IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ronald L. Mickel, Jr.,		:	
	Petitioner	:	
		:	
v.		:	
		:	
Pennsylvania Board of		:	
Probation and Parole,		:	No. 465 C.D. 2009
	Respondent	:	Submitted: July 30, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: September 30, 2010

Ronald L. Mickel, Jr. (Petitioner), an inmate at the State Correctional Institution (SCI) at Albion, petitions this Court for review of the February 17, 2009 order of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief. Petitioner's counsel, Tina M. Fryling, Esquire (Counsel), has filed a petition for leave to withdraw as counsel, and has submitted a letter in support of her petition. For reasons set forth in this opinion, we grant Counsel's petition to withdraw and affirm the order of the Board.

On October 4, 1990, Petitioner was sentenced to a prison term of 2 ½ to 8 years, and on April 15, 1991, he was sentenced to a term of 10 to 16 years, for an aggregate term of 10 ½ to 24 years imprisonment. At that time, Petitioner's maximum release date was August 25, 2014. Petitioner was paroled on April 9, 2001, and that parole was revoked on November 26, 2001 at which time Petitioner was recommitted to a state correctional institution as a technical parole violator to

serve 12 months back-time, and his new maximum release date was calculated as October 4, 2014. On July 24, 2003, Petitioner was paroled to the Erie Community Corrections Center, and arrested on April 1, 2004 for unrelated charges which were subsequently nolle prossed. Petitioner was released again on parole on July 8, 2005. On March 8, 2006, he was recommitted as a technical parole violator but was given no additional time.

On July 25, 2006, Petitioner was reparoled, and on June 11, 2008, he was again arrested on unrelated charges for which he was subsequently convicted and sentenced to 6 months probation. On November 6, 2008, Petitioner was ordered to serve 12 months back-time as a convicted parole violator, and 6 months back-time for the offense of indirect criminal contempt extending Petitioner's maximum release date to June 14, 2019.[1]

Petitioner filed an administrative appeal from the Board's November 6, 2008 decision. In a decision mailed February 17, 2009, the Board affirmed its November 6, 2008 decision. On March 24, 2009, Petitioner filed a Petition for Review with this Court. The public defender's office was appointed to represent Petitioner, and on June 29, 2009, Counsel filed a petition for leave to withdraw and a no-merit letter. As required, Counsel served copies of these materials on Petitioner and advised him of his right to proceed pro se or obtain new counsel.[2]

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 an attorney wants to withdraw representation, the attorney must review the case zealously, and:

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[1] The 12 months back-time was the result of technical violations, and the 6 months back-time was the result of his conviction.

[2] *See* ¶3 of the petition for leave to withdraw and footer to Counsel's no-merit letter.

> 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 (quotation marks omitted). Here, Counsel's letter detailed the nature and extent of Counsel's review of the case, listed Petitioner's issues, and explained why and how those issues lacked merit.

Petitioner argues that because he was already ordered to serve back-time for parole violations he cannot be again ordered to serve back-time for parole violations; and that he cannot be "sentenced" twice for the same event (Erie County sentenced him for indirect contempt, and he was ordered to serve back-time for the indirect contempt). Thus, Petitioner argues that the Board erred in moving his maximum release date to June 14, 2019.[3] Counsel concludes, however, a parole recommitment is not a second punishment for an original offense, but instead it is an administrative determination. We agree with counsel.

Regarding Petitioner's first argument, each time Petitioner was ordered to serve back-time for parole violations, they were for different violations committed on different dates. For example, on November 26, 2001, it was determined that he violated special condition 5C by failing to refrain from violative behavior. Certified Record (C.R.) at 17. On March 8, 2006, it was determined that he had violated: condition 2 by changing his residence without permission, condition 5a by using

[3] Petitoner is not disputing the date per se, but what he believes to be the reasons for the new date, i.e., the court ordering him to serve back-time on duplicate violations, and the court "sentencing" him twice for his indirect contempt charge.

drugs, condition 7(1) by consuming alcohol, and condition 7(2) by failing to complete the Gateway program. C.R. at 32. And on November 6, 2008, it was determined that he violated: condition 3A by failing to follow written instructions, condition 3C by failing to notify parole staff of a change of status when he got fired from his job and when he changed his residence, and condition 7 by failing to follow curfew. C.R. at 118. Thus, Petitioner's argument is meritless.

Regarding Petitioner's second argument, clearly a criminal conviction is a parole violation and the Board ordered Petitioner to serve back-time for said violation. Further, the imposition of back-time is not a new sentence, but is pursuant to the original sentence. Thus, Petitioner was not sentenced twice for his indirect contempt. Accordingly, Petitioner's argument is meritless.

Counsel cites *Johnson v. Pennsylvania Board of Probation and Parole*, 706 A.2d 903 (Pa. Cmwlth. 1998) and *Green v. Pennsylvania Board of Probation and Parole*, 664 A.2d 677 (Pa. Cmwlth. 1995), for the proposition that the Board's findings must be upheld absent an abuse of discretion; but the Board must be reversed if it has erred as a matter of law, abused its discretion, or acted in an arbitrary or capricious manner, and/or violated Petitioner's constitutional rights. Counsel concludes that there is no evidence in the record that the Board acted arbitrarily, capriciously, or unreasonably. We agree.

Having made an independent evaluation of the issues presented and having found that Counsel's no-merit letter satisfied the *Zerby* requirements and adequately addressed the issues, this Court grants the application for leave to withdraw appearance, and affirms the Board's order.

JOHNNY J. BUTLER, Judge

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O R D E R

AND NOW, this 30th day of September, 2010, Tina M. Fryling, Esquire's Petition for Leave to Withdraw as Counsel is granted, and the February 17, 2009 order of the Pennsylvania Board of Probation and Parole is affirmed.

JOHNNY J. BUTLER, Judge