

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

George Serrano, :
Petitioner :
 :
v. : No. 1712 C.D. 2010
 : Submitted: February 18, 2011
Pennsylvania Board of Probation :
and Parole, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: May 5, 2011

George Serrano (Serrano) petitions for review of an adjudication of the Pennsylvania Board of Probation and Parole (Board) denying his administrative appeal. Serrano's appointed counsel, Centre County Chief Public Defender David Crowley (Counsel), has filed an application for leave to withdraw as counsel. Finding no error in the Board's decision, we affirm and also grant Counsel leave to withdraw.

On August 19, 1985, Serrano was sentenced to serve five to ten years in prison after his conviction for robbery and criminal conspiracy. Certified Record at 7, (C.R. ___). He was released on parole on December 19, 1990, with a maximum parole violation date of August 19, 1995. On August 22, 1991, Serrano was arrested in Miami, Florida for robbery and kidnapping with a firearm, and on November 20, 1991, he was convicted and sentenced to life imprisonment. On

September 23, 1992, his sentence was reduced to 25 years imprisonment and 25 years probation. On June 19, 1992, seven months after Serrano's Florida conviction, the Board issued a warrant for Serrano's arrest as a convicted parole violator.

On November 23, 2009, the Board was notified that the State of Florida was releasing Serrano to the Board's warrant. On December 3, 2009, the Board issued a decision to return Serrano to Pennsylvania as a convicted parole violator. He was returned on December 12, 2009, and placed into SCI-Camp Hill.

Serrano's revocation hearing was held on March 12, 2010. The Board issued a decision recommitting Serrano for 36 months as a convicted parole violator and extending his maximum parole violation date to August 12, 2014. On May 14, 2010, Counsel, on behalf of Serrano, filed an administrative appeal, asserting several errors. First, the revocation hearing, held 15 years after the expiration of Serrano's maximum sentence, was too late. Second, the Board failed to declare Serrano delinquent prior to the expiration of his parole and, thus, could not have him arrested. Third, the Board incorrectly calculated Serrano's maximum parole violation date. The Board issued a new decision on August 16, 2010, which dismissed Serrano's first two contentions but granted relief on the third. The Board recalculated Serrano's maximum parole violation date to be August 7, 2014. Serrano now petitions this Court for review.¹

¹ Our review is limited to determining whether substantial evidence supports the Board's decision, and whether the Board erred as a matter of law or violated the parolee's constitutional rights. *Harden v. Pennsylvania Board of Probation and Parole*, 980 A.2d 691, 695 n.3 (Pa. Cmwlth. 2009).

On appeal,² Serrano raises two issues for our review.³ First, Serrano argues that the Board did not hold his parole revocation hearing in a timely matter. Second, he argues that the Board lacked jurisdiction to revoke his parole.

Before we address the merits of Serrano’s petition for review, we must first consider whether Counsel has fulfilled the technical requirements for a petition to withdraw from representation. When counsel believes 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).⁴ This Court has summarized the requirements under *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

² In his petition for review, Serrano generally objects to the Board’s determination on the grounds that the Board lacked sufficient evidence for its factual findings, violated its own regulations, and violated his due process rights. However, he only specifically raises the following two issues: (1) whether the Board’s hearing was untimely; and (2) whether the Board lacked jurisdiction to revoke his parole.

³ Serrano, in his brief to this Court, raises the following issues under the heading “other issues:” (1) that the Board erred in calculating his time credit; and (2) that the Board erred in failing to accept documentation he offered showing his original inmate number had been maxed out. However, these issues were not raised in his petition for review, nor were they “fairly comprised” in any issue raised in the petition. Therefore, these issues are waived. *See Tyler v. Unemployment Compensation Board of Review*, 591 A.2d 1164, 1168 (Pa. Cmwlth. 1991) (stating that when a petitioner fails to include an issue in his petition for review, but addresses the issue in his brief, this Court may decline to consider the issue, since it was not raised in the stated objections in the petition for review, nor “fairly comprised therein” in accordance with Pa.R.A.P. 1513). *See also* Pa.R.A.P. 1513(d) (requiring a petition for review to contain a general statement of the objections to the order and noting that the statement of objections will be deemed to include every subsidiary question fairly comprised therein).

⁴ Counsel must also notify the parolee of his request to withdraw, furnish the parolee with a copy of the no-merit letter, and inform the parolee that he has a right to retain new counsel or proceed *pro se*. *Zerby v. Shanon*, 964 A.2d 956, 961 (Pa. Cmwlth. 2009)

wished to have raised, with counsel’s explanation of why those issues are meritless.”

Zerby, 964 A.2d at 961 (citations omitted). Furthermore, a no-merit letter must include “substantial reasons for concluding that” a petitioner’s arguments are meritless. *Id.* at 962. If we determine that counsel is correct that his client’s claims lack merit, we will allow counsel to withdraw and deny relief. Conversely, if the claims appear to be meritorious, we will deny counsel’s request and grant relief or instruct counsel to file a brief on behalf of his client. *Id.*

On December 13, 2010, Counsel served a copy of his no-merit letter on Serrano, which letter took the form of a brief in support of his application to withdraw. However, the brief satisfied the requirements of a no-merit letter, and we will treat it as such. Counsel informed Serrano of his right either to retain new counsel or to proceed *pro se*, and he supplied Serrano with a copy of the certified record. Counsel’s no-merit letter detailed all of the issues he raised on behalf of Serrano in his petition for review to this Court, as well as two additional arguments regarding Serrano’s appeal.⁵ Counsel then thoroughly analyzed each issue and explained why there are substantial reasons for concluding that each argument is without merit. Counsel’s no merit letter satisfies the technical requirements of *Turner*, and we grant Counsel’s application for leave to withdraw.

Having determined that Counsel has fulfilled the requirements for withdrawal of representation, we now consider the merits of Serrano’s appeal. For

⁵ As noted earlier, the two additional issues regarding Serrano’s appeal that were included in Counsel’s brief to this Court are waived. However, Counsel, in an effort to prepare a thorough no-merit letter, addressed these issues for Serrano’s personal benefit and explained why they lack merit.

the following reasons, we concur in Counsel’s judgment that Serrano’s appeal lacks merit.

Serrano first argues that his March 12, 2010, revocation hearing was not timely because it was held 15 years after the expiration of his maximum sentence and after the Board closed his case and destroyed its files. Serrano contends that this 15-year delay violated his due process rights.

Before a parolee is recommitted as a convicted parole violator the Board must provide him a revocation hearing. 37 Pa. Code §71.4.⁶ Generally, the revocation hearing must be held within 120 days of the Board receiving official notification of a guilty plea or guilty verdict. *Id.* However, when the parolee is confined out of state, the revocation hearing must be held “within 120 days of the official verification of the return of the parolee to a State correctional facility.” 37 Pa. Code §71.4(1)(i). *See also Brooks v. Pennsylvania Board of Probation and Parole*, 704 A.2d 721, 723 (Pa. Cmwlth. 1997) (noting the well-settled principle that the 120-day period does not begin to run until the Board acquires jurisdiction over the parolee).

⁶ Section 71.4 provides, in relevant part:

[B]efore a parolee is recommitted as a convicted violator:

(1) A revocation hearing shall be held within 120 days from the date the Board received official verification of the plea of guilty or nolo contendere or of the guilty verdict at the highest trial court level except as follows:

(i) If a parolee is confined outside the jurisdiction of the Department of Corrections, such as confinement out-of-State, . . . the revocation hearing shall be held within 120 days of the official verification of the return of the parolee to a State correctional facility.

37 Pa. Code §71.4(1)(i).

Here, the certified record shows that the State of Florida released Serrano to the Board between December 7 and December 12, 2009. He was physically returned to Pennsylvania on December 12, 2009, which triggered the 120-day deadline for revoking Serrano's parole. The Board conducted his revocation hearing 90 days later, on March 12, 2010, well within the statutory time limit. There is no merit to Serrano's contention that his revocation hearing was untimely.

Finally, Serrano argues that the Board lacked jurisdiction to revoke his parole. Specifically, he contends that the Board lacked jurisdiction over him because the Board did not declare him delinquent prior to the expiration of his original maximum date or lodge a detainer against him.

The Board is expressly empowered to recommit a parole violator who "during the period of parole . . . commits a crime punishable by imprisonment, for which the parolee is convicted or found guilty by a judge or jury" 61 Pa. C.S. §6138(a)(1). This Court has consistently upheld the Board's right to recommit a parole violator, even if the parolee is not convicted until after his original sentence has expired, or where the Board does not become aware until after the expiration of the maximum sentence date that a parolee committed a crime while he was on parole. *See, e.g., Adams v. Pennsylvania Board of Probation and Parole*, 885 A.2d 1121, 1124 (Pa. Cmwlth. 2005) (noting that the Board can recommit and recompute the sentence of a parolee who commits a crime while on parole); *Williams v. Pennsylvania Board of Probation and Parole*, 654 A.2d 235 (Pa. Cmwlth. 1995) (holding that the Board can lodge a detainer after the expiration of a parolee's original maximum date, for a crime committed while on parole, upon learning of the commission of the crime). Further, we have held that the Board

retains this power “regardless of its prior administrative actions ... or the detention of the [parolee] by other authorities.” *Commonwealth ex rel. Hall*, 3 Pa. Cmwlth. 435, 443, 1971 WL 13022, *5 (Pa. Cmwlth. 1971).

It is undisputed that Serrano committed a crime in Florida while on parole and was convicted of that crime. The Board was entitled to recommit Serrano as a convicted parole violator. 61 Pa. C.S. §6138(a)(1).⁷ We have found no authority to support Serrano’s position that the Board has a deadline for issuing a warrant for arrest of an out-of-state parole violator, and Serrano does not cite to any such authority. Accordingly, we hold that it is irrelevant that the Board waited seven months to issue a warrant for Serrano’s arrest after his conviction in Florida.

In sum, Counsel has fulfilled the technical requirements for withdrawing his representation, and our independent review of the record before the Board reveals that Serrano’s issues on appeal are all without merit. Accordingly, we grant Counsel’s application for leave to withdraw and affirm the Board’s decision.

MARY HANNAH LEAVITT, Judge

⁷ It states:

(a) Convicted violators.--

(1) A parolee under the jurisdiction of the board released from a correctional facility who, during the period of parole or while delinquent on parole, commits a crime punishable by imprisonment, for which the parolee is convicted or found guilty by a judge or jury or to which the parolee pleads guilty or nolo contendere at any time thereafter in a court of record, may at the discretion of the board be recommitted as a parole violator.

61 Pa. C.S. §6138(a)(1).

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ORDER

AND NOW, this 5th day of May, 2011, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter, dated August 16, 2010, is AFFIRMED, and the application for leave to withdraw as counsel filed by Centre County Chief Public Defender David Crowley is GRANTED.

MARY HANNAH LEAVITT, Judge