

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clarence Glenn,	:	
Petitioner	:	
	:	
v.	:	No. 267 C.D. 2009
	:	Submitted: December 18, 2009
Pennsylvania Board of Probation and	:	
Parole,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: February 16, 2010

Clarence Glenn (Glenn) petitions for review of the January 28, 2009, decision of the Pennsylvania Board of Probation and Parole (Board), which denied Glenn's request for administrative relief. The Public Defender of Schuylkill County (Public Defender) has filed a petition to withdraw as counsel on the grounds that Glenn's petition for review is without merit and frivolous. We deny the Public Defender's petition without prejudice.

On April 19, 1990, Glenn was released on parole from a four-to-ten year sentence for robbery and aggravated assault. (C.R. at 22.) However, on November 27, 1990, Glenn was arrested for firearms offenses. (C.R. at 34, 36.) Glenn was released on bail, and he absconded. (C.R. at 81.) As a result, the Board declared Glenn delinquent as of November 30, 1990. (C.R. at 25.)

On August 16, 1991, Glenn was arrested for firearms offenses and technical parole violations. (C.R. at 27.) The Board issued a warrant to detain him. (C.R. at 26.) The firearms charges were federalized, and Glenn was recommitted as a technical parole violator, when available, to serve nine months backtime. (C.R. 35, 41.)

In January 1992, Glenn was found guilty in Philadelphia Municipal Court of two of the firearms offenses related to his November 1990 arrest. (C.R. at 36, 38.) On March 4, 1992, Glenn received a sentence of time served to twenty-three months in jail. (C.R. at 78.) On May 29, 1992, the Board recommitted Glenn as a convicted parole violator (CPV), when available, to serve eighteen months backtime. (C.R. at 46.)

On February 4, 1992, Glenn was found guilty in federal court of the August 16, 1991, firearms offense. (C.R. at 41, 47.) On August 27, 1992, Glenn received a federal sentence of ten years, and a federal detainer was issued the next day. (C.R. at 42-43, 47, 69.) Subsequently, Glenn was re-sentenced to a federal term of 235 months, or nineteen years and seven months. (C.R. at 97, 102.) On May 14, 1993, the Board recommitted Glenn as a CPV, when available, to serve eighteen months backtime concurrently with the eighteen months imposed on May 29, 1992. (C.R. at 67.)

On July 16, 1993, the Board sent a letter to the Record Officer at the State Correctional Institution at Bellefonte, stating that Glenn has been unavailable to serve the eighteen months backtime since the federal detainer was issued on August

28, 1992, and that Glenn will not be available until his return from federal custody. (C.R. at 69.)

On October 12, 1993, Glenn was paroled from the November 1990 county sentence to serve his federal sentence. (C.R. at 70, 72.) Glenn was returned to state custody on September 17, 2008. (C.R. at 116.) On October 10, 2008, the Board issued a decision requiring Glenn to serve the eighteen months backtime. (C.R. at 79.) In re-calculating Glenn's maximum date, the Board gave Glenn backtime credit for time served from August 16, 1991, to March 4, 1992, and from March 4, 1992, to August 27, 1992. (C.R. at 77.)

Glenn filed a petition for administrative review with the Board, claiming that he was entitled to backtime credit for time served from August 16, 1991, to October 13, 1993. (C.R. at 87.) The Board denied Glenn's petition, explaining that Glenn was not entitled to time he served on the federal sentence. (C.R. at 114.) Glenn then filed his petition for review with this court. We now address the Public Defender's petition for leave to withdraw as counsel.

Counsel may seek leave to withdraw his representation by submitting a no-merit letter detailing the nature and extent of counsel's diligent review of the case, listing the issues that 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 (Pa. Cmwlth. 2009). Counsel also must send the petitioner a copy of the no-merit letter, a copy of counsel's petition to withdraw and a statement advising the petitioner that he has the right to proceed either *pro se* or by new counsel. *Id.* Where

counsel fails to satisfy these technical requirements, this Court will not address the merits but will deny counsel's request to withdraw and will direct counsel to file either a proper no-merit letter or an advocate's brief. *Id.*

Here, the Public Defender failed to explain why Glenn is not entitled to backtime credit for the entire time he served from August 16, 1991, to October 13, 1993. The Public Defender sets forth a lengthy history of Glenn's record since 1982, including a statement that Glenn received credit on his federal sentence for the time he served from August 16, 1991, to October 11, 1993, (No-merit letter at 3, *see* C.R. at 97), and then states:

The petitioner is requesting credit from August 17, 1991, through October 12, 1993, [sic] against his service of backtime for recommitment on his parole revocation. Because he received this credit toward his federal sentence he cannot receive double credit and therefore has not served the backtime as he stated. *Gaito v. Pennsylvania Board of Probation and Parole*, 128 Pa. Cmwlth. 253, 563 A.2d 545 (1989).

(No-merit letter at 3-4.) First, the Public Defender incorrectly cites *Gaito*, and later the Act known as the Parole Act,¹ for his explanatory statement. Second, the Public Defender's statement does not recognize that Glenn actually received backtime credit for the time he served from August 16, 1991, to August 27, 1992. Third, the Public Defender's statement does not explain why, if Glenn received double credit for the time he served from August 16, 1991, to August 27, 1992, Glenn should not receive double credit for the time he served from August 28, 1992, to October 13, 1993.

¹ 61 Pa. C.S. §§6101-6153.

Accordingly, we deny the Public Defender's petition to withdraw as counsel without prejudice to file an amended petition to withdraw or a brief on the merits of Glenn's petition for review within thirty days.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 16th day of February, 2010, the petition for leave to withdraw as counsel filed by the Public Defender of Schuylkill County is hereby denied without prejudice to file an amended petition, or a brief on the merits, within thirty (30) days.

ROCHELLE S. FRIEDMAN, Senior Judge