

subsequently arrested on drug related charges on August 23, 2007, in Camden, New Jersey, and confined in the Camden County Jail in lieu of bail.

The Board issued a warrant to commit and detain Moore on September 13, 2007. Moore pled guilty to “distribution and/or possession with intent to distribute CDS” on June 13, 2008. On August 1, 2008, Moore was sentenced and “committed to the custody of the Commissioner of the Department of Corrections [of New Jersey] for a term of 10 years, NJSP 18 months to be served before being eligible for parole.” Moore was credited by the New Jersey court with time served from August 24, 2007 to July 31, 2008, 343 days.

Moore was returned to Pennsylvania custody on January 26, 2010, signed a waiver of his violation/revocation hearing and entered an admission to a technical violation of leaving the district without permission and the new criminal conviction.

By decision dated March 16, 2010, the Board recommitted Moore to a state correctional institution as a technical parole violator to serve 6 months and as a convicted parole violator to serve an unexpired term of 1 year, 5 months, 28 days concurrently for a total of 1 year, 5 months, 28 days. His parole violation maximum date was recalculated to July 27, 2011.

Moore filed a request for administrative relief, arguing that the Board erred in not crediting him with time served in the State of New Jersey and that the disposition of the New Jersey sentence was 10 years with an 18

month parole ineligibility to be run concurrent with any sanctions imposed by the Board.¹

By decision mailed May 6, 2010, the Board denied Moore's petition for administrative relief and affirmed its decision of March 16, 2010. On May 28, 2010, Moore filed a *pro se* petition for review with this court.² In his petition for review, Moore challenges the Board's calculation of his backtime. Moore contends that he should be credited 471 days of backtime that he served in New Jersey under the Board's detainer, as the New Jersey court ordered its sentence to run concurrently with that of the Board's.³ Counsel filed his petition to withdraw, along with an Anders brief, on August 27, 2010.⁴

Initially, we address Counsel's petition to withdraw. When a court-appointed counsel subsequently determines that the issues raised by

¹ A review of the New Jersey disposition reveals that Moore's statement that his New Jersey sentence was to run concurrently with any sanctions imposed by the Board is in error.

² On June 8, 2010, this court appointed the Public Defender of Luzerne County to represent Moore in this matter. The Board certified the record on July 21, 2010.

³ As stated previously, the New Jersey court did not order its sentence to run concurrently with that of the Board's.

⁴ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). "Anders rests on the distinction between complete frivolity and the absence of merit, and that only the former supports counsel's request to withdraw and a court's order granting the request." Commonwealth v. Santiago, 602 Pa. 159, 174, 978 A.2d 349, 358 (2009). Our Supreme Court recently articulated that in an "Anders brief that accompanies court-appointed counsel's petition to withdraw, counsel must: (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous. We recognize that this is a significant adjustment in our decisional law concerning Anders." Santiago, at 178-179, 978 A.2d at 361.

the parolee in his appeal are wholly frivolous, he may be permitted to withdraw as counsel if he satisfies the following procedural requirements: he must notify the parolee of his request to withdraw; he must furnish the parolee with a copy of an Anders brief or no-merit letter satisfying the requirements of Commonwealth v. Turner, 518 Pa. 491, 494, 544 A.2d 927, 928 (1988); and he must advise the parolee of his right to retain new counsel or raise any new points he might deem worthy of consideration by submitting a brief on his own behalf. Reavis v. Pennsylvania Board of Probation and Parole, 909 A.2d 28 (Pa. Cmwlth. 2006)(citing Craig v. Pennsylvania Board of Probation and Parole, 502 A.2d 758 (Pa. Cmwlth. 1985)). Counsel's brief or no-merit letter must set forth: (1) the nature and extent of his review of the case; (2) the issues the parolee wishes to raise on appeal; and (3) counsel's analysis concluding that the appeal has no merit and is frivolous. Banks v. Pennsylvania Board of Probation and Parole, 827 A.2d 1245 (Pa. Cmwlth. 2003). Once this court is satisfied that all of the above requirements have been met, we will then make an independent evaluation of the proceedings before the Board to determine whether the parolee's appeal is indeed frivolous before we will allow counsel to withdraw. Id. at 1248.

Counsel in this case served Moore with copies of his petition for leave to withdraw and the Anders brief on August 26, 2010, in which Counsel made clear his intention to withdraw and that Moore had the option of either retaining private counsel or filing a *pro se* brief with this court. Counsel stated that he has conducted a conscientious review of the record. Counsel set forth Moore's single issue, that the Board, in its recomputing of

Moore's parole violation maximum date following his recommitment as a convicted parole violator, failed to properly credit Moore with time served in New Jersey from September 13, 2007 to January 26, 2010. Counsel, thereafter, set forth an extensive analysis which ultimately concluded that Moore's appeal had no merit and was frivolous.

Our independent review of the merits of the appeal reveals that Moore was incarcerated in New Jersey from September 13, 2007 through January 26, 2010, when he was released into the Board's custody. Moore remained in the Camden County jail, as he was unable to post bail. In Gaito v. Pennsylvania Board of Probation and Parole, 488 Pa. 397, 412 A.2d 568 (1980), our Supreme Court determined that when a parolee is incarcerated on criminal charges and does not post bail, time spent in jail is not credited to the parolee's original sentence on recommitment as a convicted parole violator because the parolee was not incarcerated solely on the Board's warrant.

Moore contends that the Board owes him credit for time served from September 13, 2007 through January 26, 2010, while he was incarcerated in New Jersey. Moore contends that the New Jersey court ordered his sentence of 10 years with an 18 month parole ineligibility, to run concurrently with any sanctions imposed by the Board. However, after a review of the record, we disagree. The New Jersey court does not state that the sentence should run concurrently at all. Thus, Moore's statement is in error.

Further, even if the New Jersey court had ordered such concurrent sentence, according to Vance v. Pennsylvania Board of Probation

and Parole, 741 A.2d 838 (Pa. Cmwlth. 1999), the Board cannot grant him credit for time served outside of the Commonwealth's jurisdiction.

Accordingly, Counsel's petition to withdraw as counsel is granted and the order of the Board is affirmed.

JIM FLAHERTY, Senior Judge

