

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael L. Hulstine, :
 Petitioner :
 : :
 : :
 v. : No. 1403 C.D. 2007
 : Submitted: January 4, 2008
Pennsylvania Board of Probation :
and Parole, :
 Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Judge
 HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN

FILED: February 8, 2008

Michael L. Hulstine (Hulstine) petitions for review of the June 25, 2007, order of the Pennsylvania Board of Probation and Parole (Board), which affirmed the Board's calculation of Hulstine's parole violation maximum date of July 23, 2008. Appointed counsel has filed a petition for leave to withdraw, which we deny.

On August 3, 2006, while on parole from a state sentence, Hulstine was arrested and charged with drug-related offenses. (C.R. at 15.) As a result, the Board issued a detainer warrant. (C.R. at 14.) Hulstine was charged with additional drug-related offenses on August 18, 2006. (C.R. at 17.) Hulstine posted bail and, thus, as of August 18, 2006, he was detained solely on the Board warrant. (C.R. at 15, 17.) Hulstine was convicted on four of the drug-related offenses on

December 20, 2006, receiving concurrent sentences of three to twelve months. (C.R. at 27, 47, 54.)

After a parole revocation hearing, the Board recommitted Hulstine as a convicted parole violator (CPV) to serve one year and eight months backtime on his original sentence. The Board determined that Hulstine's new maximum date would be July 23, 2008. (C.R. at 68.) In calculating the new maximum date, the Board gave Hulstine credit for the time he was held solely on the Board's detainer warrant from August 18, 2006, to December 20, 2006. (C.R. at 65.) The Board then added the number of days remaining on Hulstine's original sentence to the date of March 27, 2007, to arrive at the July 23, 2008, maximum date. (C.R. at 65.)

Hulstine filed a request for administrative relief, arguing that the Board failed to give him credit for the time he was held solely on the Board's detainer warrant from August 22, 2006, to December 23, 2006. (C.R. at 69.) The Board issued a decision affirming its calculation, stating that it gave Hulstine credit for the period from August 18, 2006, to December 20, 2006. (C.R. at 73.) The Board also indicated that it added the number of days remaining on Hulstine's sentence to the date of March 27, 2007, because that was the date when Hulstine became available. (C.R. at 73.)

Hulstine then filed his petition for review with this court. Hulstine argues for the first time in his petition that the Board failed to give him credit for the period from December 20, 2006, to March 27, 2007. Hulstine contends that:

(1) he was in a state correctional institution during that time and, thus, could not get credit on his county sentences; and (2) he was required to serve his original sentence before beginning his county sentence.

Appointed counsel has filed an application for leave to withdraw, asserting that Hulstine's appeal is frivolous. When counsel determines that the issues raised by a petitioner are frivolous, and this court concurs, counsel will be permitted to withdraw. *Reavis v. Pennsylvania Board of Probation and Parole*, 909 A.2d 28 (Pa. Cmwlth. 2006). However, counsel also must satisfy the requirements set forth in *Craig v. Pennsylvania Board of Probation and Parole*, 502 A.2d 758 (Pa. Cmwlth. 1985).

Under *Craig*, counsel must: (1) notify the parolee of the request to withdraw; (2) furnish the parolee with either an *Anders*¹ brief or a no-merit letter pursuant to *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988); and (3) inform the parolee of his right to retain new counsel or submit a brief on his own behalf. If counsel provides a no-merit letter under *Turner*, the letter must discuss the nature and extent of counsel's review, the issues that the parolee has raised and counsel's analysis in concluding that the parolee's appeal is frivolous. *Reavis*.

Here, in the no-merit letter, counsel does not discuss the specific issues raised by Hulstine, i.e., whether Hulstine is entitled to credit for the period

¹ An *Anders* brief satisfies the requirements set forth in *Anders v. State of California*, 386 U.S. 738 (1967).

from December 20, 2006, to March 27, 2007, because Hulstine was in a state correctional institution during that time and because he was required to serve his original sentence before beginning his county sentence. Counsel simply repeats the Board's explanation of its calculation. Moreover, counsel states that Hulstine challenges his July 23, **2009**, maximum date, but the correct year is **2008**. In this regard, we note that the first paragraph of the Board's decision also gives the year as **2009**, but a later paragraph gives the correct year. It would appear that counsel failed to review the record to resolve the discrepancy in the Board's decision.² (See No-merit letter.) Because of these deficiencies, we conclude that counsel has not complied with *Turner*.

Accordingly, we deny counsel's application for leave to withdraw as counsel.³

ROCHELLE S. FRIEDMAN, Judge

² Counsel also incorrectly states that Hulstine is seeking credit for the period from December 20, **2007**, to March 27, 2007, and that Hulstine received his county sentences on December 20, **2007**. In both instances, the correct year is **2006**. Such errors may be only typographical in nature, but, in a case where dates are critical, the multiple errors are confusing and evidence a lack of care by counsel.

³ This court will not examine the merits of an appeal until it is satisfied that counsel has provided a proper *Anders* brief or no-merit letter. *Hont v. Pennsylvania Board of Probation and Parole*, 680 A.2d 47 (Pa. Cmwlth. 1996).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael L. Hulstine,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1403 C.D. 2007
	:	
Pennsylvania Board of Probation	:	
and Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 8th day of February, 2008, the application for leave to withdraw as counsel is denied without prejudice to file a proper application within thirty days.

ROCHELLE S. FRIEDMAN, Judge