

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ricky Clarkson,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Board of Probation and	:	
Parole,	:	No. 1803 C.D. 2009
	:	
Respondent	:	Submitted: February 26, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: March 29, 2010

Ricky Clarkson (Clarkson), an inmate currently imprisoned at the State Correctional Institution of Mahanoy (SCI Mahanoy), petitions for review of the order of the Pennsylvania Board of Probation and Parole (Board) for administrative relief from the revocation of his parole. Kent D. Watkins, Esquire (Counsel), Clarkson’s appointed counsel, has filed an application for leave to withdraw his appearance on the grounds that Clarkson’s appeal has no merit. Counsel submitted a letter in support of the application. For reasons set forth in this opinion, we grant Counsel’s petition for leave to withdraw, and affirm the order of the Board.

Clarkson was serving three concurrent four to eight year sentences for robbery when he was paroled on October 30, 2006. At that time, he had a minimum sentence date of January 8, 2006, and maximum sentence date of January 8, 2010.

On February 19, 2007, Clarkson was arrested on charges of manufacture/delivery or possession with intent to deliver a controlled substance and possession of a controlled substance, but he was unable to post bail at that time.<sup>1</sup> His bail was eventually posted on May 29, 2007; however, Clarkson remained in prison pursuant to a Board detainer. Clarkson was found guilty of the drug charges on December 17, 2007, and his bail was revoked. His new sentence was five to ten years. The conviction was certified by the Board on January 16, 2008.

A parole revocation hearing, at which Clarkson was represented by Counsel, was held on February 15, 2008. The Board recommitted Clarkson to SCI Mahanoy as a convicted parole violator to serve 24 months backtime, pending his sentencing. The Board recalculated Clarkson's maximum sentence date as March 15, 2011, after giving him credit for 202 days backtime.

Clarkson filed, through Counsel, a timely request for administrative relief alleging that the Board failed to give him credit for all of the time he served exclusively pursuant to the Board's warrant. The Board denied his request by an action mailed August 17, 2009. On September 17, 2009, Counsel filed a petition for review with this Court, on behalf of Clarkson, appealing the Board's denial of administrative relief.<sup>2</sup> On December 16, 2009, Counsel filed with this Court a petition to withdraw his representation, together with a no-merit letter claiming that there was no merit to Clarkson's arguments on appeal, since the Board correctly calculated his new maximum sentence date (no-merit letter).

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<sup>1</sup> Counsel's letter in support of his petition to withdraw indicates that Clarkson's arrest was on February 17, 2007; however, the arrest report indicates that the arrest was made on February 19, 2007.

<sup>2</sup> Our scope of review of the Board's decision denying administrative relief is limited to determining whether necessary findings of fact are supported by substantial evidence, an error of law was committed, or constitutional rights have been violated. *McNally v. Pennsylvania Bd. of Prob. and Parole*, 940 A.2d 1289 (Pa. Cmwlth. 2008).

Under *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) (*Turner/Finley*), when counsel wants to withdraw representation, he must review the case zealously, and then:

submit a ‘no-merit’ letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel’s diligent review of the case, listing the issues which the petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw.

*Zerby v. Shanon*, 964 A.2d 956, 960 (Pa. Cmwlth. 2009). “A no-merit letter must include ‘substantial reasons for concluding that’ a petitioner’s arguments are meritless.” *Id.* at 962 (quoting *Jefferson v. Pennsylvania Bd. of Prob. and Parole*, 705 A.2d 513, 514 (Pa. Cmwlth. 1998)). This Court’s duty to examine the merits of the underlying appeal is triggered only if the petition to withdraw complies with *Turner/Finley*. See *Hont v. Pennsylvania Bd. of Prob. and Parole*, 680 A.2d 47 (Pa. Cmwlth. 1996). In the present case, Counsel’s letter detailed the nature and extent of his review of the case, listed Clarkson’s issue, and explained why and how the issue lacked merit. Counsel’s petition to withdraw complies with *Turner/Finley*, therefore, an examination of the merits of Clarkson’s appeal is triggered.

Clarkson’s only argument on appeal is that the Board miscalculated his credit and new maximum sentence date. Under Section 6138(a) of the Prisons and Parole Code (Code), 61 Pa.C.S. § 6138(a):

(1) A parolee under the jurisdiction of the board released from a correctional facility who, during the period of parole . . . commits a crime punishable by imprisonment, for which the parolee is convicted or found guilty . . . may at the discretion of the board be recommitted as a [convicted] parole violator.

(2) If the parolee's recommitment is so ordered, the parolee shall be reentered to serve the remainder of the term which the parolee would have been compelled to serve had the parole not been granted and shall be given no credit for the time at liberty on parole.

....

(4) The period of time for which the parole violator is required to serve shall be computed from and begin on the date that the parole violator is taken into custody to be returned to the institution as a parole violator.

Further, as our Supreme Court has explained:

if a defendant is being held in custody solely because of a detainer lodged by the Board and has otherwise met the requirements for bail on the new criminal charges, the time which he spent in custody shall be credited against his original sentence. If a defendant, however, remains incarcerated prior to trial because he has failed to satisfy bail requirements on the new criminal charges, then the time spent in custody shall be credited to his new sentence.

*Gaito v. Pennsylvania Bd. of Prob. & Parole*, 488 Pa. 397, 403-04, 412 A.2d 568, 571 (1980).

Clarkson's original maximum sentence date for his robbery convictions was January 8, 2010. He was paroled on October 30, 2006. On February 19, 2007, he was arrested on drug charges, and posted bail on May 29, 2007, however he remained in prison solely pursuant to the Board's detainer. On December 17, 2007, he was convicted of the drug charges, his bail was revoked, and he received his new sentence on July 24, 2008.<sup>3</sup> A parole violation hearing was held, and the Board recommitted Clarkson on February 29, 2008 to serve 24 months backtime. Clarkson then owed 1,166 days on his previous sentence, calculated as the number of days

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<sup>3</sup> Sentencing appears to have been delayed due to scheduling conflicts between the trial court's and Counsel's calendars.

between his October 30, 2006 release date and his January 8, 2010 original maximum sentence date. He was given 202 days credit toward the backtime for his incarceration between May 29, 2007 and December 17, 2007, when he was detained solely on the Board's detainer. Thus receiving credit for time served, Clarkson was left with 964 days of backtime yet to serve. He received no credit for the period between December 17, 2007 and July 24, 2008, since he was then incarcerated on his new conviction given that bail on the new charges was then revoked. Consequently, he was not available to start serving his backtime until July 24, 2008, the date on which he received his new sentence. The Board, thus, recalculated his new maximum sentence date as March 15, 2011. Clearly, the Board did not err in recalculating Clarkson's maximum sentence date.

Having made an independent evaluation of the issue presented, and having found that Counsel's no-merit letter satisfied the *Zerby* requirements and adequately addressed Clarkson's issue, we grant the application for leave for Counsel to withdraw his appearance, and affirm the Board's order.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 29<sup>th</sup> day of March, 2010, Counsel's application for leave to withdraw appearance is granted, and the order of the Pennsylvania Board of Probation and Parole, mailed August 17, 2009, is affirmed.

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JOHNNY J. BUTLER, Judge