

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kendrick Bennett, :
 :
 Petitioner :
 :
 v. : No. 2445 C.D. 2010
 :
 : Submitted: March 25, 2011
 Pennsylvania Board of Probation :
 and Parole, :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: October 14, 2011

Before the court is Kendrick Bennett's (Petitioner) petition for review of the November 2, 2010, order of the Pennsylvania Board of Probation and Parole (Board), which denied Petitioner's request for administrative relief from the Board's April 14, 2010, order recommitting him to serve 412 days backtime as a convicted parole violator (CPV). Also before the court is Attorney Kent D. Watkins' (Counsel) Petition to Withdraw Representation on the basis that there are no grounds for appeal and the petition is frivolous. We grant Counsel's petition and affirm the Board's order.

On January 5, 2009, Petitioner was paroled from a state correctional institution with 412 days remaining in his sentence and, therefore, a maximum date of February 26, 2010. (Certified Record at 23.) On June 18, 2009, Petitioner was

arrested on new criminal charges, resulting in a new term of imprisonment in the county prison. The Board lodged a detainer on June 19, 2009, and Petitioner did not post bail. Although Petitioner was transferred to a state correctional institution on February 3, 2010, he was not paroled from the new sentence until February 17, 2010. (Certified Record at 67.) Petitioner waived his right to a revocation hearing. By decision mailed April 14, 2010, the Board recommitted Petitioner as a CPV to serve his unexpired term of one year, one month and twenty-one days beginning February 17, 2010, resulting in a maximum date of April 10, 2011. Petitioner filed a request for administrative relief which the Board denied by order dated November 2, 2010.

On November 17, 2010, Petitioner filed a petition for review, through Counsel, alleging that the Board erroneously calculated Petitioner's backtime as beginning on February 17, 2010, rather than February 3, 2010, the date on which he was transferred from county jail to a state correctional institution. On January 28, 2011, however, Counsel wrote a no-merit letter to this court, indicating that he no longer believed that Petitioner's maximum date had been miscalculated. On February 1, 2011, this court issued a per curiam order noting that Counsel's petition to withdraw would be considered along with the merits of the petition for review, and directing Petitioner to either obtain substitute counsel or file a brief on his own behalf.

Before examining the merits of Petitioner's appeal, we address Counsel's petition to withdraw. In Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988), our Supreme Court set forth the proper procedure to be followed when court-appointed counsel seeks to withdraw from representation because issues raised by the petitioner are without merit. We have interpreted Turner as requiring counsel to file a no-merit letter containing: (1) the nature and extent of counsel's review; (2)

the issues the petitioner wishes to raise; and (3) counsel's analysis in concluding that the petitioner's appeal is without merit. Zerby v. Shanon, 964 A.2d 956 (Pa. Cmwlth. 2009). These requirements must be satisfied by court-appointed counsel before we may consider any request by counsel to withdraw an appearance on behalf of an individual under the jurisdiction of the Board. Id. In reviewing an application for leave to withdraw, this court must make an independent evaluation of the proceedings before the Board to determine whether the petitioner's appeal is wholly frivolous. Id.

Here, Counsel provided Petitioner with a copy of the no-merit letter and advised him of his right to proceed pro se or with new counsel. Further, the no-merit letter adequately details the nature of Counsel's review of the case and why Counsel had come to believe that Petitioner's maximum date was correct. Our review of the no-merit letter, along with a careful review of the record, leads us to agree with Counsel.

If a new sentence is imposed on a parolee, "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). Thus, Petitioner did not become available to commence service of his original sentence again until he was paroled from the county prison on February 17, 2010. We agree with Counsel, therefore, that Petitioner's maximum date was properly set at April 10, 2011, 412 days after February 17, 2010.

Accordingly, we grant Counsel's application for leave to withdraw and affirm the Board's order.

PATRICIA A. McCULLOUGH, Judge

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| | : | |
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ORDER

AND NOW, this 14th day of October, 2011, Kent D. Watkins' application for leave to withdraw is granted and the November 2, 2010, order of the Pennsylvania Board of Probation and Parole is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge