

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lars Robinson, :
 :
 Petitioner :
 :
 :
 v. : No. 79 C.D. 2011
 : Submitted: June 10, 2011
 :
 Pennsylvania Board of Probation and :
 Parole, :
 :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: July 26, 2011

Lars Robinson petitions for review of the December 20, 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 Robinson's petition for review has no merit. We grant Counsel's application for leave to withdraw and affirm.

In April 2004, Robinson was serving a one- to seven- year sentence for drug manufacture/sale/delivery or possession with intent to deliver. Robinson's sentence was identified by Institution Number FT8682, and, at the time, carried a maximum sentence expiration date of November 26, 2010. (C.R. at 1.)

On January 31, 2005, Robinson was paroled from the FT8682 sentence to a community corrections center. (C.R. at 8.) On September 15, 2005, Robinson was recommitted to a state correctional institution as a technical parole violator to serve six months' backtime. Robinson's maximum sentence expiration date was recomputed to December 3, 2010. (*Id.* at 12-14.)

On February 21, 2006, Robinson was reparaoled from the FT8682 sentence to a community corrections center. On January 25, 2007, the Board declared Robinson delinquent effective December 28, 2006. (*Id.* at 20.)

On August 17, 2007, the Board recommitted Robinson to a state correctional institution as a technical parole violator to serve twelve months' backtime for multiple technical parole violations. (*Id.* at 23.) Robinson's maximum sentence expiration date was recomputed to June 13, 2011. (*Id.* at 21.)

On February 2, 2009, the Board again reparaoled Robinson to a community correction residency. (*Id.* at 29.) On November 3, 2010, Robinson was recommitted to a state correctional institution as a technical parole violator to serve his unexpired term of nine months and twelve days for violation of condition number seven of his parole, failure to successfully complete the Minsec Hazleton drug and alcohol program. Robinson's maximum sentence expiration date was listed as June 13, 2011. (*Id.* at 33.) Robinson filed a timely request for administrative relief from the November 3, 2010, Board action. (*Id.* at 34-35.)

On December 20, 2010, the Board denied Robinson's request for administrative relief, determining that Robinson was requesting relief from the August 17, 2007, Board action that recalculated his maximum sentence expiration date as June 13, 2011. The Board stated that "you cannot use the current revocation/recalculation mailed November 10, 2010 to revive this lapsed appeal right." (*Id.* at 36.) The Board dismissed Robinson's appeal as untimely. (*Id.*)

Counsel filed a petition for review on behalf of Robinson, arguing that the Board failed to give Robinson credit for all time served solely under its warrant. 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 Robinson, advising Robinson 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.¹

In his no-merit letter,² Counsel recognizes that an inmate must avail himself of a timely administrative appeal of the decision recalculating his maximum term. *St. Clair v. Pennsylvania Board of Probation and Parole*, 493 A.2d 146, 154 (Pa. Cmwlth. 1985). The appeal process available to an inmate who seeks a

¹ 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).

² A no-merit letter must detail the nature and extent of Counsel's review, list each issue the petitioner wished 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).

recalculation of his maximum sentence is set forth in 37 Pa. Code §73.1(b)(1), which provides that an inmate's failure to petition the Board for administrative relief from the alleged miscalculation of a maximum sentence bars judicial intervention in the administrative process. Counsel concludes that, as there are no other issues before this court, Robinson's appeal has no merit.

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 dismissed Robinson's appeal as untimely, we agree with Counsel that Robinson failed to appeal the initial recalculation order. The order that Robinson appealed did not recalculate his maximum sentence, and Robinson cannot use the December 20, 2010, order to revive a lapsed right to appeal. Robinson needed to appeal from the recalculation order of August 17, 2007, when his maximum sentence expiration date was recomputed to be June 13, 2011. *McCaskill v. Pennsylvania Board of Probation and Parole*, 631 A.2d 1092, 1095 (Pa. Cmwlth. 1993) (prisoner must file an administrative appeal within thirty days of the mailing date of the determination or the Board has no jurisdiction to entertain the appeal and should dismiss it as untimely); *see also Evans v. Pennsylvania Department of Corrections*, 713 A.2d 741, 743 (Pa. Cmwlth. 1998) (inmate's failure to petition the Board for administrative relief from the alleged miscalculation of a maximum sentence bars judicial intervention in the administrative process).

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

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	:	
Respondent	:	

ORDER

AND NOW, this 26th day of July, 2011, it is hereby ordered that the application for leave to withdraw as counsel is granted, and the order of the Pennsylvania Board of Probation and Parole, dated December 20, 2010, is affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge