

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alfredo Maldonado, :  
Petitioner :  
 :  
v. : No. 1395 C.D. 2009  
 : Submitted: March 5, 2010  
 :  
Pennsylvania Board of :  
Probation and Parole, :  
 :  
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FLAHERTY

FILED: April 22, 2010

This case is before us on the petition for leave to withdraw as counsel filed by Kent D. Watkins (Counsel), from his representation of Alfredo Maldonado (Maldonado). Maldonado petitions for review from an order of the Pennsylvania Board of Probation and Parole (Board) which denied his request for administrative relief from the Board's recommitment order. We grant Counsel's request to withdraw and affirm the order of the Board.

Maldonado was sentenced in Lancaster County to a term of five to ten years for robbery and five to ten years for criminal attempt of robbery. His longest minimum sentence was April 20, 2006 and his longest maximum sentence was April 20, 2011. Maldonado was paroled on July 16, 2007.

In an action dated November 15, 2007, the Board declared Maldonado delinquent effective November 13, 2007. On January 5, 2008, Maldonado turned himself in and was charged with violating conditions #2 and #3a of his parole, changing residence without permission and failure to report as instructed.

On January 23, 2009, a violation hearing was conducted. At the hearing, Maldonado admitted to violating condition #2, in that he did not have written permission from the parole staff to change his residence. Maldonado also admitted that he did not maintain regular contact with parole staff, in violation of condition #3a. (Certified record at p. 40). As a result, the Board issued a decision dated February 25, 2009, recommitting Maldonado to serve twelve months of backtime for violating conditions #2 and #3a.

Maldonado thereafter filed a *pro se* request for administrative relief. In an action mailed July 8, 2009, the Board affirmed the decision.

Maldonado filed a petition for review with this court. Thereafter, Maldonado filed a motion for extension of time to file a brief and permission to file a reduced number of copies. In an order dated January 15, 2010, this court granted the motion. Maldonado subsequently filed a brief with this court and also filed an amended petition for review. Maldonado, however, did not seek permission to file an amended petition for review and, as such, the amended petition for review is stricken.<sup>1</sup>

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<sup>1</sup> We note that in the amended petition for review, Maldonado raised issues which were not raised before the Board. Namely, Maldonado claimed that the Board did not exercise due diligence after learning that he violated his parole and that it was prejudicial to allow testimony about other parole violations. Failure to raise an issue before the

Before addressing the merits of the case, we first address Counsel's application to withdraw his appearance. As stated in Zerby v. Shanon, 964 A.2d 956 (Pa. Cmwlth. 2009), in accordance with Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988), Epps v. Pennsylvania Board of Probation and Parole, 565 A.2d 214 (Pa. Cmwlth. 1989) and Frankhouser v. Pennsylvania Board of Probation and Parole, 598 A.2d 607 (Pa. Cmwlth. 1991), counsel seeking to withdraw from representation of a parolee seeking review of a determination of the Board must provide a "no-merit" letter. The "no-merit" letter must contain the nature and extent of counsel's review, and list each issue the parolee wishes to raise with an explanation as to why those issues are meritless. Counsel must also inform the parolee of his right to retain new counsel or submit a brief on his own behalf. Reavis.

In performance of his duties, Counsel has reviewed the record certified by the Board to this court and has set forth in his letter the issues raised in Maldonado's petition for review from the Board's determination. Counsel has also addressed each issue and explained why each is without merit. Specifically, as to whether substantial evidence supports the Board's decision, Counsel points out that Maldonado admitted before the Board that he violated conditions #2 and #3a. Further, although Maldonado claims that his recommitment period was excessive, Counsel responds that it is within the presumptive range. Finally, as to Maldonado's claim that he was not represented by counsel at the hearing, Counsel states that the certified record shows that Maldonado was in fact represented by counsel.

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Board results in waiver and precludes this court's review. Reavis v. Pennsylvania Board of Probation and Parole, 909 A.2d 28 (Pa. Cmwlth. 2006).

We next make an independent review of Maldonado's claims.<sup>2</sup> With respect to the parole violations, we observe that Maldonado, when asked whether he changed his residence without permission in violation of condition #2, Maldonado replied, "Yes ma'am." (Record at 40.) When asked whether he failed to maintain regular contact with parole staff, a violation of condition #3a, Maldonado again replied, "Yes ma'am." (Id.) A parolee's admissions to asserted parole violations constitute substantial evidence. Pitch v. Pennsylvania Board of Probation and Parole, 514 A.2d 638 (Pa. Cmwlth. 1986.)

As to whether the backtime imposed by the Board was excessive, we observe that, as set forth in 37 Pa. Code § 75.4, the presumptive range for multiple violations of the general conditions of parole is six to eighteen months. Here, the twelve month recommitment period imposed by the Board is well within the presumptive range.

Finally, this court's review of the record indicates that Maldonado was represented by counsel at the Board's hearing, that Maldonado had an opportunity to speak with his counsel and that he was ready to proceed. (Record at 37.)

We conclude that Counsel has thoroughly examined the record, set forth the issues, researched the applicable law and correctly analyzed the merits of Maldonado's appeal. We have also reviewed the issues independently and agree with Counsel's assessment that Maldonado's

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<sup>2</sup> This court's review is limited to determining whether constitutional rights were violated, whether the adjudication was in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. McPherson v. Pennsylvania Board of Probation and Parole, 785 A.2d 1079 (Pa. Cmwlth. 2001).

appeal is without merit. As such, the application of Counsel filed with this court for leave to withdraw his appearance is granted and the order of the Board is affirmed.

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JIM FLAHERTY, Senior Judge

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	:	
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**ORDER**

Now, April 22, 2010, the amended petition for review filed by Alfredo Maldonado is stricken. The order of the Pennsylvania Board of Probation and Parole in the above-captioned matter is affirmed and the petition to withdraw as counsel filed by Kent D. Watkins is granted.

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JIM FLAHERTY, Senior Judge