

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jose Luis Gonzalez, :  
Petitioner :  
 :  
v. : No. 2090 C.D. 2010  
 : Submitted: February 25, 2011  
Board of Probation and Parole, :  
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN<sup>1</sup>

FILED: July 15, 2011

Jose Luis Gonzalez (Gonzalez) petitions for review of the September 2, 2010, order of the Pennsylvania Board of Probation and Parole (Board), which denied his petition for administrative review of the Board's recalculation of his maximum sentence expiration date. Appointed counsel (Counsel) has filed an application for leave to withdraw as counsel, asserting that Gonzalez's petition for review has no merit. We grant Counsel's application for leave to withdraw and affirm.

In April 2006, Gonzalez was serving multiple sentences for burglary, aggravated assault with serious bodily injury and robbery with serious bodily injury. Those sentences were identified by Institution Number CY0929, and, at the time, they carried a maximum sentence expiration date of April 5, 2012. (C.R. at 37.)

---

<sup>1</sup> This case was reassigned to the opinion writer on June 14, 2011.

On April 28, 2006, Gonzalez was paroled from the CY0929 sentences to serve the sentences he previously received for a drug offense and for making false reports to law enforcement authorities. The latter sentences were identified by Institution Number GQ3612. (*Id.* at 37, 43.)

On November 6, 2006, Gonzalez was released on parole from the GQ3612 sentences to a residential drug and alcohol treatment program. However, on December 6, 2006, Gonzalez left the program without authorization and was declared delinquent. (*Id.* at 43, 47.)

On February 8, 2009, Gonzalez was arrested by police in Nags Head, North Carolina, on various charges, including possession of a controlled substance. (*Id.* at 48.) The Board became aware of the arrest and issued a detainer warrant. (*Id.* at 57.) On June 10, 2009, Gonzalez was convicted and sentenced in North Carolina for possession of heroin. (*Id.* at 55.)

On September 4, 2009, Gonzalez was returned to a state correctional institution in Pennsylvania. (*Id.* at 58.) On September 10, 2009, the Board issued a warrant to detain Gonzalez as a technical parole violator. (*Id.* at 60.) The Board scheduled a parole revocation hearing for September 22, 2009, in connection with the technical violations and the conviction in North Carolina. (*Id.* at 64-65.) However, Gonzalez waived the hearing. (*Id.* at 74-75.)

On March 15, 2010, the Board mailed its decision recommitting Gonzalez as a technical and convicted parole violator and setting his maximum sentence expiration date as August 13, 2015, with respect to his CY0929 sentences. (*Id.* at 82-83.) In calculating the new maximum date, the Board added 2,169 days to his prior maximum date of April 5, 2012. (*Id.* at 80.) On March 30, 2010, Gonzalez filed a request for administrative review, asserting that the Board should have added only 1,977 days to his prior date of April 5, 2012. (*Id.* at 85.) Gonzalez indicated that 1,977 days represents the period of time from November 6, 2006, the date of his release on parole, to September 4, 2009, the date of his return to a Pennsylvania state correctional institution. (*Id.*)

On July 30, 2010, Counsel sent a letter to the Board, stating that 120 days had passed since Gonzalez filed his request for administrative relief. Counsel requested a decision within two weeks. (*Id.* at 89.) On September 2, 2010, the Board mailed its decision denying Gonzalez's petition for administrative relief. In the decision, the Board explained that: (1) Gonzalez was paroled from his CY0929 sentences on April 28, 2006, to serve his sentences at GQ3612; (2) November 6, 2006, was the date of Gonzalez's parole from his GQ3612 sentences; and (3) the new maximum date of August 13, 2015, pertained to the CY0929 sentences. (*Id.* at 91-92.)

Counsel filed a petition for review on behalf of Gonzalez, arguing that the Board: (1) failed to give Gonzalez credit for all time served solely under its warrant; (2) failed to hold a timely revocation hearing; and (3) violated Gonzalez's right to equal protection and due process by taking six months to dispose of his

request for administrative relief. Subsequently, Counsel filed an application to withdraw, stating that, after reviewing the certified record, Counsel determined that the petition for review is without merit. Counsel has filed a no-merit letter, with a copy to Gonzalez, advising Gonzalez of his right to retain substitute counsel, if he so desires, and of his right to raise any points that he may deem worthy of merit in a *pro se* brief.<sup>2</sup>

In his no-merit letter,<sup>3</sup> Counsel first recognizes that Gonzalez was paroled from his CY0929 sentences on April 28, 2006, and, at that time, Gonzalez had 2,169 days to serve until his maximum expiration date of April 5, 2012. Thus, he concludes that the Board correctly calculated Gonzalez's new maximum date as August 13, 2015. Second, Counsel recognizes that Gonzalez waived his revocation hearing, and, even if he had not done so, the Board had scheduled the hearing within 120 days of Gonzalez's return to a Pennsylvania state correctional institution. Finally, Counsel states that, under *Slotcavage v. Pennsylvania Board of Probation and Parole*, 745 A.2d 89 (Pa. Cmwlth. 2000), the Board's delay in issuing a decision does not violate equal protection or due process rights unless the delay has caused prejudice to the parolee. Counsel concludes that, based on the record, Gonzalez suffered no prejudice from the delay here.

---

<sup>2</sup> See *Adams v. Pennsylvania Board of Probation and Parole*, 885 A.2d 1121, 1123 (Pa. Cmwlth. 2005) (stating that counsel seeking leave to withdraw must notify the parolee of the request to withdraw, furnish the parolee a copy of the no-merit letter and advise the parolee of his right to retain new counsel or raise any points he may deem worthy of consideration).

<sup>3</sup> A no-merit letter must detail the nature and extent of Counsel's review, list each issue the petitioner wishes to have raised and explain why those issues are meritless. *Hughes v. Pennsylvania Board of Probation and Parole*, 977 A.2d 19, 24-25 (Pa. Cmwlth. 2009).

Because Counsel has complied with the technical requirements for seeking leave to withdraw as counsel, we will now independently assess the merits of the case. With respect to whether the Board properly used April 28, 2006, rather than November 6, 2006, to determine the number of days remaining on Gonzalez's CY0929 sentences, we agree with Counsel that the Board properly used April 28, 2006. Indeed, Gonzalez was paroled from his CY0929 sentences on April 28, 2006. It is true that, from April 28, 2006, to November 6, 2006, Gonzalez was still detained, but he was detained on his GQ3612 sentences, not a Board warrant relating to the CY0929 sentences.

With respect to whether the Board held a timely revocation hearing, Counsel correctly learned from the record that Gonzalez had waived his hearing. Moreover, Gonzalez returned to a Pennsylvania state correctional institution on September 4, 2009, and the Board scheduled his hearing for September 22, 2009, within 120 days of his return to Pennsylvania. Thus, even if Gonzalez had not waived the hearing, the scheduled hearing would have been timely. *See* 37 Pa. Code §71.4(1)(i) (stating that, where a parolee is confined out of state, a revocation hearing shall be held within 120 days of the official verification of the return of the parolee to a state correctional facility).

With respect to whether the Board violated Gonzalez's right to equal protection and due process by taking six months to issue a decision, this court noted in *Slotcavage* that, where a parolee has suffered no harm from a delay in issuing a decision, the only remedy available to the parolee is to command the Board to issue

its decision. *Slotcavage*, 745 A.2d at 92 n.3. Here, Gonzalez did not suffer harm from the Board's delay because the Board's recalculation of Gonzalez's maximum sentence date was correct. Because the Board has already issued its decision, Gonzalez has no available remedy with respect to his equal protection and due process claims.

Inasmuch as we agree with Counsel that the petition for review lacks merit, we grant the application for leave to withdraw as counsel and affirm.

---

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jose Luis Gonzalez,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2090 C.D. 2010
	:	
Board of Probation and Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 15th day of July, 2011, it is hereby ordered that the application for leave to withdraw as counsel is granted, and the order of the Board of Probation and Parole, dated September 2, 2010, is affirmed.

---

ROCHELLE S. FRIEDMAN, Senior Judge