

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mike Riley, :
 :
 Petitioner :
 :
 v. : No. 83 C.D. 2011
 :
 : Submitted: June 10, 2011
 Pennsylvania Board of Probation and :
 Parole, :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: September 13, 2011

Jason G. Pudleiner, Esquire (Counsel), First Assistant Public Defender for Clearfield County, petitions the Court for leave to withdraw as counsel on behalf of Petitioner, Mike Riley (Riley). Counsel was appointed to represent Riley, who petitions for review of the December 17, 2010, order of the Pennsylvania Board of Probation and Parole (Board), which denied his administrative appeal of an order recommitting him to serve a total of ten months and nine days backtime as a convicted parole violator. We grant Counsel's request and affirm the Board's order.

Riley was originally sentenced to a two-to-four year state prison term resulting from a conviction in Philadelphia County of Felony Manufacture/Sale/Deliver/Possession with Intent to Deliver Drugs. His maximum

expiration date for that sentence was October 18, 2009, and he was released on parole on January 9, 2008. (Certified Record (C.R.) at 43.)

While on parole, Riley was arrested for new criminal charges on September 23, 2008, and the Board issued a detainer against him on September 24, 2008. (C.R. at 120.) Those charges, however, were subsequently withdrawn, and Riley was released from state prison on February 3, 2009. Id. Riley was again arrested in Philadelphia County on May 20, 2009, on new charges of Felony Possession with Intent to Deliver Drugs. (C.R. at 27.) The Board issued a warrant to commit and detain him on May 21, 2009. (C.R. at 26.) Riley posted bail from these new charges on June 9, 2009, and the Board lifted its detainer on October 17, 2009. (C.R. at 120.) On May 14, 2010, Riley was sentenced to serve three-to-six years in state prison for these new charges. (C.R. at 50.)

On July 16, 2010, Riley was given a parole revocation hearing at SCI Houtzdale, and the Board voted to revoke his parole and recommit him to serve his unexpired term of ten months and nine days. (C.R. at 103.) The Board's recommitment order gave Riley time credit from September 24, 2008, through February 3, 2009, for the days he was in custody awaiting trial on the charges stemming from his second arrest. (C.R. at 101.) Riley also received time credit from June 9, 2009, through October 17, 2009, for the period of time between his posting bail and the Board lifting its detainer against him. (C.R. at 101.) Based on his recommitment date of July 16, 2010, the Board recalculated Riley's maximum date for his original sentence to be May 24, 2011. Id. Riley filed a request for administrative relief, which the Board denied.

On January 12, 2011, Riley filed a counseled petition for review with this Court,¹ contending that the Board's recalculation of the maximum date for his original sentence violated his due process rights and was contrary to applicable law. Riley asserted he was entitled to credit toward his original sentence from May 14, 2010, the date he was sentenced on the subsequent charges. However, on March 31, 2011, Counsel filed an application to withdraw, supported by a no-merit letter pursuant to Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988). In the letter, Counsel advised Riley that the Board correctly determined the date upon which he became available to serve backtime for a prior conviction. Counsel concluded that Riley's appeal to this Court is without merit.

Before examining the merits of Riley's appeal, we must be satisfied that Counsel discharged his responsibility by complying with the technical requirements set forth in Craig v. Pennsylvania Board of Probation and Parole, 502 A.2d 758 (Pa. Cmwlth. 1985). According to Craig, appointed counsel must notify the parolee of his request to withdraw and furnish the parolee with a copy of a brief complying with Anders v. State of California, 386 U.S. 738 (1967). In lieu of an Anders brief, appointed counsel may submit a no-merit letter that satisfies the requirements of Turner and informs the parolee of his right to retain new counsel or file a brief on his own behalf. Reavis v. Pennsylvania Board of Probation and Parole, 909 A.2d 28 (Pa. Cmwlth. 2006).

¹ Our scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or whether necessary findings are supported by substantial evidence. Prebella v. Pennsylvania Board of Probation and Parole, 942 A.2d 257 (Pa. Cmwlth. 2008).

Should appointed counsel proceed in accordance with Turner, his no-merit letter must set forth the following: (1) the nature and extent of counsel's review of the case; (2) the issues the petitioner wishes to raise; and (3) counsel's analysis in concluding the appeal is without merit. Hughes v. Pennsylvania Board of Probation and Parole, 977 A.2d 19 (Pa. Cmwlth. 2009). Counsel must comply with these requirements to ensure that an offender's claims are considered and counsel has substantial reasons for concluding the claims are without merit. Reavis.

Here, Counsel informed Riley of Counsel's request to withdraw and provided Riley with a copy of the no-merit letter informing Riley of his right to retain new counsel or file a pro se brief. Furthermore, Counsel's no-merit letter adequately details the nature of his review of the case and the issue Riley wishes to raise on appeal. The no-merit letter also thoroughly sets forth Counsel's analysis of the issue and his basis for determining it is without merit. We conclude that Counsel's no-merit letter complies with Turner, and, thus, we turn to the merits of Riley's appeal.

Riley contends that the Board failed to properly credit the time he served between May 14, 2010, the date he was sentenced on his new charges, and July 16, 2010, the date of his revocation hearing. Section 6138(a)(5) of the Prisons and Parole Code, 61 Pa. C.S. §6138(a)(5), states in relevant part as follows:

If a new sentence is imposed on the parolee, the service of the balance of the term originally imposed shall precede the commencement of the new term imposed in the following cases:

- (i) If a person is paroled from a State correctional institution and the new sentence imposed on the person is to be served in the State correctional institution.

Relying on this provision, Riley argues that his time served between the dates of May 14, 2010, and July 16, 2010, should be credited towards his original sentence.

However, section 6138(a)(4) of the Prisons and Parole Code states that the “period of time for which the parole violator is required to serve shall be computed from and begin on the date that he is taken into custody to be returned to the institution as a parole violator.” 61 Pa. C.S. §6138(a)(4). This Court has previously held that where a petitioner was given a new sentence for a second crime, and his parole revocation hearing followed at a later date, the period of time in between should not be credited towards his original sentence. Campbell v. Pennsylvania Board of Probation and Parole, 409 A.2d 980 (Pa. Cmwlth. 1980). Thus, the rule set forth in section 6138(a)(5) of the Prisons and Parole Code is only operative when “parole has been revoked and the remainder of the original sentence becomes due and owing.” Campbell, 409 A.2d at 982. Here, because the Board did not revoke Riley’s parole until July 16, 2010, Riley could not begin serving backtime before that date.

Therefore, we conclude that the Board’s calculation is correct and that Riley’s appeal is without merit. Accordingly, we grant Counsel’s petition for leave to withdraw, and we affirm the Board’s order.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mike Riley,	:	
	:	
Petitioner	:	
	:	No. 83 C.D. 2011
v.	:	
	:	
Pennsylvania Board of Probation and	:	
Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 13th day of September, 2011, the petition to withdraw as counsel filed by Jason G. Pudleiner is granted, and the December 17, 2010, order of the Pennsylvania Board of Probation and Parole is affirmed.

PATRICIA A. McCULLOUGH, Judge