



On January 22, 2007, Mann was arrested in Montgomery County for violations of his parole conditions.<sup>1</sup> Mann was also charged with several crimes, including loitering and prowling and unsworn falsification.<sup>2</sup> The Board detained Mann on the day of his arrest, pending disposition of the criminal charges. Subsequently, the Board recommitted Mann to serve twelve months back time for the technical parole violations. Mann posted bail on March 16, 2007, for the loitering and prowling charges, but he never posted bail for the unsworn falsification charges.

On July 21, 2008, Mann filed a request for administrative relief. In his request, Mann objected to an October 24, 2007, decision of the Board that recalculated Mann's maximum sentence date as March 9, 2010, which rendered him eligible for a re-parole review no sooner than July 2008. The Board denied Mann's administrative appeal in a letter mailed May 12, 2009, stating in relevant part:

With the above facts in mind, you are not entitled to a back time served credit (i.e. time that you were held solely on the Board's warrant prior to your recommitment order) because you were never incarcerated solely on the Board warrant. *See Gaito v. Pa. Board of Probation and Parole*, 412 A.2d 568 (Pa. 1980). You became available to begin serving your back time on July 26, 2007 when you were convicted of the Montgomery County Court of Common Pleas indictment number 780-2007 crime. Adding 957 days (or 2 years, 7 months, 14 days) to July 26, 2007, yields a new parole violation maximum date of March 9, 2010. Therefore, your parole violation maximum sentence date is correct.

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<sup>1</sup> Mann was charged with violating: condition 1 (leaving the district without permission); condition 2 (change of residence without permission); and condition 7 (successfully completing the Kintock program).

<sup>2</sup> On July 26, 2007, Mann pled guilty to both loitering and prowling and unsworn falsification. He received six months probation and time served to 23 months, respectively. Subsequently, on October 24, 2007, Mann was sentenced to serve twelve months concurrently with his sentence as a technical parole violator.

C.R. 148-149 (emphasis in original). Mann now petitions this Court to review the Board's denial of his administrative appeal.

On appeal,<sup>3</sup> Mann contends that the Board made a clerical error when computing his maximum sentence date and his parole review dates. Mann argues that he should be given credit for back time from January 22, 2007, the time the Board lodged a warrant against him, until July 26, 2007, the date that he was convicted on the new charges.

Before we address the merits of Mann's petition for review, we consider whether Counsel has fulfilled the technical requirements for a petition to withdraw from representation. When counsel believes that an appeal is without merit, he may file a petition to withdraw pursuant to *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988). This Court recently summarized the requirements established by *Turner* as follows:

[C]ounsel seeking to withdraw from representation of a petitioner seeking review of a determination of the Board must provide a "no-merit" letter which details "the nature and extent of [the attorney's] review and list[s] each issue the petitioner wished to have raised, with counsel's explanation of why those issues are meritless." *Turner*, 518 Pa. at 494-95, 544 A.2d at 928.... A no-merit letter must include "substantial reasons for concluding that" a petitioner's arguments are meritless. *Jefferson v. Pennsylvania Board of Probation and Parole*, 705 A.2d 513, 514 (Pa. Cmwlth. 1998).

*Zerby v. Shanon*, 964 A.2d 956, 961-962 (Pa. Cmwlth. 2009).

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<sup>3</sup> Our review is limited to determining whether substantial evidence supports the Board's decision, and whether the Board erred as a matter of law or violated the parolee's constitutional rights. 2 Pa. C.S. §704; *Reavis v. Pennsylvania Board of Probation and Parole*, 909 A.2d 28, 33 n.3 (Pa. Cmwlth. 2006).

On September 8, 2009, Counsel served a copy of his *Turner* no-merit letter on Mann. Counsel's no-merit letter explained that he had exhaustively reviewed the record and concluded that the Board's calculation was correct based on the case law and on Counsel's own calculations. These constituted two "substantial reasons for concluding that" Mann's argument was meritless. Counsel also advised Mann that he had the right to retain substitute counsel or to file a *pro se* brief with this Court. Counsel's no-merit letter addressed the substantive issue raised by Mann and satisfied the technical requirements of *Turner*.

Having determined that Counsel has fulfilled the requirements for withdrawal of representation, we next consider whether Mann's appeal has merit. We concur in Counsel's judgment that the appeal is frivolous.<sup>4</sup>

Mann contends that the Board miscalculated his maximum term date by not crediting him with back time from the time of his new arrest until the time of his new conviction. As noted by Counsel, it is well-settled that "if a defendant is being held in custody *solely* because of a detainer lodged by the Board and has otherwise met the requirements for bail on the new criminal charges, the time which he spent in custody shall be credited against his original sentence." *Gaito v. Pennsylvania Board of Probation and Parole*, 488 Pa. 397, 403, 412 A.2d 568, 571 (1980) (emphasis added). In this case, however, Mann was not being held in custody solely because of the Board's detainer. On the unsworn falsification charge, Mann failed to post bail. Therefore, Mann was held in custody because he failed to post bail, not because of

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<sup>4</sup> Although Counsel was only required to find Mann's appeal to be without merit, Counsel went a step further to conclude that Mann's appeal had no basis in law or fact and is, therefore, frivolous. The arguments that follow were offered by Mann's counsel in his explanation of why Mann's appeal is frivolous.

the Board's detainer. Under *Gaito*, the time Mann spent in custody cannot be credited against his original sentence.

When Mann was released on parole, his maximum sentence date was May 30, 2009. This means that there were 957 days remaining on his initial sentence. Mann was convicted on July 26, 2007, and on that date he commenced serving the remainder of his sentence. Adding the 957 days left on his original sentence results in a new maximum sentence date of March 9, 2010. Therefore, the Board correctly calculated Mann's maximum sentence date; his claim that the Board erred in doing so is frivolous.

In sum, Counsel has fulfilled the technical requirements for withdrawing his representation, and our independent review of the record before the Board reveals that Mann's appeal is wholly frivolous. Accordingly, we grant Counsel's application for leave to withdraw and affirm the Board's decision.

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MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthony Mann,	:	
Petitioner	:	
	:	
v.	:	No. 1153 C.D. 2009
	:	
Pennsylvania Board of Probation and Parole,	:	
Respondent	:	

**ORDER**

AND NOW, this 16<sup>th</sup> day of February, 2010, the order of the Pennsylvania Board of Probation and Parole in the above-captioned matter, dated May 12, 2009, is AFFIRMED, and the application for leave to withdraw as appointed counsel filed by Harry J. Cancelmi, Jr. is GRANTED.

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MARY HANNAH LEAVITT, Judge