

On April 8, 2005, Rivera was arrested by Berks County police for attempting to sell one kilogram of cocaine to undercover detectives. A Board detainer was lodged on April 8, 2005, and lifted on June 21, 2005, the date of Rivera's maximum sentence date. On September 21, 2005, the Commonwealth's charges were marked *nolle prosequi*. On October 11, 2005, federal authorities arrested Rivera for his conduct on April 8, 2005, under federal law.

On February 6, 2006, Rivera pleaded guilty to the federal charges, and the Board issued a detainer to Rivera. On March 1, 2006, Rivera posted bond and turned himself in to parole authorities.

A parole revocation hearing was held on March 9, 2006, at which Rivera waived his right to an attorney and acknowledged his federal conviction. On March 30, 2006, the Board recommitted Rivera to a state correctional institution as a convicted parole violator to serve 24 months back time, when available. Rivera remained in Board custody at that time. On November 16, 2006, he was sentenced to serve 48 months on the federal conviction, to run concurrently with his original sentence for robbery. Rivera began serving his federal sentence on September 19, 2007. Notwithstanding its February 3, 2006, detainer, the Board issued another detainer in December 2007. On April 30, 2009, Rivera was released from federal prison and returned to Board custody.

On May 5, 2009, the Board, on the basis of its recommital on March 30, 2006, calculated Rivera's maximum sentence date on the robbery conviction as September 21, 2012. On September 9, 2009, the Board issued a decision in which it acknowledged that it had erred in calculating Rivera's parole violation maximum date and, accordingly, established a new maximum sentence date of November 19,

2011.¹ Rivera filed a petition for administrative review. On October 6, 2009, the Board denied Rivera's petition and affirmed the September 9, 2009, decision. Rivera now petitions this Court for our review.²

On appeal, Rivera raises three issues for our consideration. First, he contends that his rights were violated because the Board had no jurisdiction to detain him after his original June 21, 2005, maximum date expired. Second, he argues that he did not receive proper credit for the time he was held on a Board detainer from December 4, 2007, to April 30, 2009. Third, he asserts that his rights were violated because he was not given assistance of counsel and mistakenly waived his parole hearing.³

Before we address the merits of Rivera's petition for review, we first consider whether Counsel has fulfilled the technical requirements for a petition to withdraw from representation. 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 recently summarized the requirements established by *Turner* as follows:

¹ In calculating the new maximum date, the Board gave Rivera credit for the 74 days he spent in Board custody from April 8, 2005, to June 21, 2005, and the 567 days he spent in Board custody from March 1, 2006, to September 19, 2007.

² 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).

³ We note that neither the first issue nor the third issue was raised in Rivera's administrative appeal to the Board. However, as the Board has not filed a brief arguing that those issues have been waived, and in the interests of fully addressing Rivera's concerns on appeal, we will reach the merits of those issues.

[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 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)). In addition, counsel must 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*. *Id.*

On January 18, 2010, Counsel served a copy of his *Turner* no-merit letter on Rivera. Counsel informed Rivera of his right to obtain substitute counsel or to submit a *pro se* brief to this Court. Counsel’s no-merit letter details Counsel’s thorough review of the record and Rivera’s appeal documents. Counsel’s letter also addresses all issues raised by Rivera and sets forth Counsel’s analysis of those issues along with “substantial reasons for concluding that” each is without merit. Counsel’s no-merit letter satisfies the technical requirements of *Turner*.

Having determined that Counsel has fulfilled the requirements for withdrawal of representation, we now consider whether Rivera’s appeal has merit. For the following reasons, we concur in Counsel’s judgment that it does not.

First, Rivera argues that he is being detained illegally because the Board did not have jurisdiction to detain him at all after his June 21, 2005, maximum sentence date on the original robbery conviction expired. Rivera points out that the conviction for which the Board recommitted him stemmed from an arrest made by federal authorities on October 11, 2005, *after* the expiration of his maximum date.

The Board has jurisdiction to recommit a parolee who commits a crime while on parole, regardless of when he is arrested for, or convicted of, that crime. *Reavis v. Pennsylvania Board of Probation and Parole*, 909 A.2d 28, 34 (Pa. Cmwlth. 2006).⁴ In *Reavis*, this Court addressed the exact issue Rivera now raises. We held that the date of the arrest or conviction on new charges is irrelevant; it is the date of the offense that is critical. So long as “the act constituting a violation occurred before the expiration of [the] maximum sentence date, the Board retain[s] jurisdiction to recommit” the parolee as a convicted parole violator. *Id.* at 34. *See also Adams v. Pennsylvania Board of Probation and Parole*, 885 A.2d 1121, 1124 (Pa. Cmwlth. 2005) (containing the identical holding).

⁴ This authority comes from Section 21.1 of the Act commonly referred to as the Parole Act, Act of August 6, 1941, P.L. 861, *as amended*, 61 P.S. §331.21a, added by the Act of August 24, 1951, P.L. 1401, *as amended*. The Parole Act was repealed by the Act of August 11, 2009, P.L. 147. Section 6138 of the Prisons and Parole Code contains the provisions previously found in Section 21.1 of the Parole Act. Section 6138(a)(1) states:

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).

Here, Rivera's crime occurred on April 8, 2005, *before* his maximum sentence date of June 21, 2005, passed. Therefore, the Board retained jurisdiction to revoke his parole. It does not matter that his arrest and conviction took place after the original maximum date expired.

Second, Rivera argues that he did not receive proper credit for the time he was held on a Board detainer from December 4, 2007, to April 30, 2009. Rivera acknowledges that he was incarcerated and serving his federal sentence at that time, but he believes he is entitled to credit towards his original sentence because he was also held on a Board detainer and, thus, was serving time on both offenses. In support, Rivera relies on *Martin v. Pennsylvania Board of Probation and Parole*, 576 Pa. 588, 840 A.2d 299 (2003), wherein our Supreme Court stated that "when an offender is held on new criminal charges as well as a detainer lodged by the Board, we believe that the offender is confined *for both offenses*." *Id.* at 596, 840 A.2d at 303 (emphasis added).

Rivera misconstrues the Supreme Court's holding in *Martin*. A parolee is entitled to credit against his original sentence when he is detained solely on the Board's warrant. *Gaito v. Pennsylvania Board of Probation and Parole*, 488 Pa. 397, 403, 412 A.2d 568, 571 (1980). *Martin* addressed the credit calculation for a parolee incarcerated both on new criminal charges and a Board detainer prior to a trial and, thereafter, is sentenced to fewer days than he has already spent in custody. The Court held that in such a situation, the excess time spent in confinement that is over and above the sentence for the new crime will be credited toward the original sentence. Specifically, the Court held that

where an offender is incarcerated on both a Board detainer and new criminal charges, all time spent in confinement must be credited to *either* the new sentence *or* the original sentence.

Martin, 576 Pa. at 605, 840 A.2d at 309 (emphasis added).

Martin does not apply to Rivera's case. The time he is seeking credit for, December 4, 2007, to April 30, 2009, is not time he spent in confinement prior to sentencing. It is the time he spent actually serving his sentence for his conviction on the federal charges. Although Rivera is correct that he was also detained on the Board's warrant as of December 4, 2007, he is not entitled to credit on his original sentence for the time he spent serving his new sentence. Pennsylvania law, specifically Section 6138(a)(5) of the Prisons and Parole Code, does not permit an inmate to serve time on both a new sentence and the original sentence at the same time.⁵

Finally, Rivera asserts that his rights were violated because he was not given assistance of counsel despite the fact that he asked members of the Board for representation and because he mistakenly took the advice of a parole agent to waive his parole hearing.

In this respect, Rivera's argument is unclear. Rivera was given a parole revocation hearing on March 9, 2006. Rivera signed a written waiver of representation by counsel as well as a written waiver of a panel hearing, agreeing to have his hearing held before a single examiner. At the hearing, the examiner

⁵ Section 6138(a)(5)(iii) states that

[except in limited circumstances not applicable here] the service of the new term for the latter crime shall precede commencement of the balance of the term originally imposed.

61 Pa. C.S. §6138(a)(5)(iii).

Rivera points out that the federal court provided that his federal sentence was to be served concurrently with his original state sentence for robbery. However, under Pennsylvania law, a federal court has no power to direct that the time an inmate spends in federal prison will count against his previous state sentence. *Griffin v. Pennsylvania Department of Corrections*, 862 A.2d 152, 156 (Pa. Cmwlth. 2004).

apprised Rivera of his right to counsel and to a panel hearing and asked if he understood his rights and was waiving those rights of his own free will; Rivera responded affirmatively. Certified Record at 31-32. There is no evidence in the record that Rivera ever requested and was denied assistance of counsel or that he was improperly convinced by a parole agent to waive any parole hearing.

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

MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Raymond J. Rivera,	:	
Petitioner	:	
	:	
v.	:	No. 2005 C.D. 2009
	:	
Pennsylvania Board of Probation	:	
and Parole,	:	
Respondent	:	

ORDER

AND NOW, this 10th day of September, 2010, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter, dated October 6, 2009, is AFFIRMED, and the application for leave to withdraw as counsel filed by Jason G. Pudleiner is GRANTED.

MARY HANNAH LEAVITT, Judge