

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert M. Miller, :
 :
 Petitioner :
 :
 v. : No. 1681 C.D. 2007
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 :
 Pennsylvania Board of : Submitted: March 28, 2008
 Probation and Parole, :
 :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: May 14, 2008

Robert Miller petitions for review of an order of the Pennsylvania Board of Probation and Parole (Board), which denied his request for administrative relief. In addition to the petition for review, we are presented with an amended application for leave to withdraw as appointed counsel filed by Miller's court-appointed attorney, Kent D. Watkins, on the grounds that Miller's appeal is frivolous.¹ For the reasons that follow, we again deny Attorney Watkins' application for leave to withdraw as counsel.

¹ Attorney Watkins' initial application to withdraw as counsel was denied, without prejudice, by order of this Court dated November 20, 2007 because counsel failed to address all issues raised in the petition for review.

When counsel believes that an appeal is wholly frivolous, he or she may file a petition to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), and Craig v. Pennsylvania Board of Probation and Parole, 502 A.2d 758 (Pa. Cmwlth. 1985), or Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988) and Epps v. Pennsylvania Board of Probation and Parole, 565 A.2d 214 (Pa. Cmwlth. 1989). Jester v. Pennsylvania Board of Probation and Parole, 595 A.2d 748, 750 (Pa. Cmwlth. 1991). Pursuant to Anders and Craig, counsel, after conducting an independent review of the record and determining the appeal is wholly frivolous, must: (1) notify the parolee of the request to withdraw; (2) furnish the parolee with a copy of the brief (Anders brief); (3) advise the parolee of his right to retain new counsel or raise any new points that he might deem worthy of consideration in a *pro se* brief; and (4) allow the parolee a reasonable opportunity to respond to counsel's motion to withdraw by either securing substitute counsel or filing a brief on his own behalf. Id.

Pursuant to Turner and Epps, if counsel so desires, he or she may file a "no-merit" letter instead of an Anders brief. The "no-merit" letter must contain: (1) the nature and extent of counsel's review; (2) the issues the petitioner wishes to raise; and (3) counsel's analysis in concluding that the petitioner's appeal is without merit or frivolous. Id. Turner has been interpreted as requiring that the "no-merit" letter list the issues the petitioner wishes to raise and must include an explanation as to why those issues lack merit. Hont v. Pennsylvania Board of Probation and Parole, 680 A.2d 47 (Pa. Cmwlth. 1996).

Here, Attorney Watkins' "no-merit" letter does not satisfy the technical requirements of Turner and Epps. First, Attorney Watkins' no-merit letter does not set forth the issues Miller wishes to raise. These issues are set forth in the petition for review and are as follows: (1) whether the denial of relief from

the Board's order revoking parole constitutes an error of law, a violation of Miller's constitutional rights and is not supported by substantial evidence; (2) whether the Board failed to give Miller credit for all time served solely under its warrant; and (3) whether the Board failed to hold a revocation hearing within 120 days from Miller's return to a state correctional facility or official verification of Miller's conviction. The only issue addressed in the Turner letter is the first issue, specifically, whether the Board's determination to recommit Miller to serve 36 months backtime is an error of law, a violation of Miller's constitutional rights and not supported by substantial evidence. Having failed to address all the issues raised, we must deny Attorney Watkins' application for leave to withdraw as counsel. Until such time as counsel complies with the requirements of Turner, we will not undertake an independent examination of the merits of Miller's appeal.

JAMES R. KELLEY, Senior Judge

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Petitioner	:	
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v.	:	No. 1681 C.D. 2007
	:	
Pennsylvania Board of	:	
Probation and Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 14th day of May, 2008, the application for leave to withdraw as appointed counsel filed by Kent D. Watkins is DENIED, without prejudice, and counsel is directed to refile the application, complying with the requirements of Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988) OR file a brief in support of Miller's petition for review within thirty days (30) of this order. Failure to comply with this order may result in the imposition of monetary sanctions against counsel.

JAMES R. KELLEY, Senior Judge