IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kenyon Williams, Petitioner	:	
v.	:	No. 1142 C.D. 2009
	:	Submitted: January 15, 2010
Pennsylvania Board of Probation and Parole, Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: June 30, 2010

Kenyon Williams (Williams) petitions for review of a determination of the Pennsylvania Board of Probation and Parole (Board) denying his administrative appeal. Williams' appointed counsel, Luzerne County Assistant Public Defender Jonathan D. Ursiak (Counsel), has filed an amended application for leave to withdraw as counsel. For the reasons that follow, we deny Counsel's amended application.

Williams is serving a five to ten year sentence for his conviction for robbery with threat of serious injury. When his sentence was imposed, Williams' maximum sentence date was February 13, 2007. On March 15, 2004, Williams was paroled.

On March 22, 2005, Williams was arrested by the Philadelphia Police Department for sexual crimes. Williams was detained on the Board's warrant

pending disposition of the new criminal charges. On May 24, 2005, and November 17, 2005, the Board issued decisions to continue Williams' detainer pending disposition of the criminal charges. Subsequently, Williams was convicted of one count of involuntary deviate sexual intercourse and two counts of corruption of minors.[1] Sentencing was deferred. On May 15, 2006, the Board issued a decision recommitting Williams as a convicted parole violator to serve the lesser of 44 months or his unexpired term, when available. Williams did not appeal.

In early 2008, additional charges were brought against Williams for crimes committed in September 2004. On May 22, 2008, Williams pleaded guilty to the charge of statutory sexual assault and was sentenced to three and a half to seven years.[2] The Board received certification of the new conviction on August 5, 2008, and held a revocation hearing on September 18, 2008. Williams attended the hearing and objected to the hearing as being untimely.

In a combined parole revocation and sentence recalculation order mailed on December 24, 2008, the Board recommitted Williams as a convicted parole violator because of his statutory sexual assault conviction. The Board recalculated his new parole violation maximum date to be June 27, 2008. Williams then filed a request for administrative relief asserting that the revocation hearing

---

[1] Despite our careful review of the record, the circumstances of this conviction are not clear. Williams says that he signed a guilty plea on March 1, 2006. It is also unclear when these particular crimes were committed. The documents in the certified record reflect incidents occurring in September 2004 and another incident occurring in February 2005.

[2] Williams' sentence was to run concurrent to "Seq. 1 CP-51-CR-0403871-2005." Certified Record at 24, 33. There is no explanation in the record of what this means, but it seems to be a reference to Williams' earlier conviction that formed the basis for the Board's action in May 2006.

was untimely and that his maximum sentence date should have remained February 13, 2007. Williams also took issue with the minimum and maximum dates of his new sentence. On May 15, 2009, the Board affirmed its order, and denied Williams' petition for administrative review.

Williams then petitioned for this Court's review of the Board's decision. Williams again argues that the 2008 revocation hearing was untimely; that the Board was not permitted to change his parole violation maximum date in 2008 when it could have, but did not, do so in 2006; and that the dates of his new sentence have been miscalculated. This Court appointed Counsel to represent Williams, and Counsel filed an application for leave to withdraw as counsel, supported by an *Anders*[3] brief. On September 14, 2009, this Court issued an order striking the application to withdraw and the brief without prejudice because Counsel failed to address any of the issues raised by Williams in his petition for review. Counsel then filed a second application to withdraw. The second application is supported by what Counsel has labeled an *Anders* brief, but it is actually a no-merit letter.

When Counsel believes that an appeal is without merit, he may file a petition to withdraw pursuant to *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988). This Court has summarized the requirements established by *Turner* as follows:

> [C]ounsel seeking to withdraw from representation of a petitioner seeking review of a determination of the Board must provide a "no-merit" letter which details "the nature and extent of [the attorney's] review and list[s] each issue the petitioner wished to have raised, with counsel's explanation of why those

[3] *Anders v. State of California*, 386 U.S. 738 (1967).

> issues are meritless." *Turner*, 518 Pa. at 494-95, 544 A.2d at 928…. A no-merit letter must include "substantial reasons for concluding that" a petitioner's arguments are meritless. *Jefferson v. Pennsylvania Board of Probation and Parole*, 705 A.2d 513, 514 (Pa. Cmwlth. 1998).

Zerby v. Shanon, 964 A.2d 956, 961-962 (Pa. Cmwlth. 2009). This Court must review the contents of the no-merit letter and determine if it meets the requirements of *Turner*. *Zerby*, 964 A.2d at 960 (quoting *Commonwealth v. Wrecks*, 931 A.2d 717, 721 (Pa. Super. 2007)). If it does not, this Court will not reach the merits of the underlying claim; instead, we will merely deny counsel's request to withdraw and direct counsel to file either a proper no-merit letter or an advocate's brief. *Id.*

Here, Counsel's no-merit letter includes a cursory recitation of the procedural and factual history. Although Counsel discusses the March 2005 arrest and the May 2008 guilty plea, he only mentions the March 2006 guilty plea and the Board's May 2006 recommitment order in passing. Counsel then identifies the issues as whether the revocation hearing was untimely and whether the Board erred by not keeping Williams' maximum date as February 13, 2007. The full extent of Counsel's analysis of these issues is as follows:

> Based on a review of the regulations and accompanying case law, counsel could not locate any cases supporting Williams' contention that his revocation hearing was untimely. Thus, counsel believes any appeal is frivolous and without merit.
>
> ***
>
> Based on a review of the regulations and accompanying case law, counsel could not locate any cases supporting Williams' contention that his max date remain February 13, 2007. Thus, counsel believes any appeal is frivolous and without merit.

Counsel's *Anders* Brief at 5, 6.

Counsel's no-merit letter does not demonstrate that he has adequately reviewed the case. The gravamen of Williams' appeal is that the 2006 guilty plea and recommitment order preclude the Board from holding another revocation hearing and recalculating his maximum date in 2008. Counsel barely mentions the events of 2006, and he makes no attempt to explain the connection between those proceedings and the 2008 guilty plea and recommitment/recalculation order. Further, Counsel's legal analysis does not cite to any statute or regulation applicable to the timeliness of a revocation hearing or the Board's recalculation of a parole violation maximum date. Baldly asserting that Counsel could not locate any cases to support Williams' contentions is insufficient to explain to Williams or this Court why and how the issues raised by Williams lack merit. What is more, Counsel has not addressed Williams' argument that the dates of his new sentence were miscalculated. In sum, Counsel has failed to fulfill his obligation to explain the extent of his review, list each issue and provide "substantial reasons" why Williams' arguments are meritless.

Therefore, we deny Counsel's amended application to withdraw, with leave to file another amended application for leave to withdraw and no-merit letter or, alternatively, a brief in support of Williams' petition, within 30 days. This is the second time Counsel has filed a deficient application and no-merit letter in this case. Should Counsel fail to file an appropriate application and no-merit letter or Petitioner's brief within 30 days, he may be sanctioned.

_____

MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kenyon Williams, Petitioner	:	
v.	:	No. 1142 C.D. 2009
Pennsylvania Board of Probation and Parole, Respondent	:	

ORDER

AND NOW, this 30th day of June, 2010, the amended application for leave to withdraw as counsel, filed by Luzerne County Assistant Public Defender Jonathan D. Ursiak, is hereby DENIED with leave to file an amended application and no-merit letter within 30 days. Should Counsel choose not to file such an application, he shall file a Petitioner's Brief within 30 days of this Order.

_____

MARY HANNAH LEAVITT, Judge