Commonwealth v. Ross*, [] 350 A.2d 836 (Pa. 1976). But before an appellant decides to retain his counsel, he should be made aware of the dangers and possible disadvantages of proceeding with counsel he asserts is ineffective. Therefore, on remand, the court should inform the appellant of the facts necessary to ensure that his decision is knowing and intelligent.

Commonwealth v. Gardner, 389 A.2d 58, 60 (Pa. 1978).

Therefore, upon remand, the Board shall determine whether Petitioner desires to proceed with counsel from the Schuylkill County Public Defender's Office or, as Petitioner requests in his Reply, he wishes to have new counsel appointed to represent him in any future proceedings. In addition, should the Board determine that Petitioner is entitled to *nunc pro tunc* relief, it should issue a new decision on the merits of the issues raised in Petitioner's administrative remedies form.

Accordingly, we vacate the Board's order and remand this matter for an evidentiary hearing in accordance with the directives set forth in this memorandum opinion. If the Board determines that *nunc pro tunc* relief is appropriate, it should issue

a new decision on the merits of Petitioner's administrative remedies appeal.¹¹ We further deny the Board's Motion to Quash and Counsel's Application to Withdraw.

PATRICIA A. McCULLOUGH, Judge

¹¹ Given our disposition, nothing would preclude any aggrieved party from timely seeking review in this Court of the Board's decision on remand regarding *nunc pro tunc* relief, the merits of Petitioner's claims, or both.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Dennis,	:	
Petitioner	:	
	:	
v.	:	No. 75 C.D. 2025
	:	
Pennsylvania Parole Board,	:	
Respondent	:	

ORDER

AND NOW, this 27th day of August, 2026, Petitioner's request for *nunc pro tunc* relief for this Petition is GRANTED. In addition, the December 19, 2024 Order of the Pennsylvania Parole Board (Board) entered in the above-captioned matter is hereby VACATED, and this matter is REMANDED for an evidentiary hearing to be conducted by the Pennsylvania Parole Board within 30 days of the date of this Order and in accordance with the foregoing memorandum opinion. It further is ordered that the Board's Motion to Quash and the Application to Withdraw filed by Kent. D. Watkins, Esq. are DENIED.

Jurisdiction relinquished.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Dennis,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 75 C.D. 2025
	:	
Pennsylvania Parole Board,	:	
	:	
Respondent	:	Submitted: May 12, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

CONCURRING OPINION BY
JUDGE WOLF

FILED: August 27, 2026

I join the well-written Majority in full. I write separately to express deep concern about the Pennsylvania Parole Board’s (Board) potential non-compliance with Section 71.4(8) of its regulations in this case. 37 Pa. Code § 71.4(8). Because this regulation functions to safeguard Petitioner’s statutory right to counsel, it is essential the Board fully, faithfully, and transparently fulfill its duty thereunder. Based on the record in this case, I am concerned that the Board is not fulfilling its duty and, if it is, it is not making a transparent record to reflect its compliance. As detailed more specifically below, it appears that here, counsel of record in a parole revocation hearing was not notified—where a regulatory requirement requires notice—of his client’s parole revocation. Perhaps counsel was notified. But if he was, the record must reflect such notification. If he was not, then the Board is in violation of its regulatory notice requirement, which raises the

question of whether this is a systemic problem. It is imperative that the record provides a clear answer to this question.

Section 9960.6(a) of the Public Defender Act¹ charges the public defender with the responsibility to furnish legal counsel in certain types of cases to any person who, for lack of sufficient funds, is unable to obtain legal counsel. 16 P.S. § 9960.6(a). “Probation and parole proceedings and revocation thereof”—due to their substantial effect on a parolee’s rights—are one such type of case where legal counsel is guaranteed. 16 P.S. § 9960.6(a)(10); *Bronson v. Bd. of Prob. & Parole*, 421 A.2d 1021, 1026 (Pa. 1980), *cert. denied*, 450 U.S. 1050 (1981). In *Vereen v. Board of Probation & Parole*, 515 A.2d 637, 640 (Pa. Cmwlth. 1986), this Court stated “a parolee’s statutory right to counsel includes the right that counsel’s assistance be effective.”²

¹ Act of December 2, 1968, P.L. 1144, *as amended*, 16 P.S. § 9960.6.

² The *Vereen* Court further explained:

Parole cases are thus distinguishable from other administrative proceedings where we have declined to extend the right to effective assistance of counsel. *See e.g., Rosenthal v. State Board of Pharmacy*, [] 457 A.2d 243 ([Pa. Cmwlth.] 1983) (disciplinary hearing before State Board of Pharmacy); *Johnson v. Workmen’s Compensation Appeal Board (Bernard S. Pinkus Co.)*, [] 321 A.2d 728 ([Pa. Cmwlth.] 1974) (proceeding to set aside final receipt in workmen’s compensation case). This distinction is due, in part, to the recognized liberty interest, as opposed to a property interest, a parolee has in the limited freedom offered by parole and that the parole revocation process may very well lead to the reincarceration of the parolee. *See Morrissey v. Brewer*, 408 U.S. 471[] (1972); *Commonwealth ex rel. Rambeau v. Rundle*, 314 A.2d 842 ([Pa.] 1973). In *Rambeau*, Justice (later Chief Justice) Henry X. O’Brien, noted the importance of counsel assistance to a parolee when he recognized that the parole revocation proceeding is the very last contact the parolee has with the Board before “his cell door is slammed shut, perhaps for life.” [] 314 A.2d at 847 (quoting *Commonwealth v. Johnson*, [] 236 A.2d 805 [[Pa.] 1968]).

515 A.2d at 640.

The statutory right to counsel in parole revocation hearings does not extinguish at the close of the administrative hearing but rather extends through the prosecution of subsequent appeals. *Larkin v. Pa. Bd. of Prob. & Parole*, 555 A.2d 954, 956 (Pa. Cmwlth. 1989) (“Indigent parolees are entitled to the assistance of counsel both at parole revocation hearings and in the prosecution of subsequent appeals as of right.”) (citing *Bronson*, 421 A.2d at 1026). Indeed, the “right to effective assistance of counsel includes the right to assistance in the task of perfecting an appeal from a denial of administrative relief by the Board.” *Id.*

The statutory right to counsel in parole revocation hearings is reflected in the Board’s regulations for parolees convicted of a new criminal offense. 37 Pa. Code § 71.4. Section 71.4(2), for example, explains that prior to a revocation hearing, a parolee will be notified of the right to retain counsel or be appointed a public defender. 37 Pa. Code § 71.4(2). Importantly, and in concert with the concept that the right to representation extends through the filing of an appeal, Subsection (8) states: “If revocation is ordered, the revocation decision shall be transmitted to the parolee **and to counsel of record.**” 37 Pa. Code § 71.4(8) (emphasis added).

In the instant matter, Petitioner was represented by Kent D. Watkins, Esquire (Counsel) at his July 12, 2024 parole revocation hearing following his guilty plea in the Lehigh County Court of Common Pleas for various charges. Counsel’s representation at the revocation hearing is reflected in the transcript of the proceedings. Certified Record at 74. The Board’s subsequent decision to recommit Petitioner, recorded July 24, 2024, and mailed August 1, 2024, shows it was sent to:

CLIENT COPY
SMART COMMUNICATIONS/PADOC
MICHAEL DENNIS ML7118
SCI - MAHANOY
PO BOX 33028
ST PETERSBURG FL 33733-8028

Id. at 100. There is no notation or other evidence in the record to indicate that the recommitment decision was ever sent to Counsel. If it was sent to Counsel, this should be reflected in the transmittal. The absence of indicia of service raises the concern in my mind that the recommitment decision was not contemporaneously sent to Counsel. Again, the regulation requires notice to Counsel.

One need not imagine the potential problems that may arise from the Board's failure to follow its own regulation and notify a public defender of an adverse decision to his client, as this case appears to illustrate them for us. From timeliness issues that produce jurisdictional hurdles, to questions regarding the effective assistance of counsel, the Board's compliance with the regulation is paramount.

As the Majority aptly notes, on this record, we are left to guess whether the Board mailed the July 24, 2024 revocation decision to Counsel. Whether it did or whether it did not, both have significant implications. If the Board notified Counsel and he did not confer with his client about the possibility of an appeal, that raises the question of whether Petitioner received effective assistance of counsel, which Petitioner is entitled to during the administrative proceeding itself, and through any appeal by right thereof. *Bronson*, 421 A.2d at 1026; *Larkin*, 555 A.2d at 956. If the Board did not notify Counsel, causing no timely appeal to be taken, that is an administrative breakdown warranting nunc pro tunc relief. *See Calcagni*

v. Board of Prob. & Parole, 582 A.2d 1141, 1143 (Pa. Cmwlth. 1990). Either way, evidence of whether the Board did or did not comply with Section 71.4(8) must be produced at the evidentiary hearing in order to protect not only Petitioner’s statutory right to counsel, 16 P.S. § 9960.6(a)(10), but his constitutional right to an effective one. *Vereen*, 515 A.2d at 640.

Section 71.4(8) of the Board’s regulations is a critical administrative function that, in practice, protects both statutory and constitutional rights of parolees in this Commonwealth. The record in this case falls gravely short of reassuring the Court that the Board’s compliance with this regulation is routine. We should not be left guessing. Because the Board’s failure to provide counsel with its decision following a revocation hearing renders a parolee’s statutory right to counsel illusory, I feel compelled to emphasize the importance of the Board’s strict and transparent³ compliance therewith.

MATTHEW S. WOLF, Judge

³ To be clear, “transparent” in this context means evidence of compliance with legal requirements which is of record, so the world may know legal obligations are being fulfilled.