

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Reginald Edwards, :
Petitioner :
v. : No. 1760 C.D. 2007
 : Submitted: August 15, 2008
Pennsylvania Board of Probation and :
Parole, :
Respondent :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SMITH-RIBNER

FILED: October 23, 2008

Reginald Edwards petitions for review of an order of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief from a Board recommitment order. Lowell T. Williams, Esquire (Counsel), has filed an application for leave to withdraw as appointed counsel to Edwards in his petition for review with a "no-merit" letter pursuant to *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988), on the basis that Edwards' petition is frivolous. Edwards' appeal to the Board reveals his sole contention that in calculating his maximum expiration date and parole review date, the Board failed to credit him for 123 days spent in custody from October 20, 2006 to February 20, 2007.

Edwards was serving a ten-to-forty year sentence of imprisonment for aggravated assault with a maximum expiration date of January 5, 2033. He was paroled on May 12, 2003. On October 30, 2005, Edwards was arrested for charges related to carrying firearms. He posted bail but was detained on the Board's warrant until October 19, 2006 when he was found guilty of the charges in the

Court of Common Pleas of Philadelphia County; Edwards' bail was revoked, and he was held in custody at SRCF-Mercer. He was later sentenced to a five-to-ten year term of imprisonment to be followed by four years of probation.

On February 20, 2007, Edwards was recommitted as a convicted parole violator. The Board thereafter determined that he was to serve 18 months of backtime, setting his parole review date as December 2007 and his maximum expiration date as February 15, 2036. Pursuant to this Court's July 6, 2007 order crediting Edwards' original sentence with 109 days that he spent in custody solely on the Board's warrant, the Board reset the dates as follows: "REVIEW IN OR AFTER SEPTEMBER 2007 – PAROLE VIOLATION MAX DATE: 10/29/2035." Notice of Board Decision, July 13, 2007, Certified Record (C.R.) at 77.

On July 12, 2007, Edwards protested by letter to the Chief Counsel of the Board that the Board had not addressed "the time frame of 10-20-06 thru 2-19-07 ie 123 days that was not accounted for." C.R. at 78 - 79. Under *Martin v. Pennsylvania Board of Probation and Parole*, 576 Pa. 588, 840 A.2d 299 (2003), Edwards argued that the 123 days must be credited to his original sentence because all time spent in custody must be credited to either the original or new sentence. He also argued that the Board lacks discretion to credit the 123 days to the new sentence on his 2006 conviction under *Mitchell v. Pennsylvania Board of Probation and Parole*, 375 A.2d 902 (Pa. Cmwlth. 1977); that it cannot be assumed that the 123 days would be credited to the new sentence; and that he was detained from October 20, 2006 to February 20, 2007 solely on a Board warrant. Edwards raised the same points by letter dated July 15 to parole staff technician Randy Flood, asserting that he would have completed the 18 months of backtime in May 2007 if he had been given 123 days in backtime credit.

On July 22, 2007, Edwards filed an administrative appeal of the Board's decision, stating the following:

- 1) Respondent Board set 10/29/2035 as my new maximum date. This is an error. The correct new maximum date should be 6/24/2035....
- 2) The Board set September 2007 as my review date. This is an error. The correct review date should be May 2007. I will have served 22 months on an 18-month backtime hit by the time I see the board. The backtime sanction should commence from the date I posted bail ... and end 18 months after, which would be May 2007.

C.R. at 85. Edwards' proposed dates appear to reflect a credit of the 123 days.

The Board responded to Petitioner, stating the following:

This is a response to your **petitions for administrative review** received July 17, 2007, July 19, 2007 and August 2 [,] 2007, all of which object to the Board decision mailed July 13, 2007....

When you were paroled on May 12, 2003 your max date was January 5, 2033, which left 10,831 days remaining on your sentence. The record reflects that you were incarcerated solely on the Board's warrant from October 31, 2005 to October 19, 2006. Thus, you received 353 days of backtime credit for that period. Subtracting this credit from the time you had remaining results in a total of 10,478 days remaining on your sentence. You became available to begin serving your backtime on February 20, 2007, when the Board obtained the necessary signatures to recommit you as a parole violator. ... Adding 10,831 days to that date yields a new parole violation maximum date of October 29, 2035.

Additionally, you were recommitted to serve 18 months backtime for your violations. Adding 18 months to the February 20, 2007 availability date, minus the 353 days of backtime credit you received, yields a review date of in or after September 2007.

Board's Letter, August 20, 2007; C.R. at 87 (emphasis in original) (citation omitted). The Board's response did not address Edwards' contention involving the

123 days. Edwards filed his petition for the Court's review, and current Counsel filed the application with a no-merit letter in support thereof. A prior application was denied because of a defective no-merit letter.

Before the Court considers a request to withdraw, counsel must satisfy the requirements necessary to withdraw as described in *Presley v. Pennsylvania Board of Probation and Parole*, 737 A.2d 858, 861 (Pa. Cmwlth. 1999):

Pursuant to *Anders v. State of California*, [386 U.S. 738 (1967)], court-appointed counsel, who seeks to withdraw his or her representation, must (1) notify the parolee of the request to withdraw, (2) furnish the parolee with a copy of the brief referring [to] anything in the record that might arguably support the appeal (*Anders* brief), and (3) advise the parolee of the right to retain new counsel or raise any new contentions. The Pennsylvania courts subsequently permitted counsel to alternatively file a "no-merit letter," instead of an *Anders* brief, (1) detailing the nature and extent of counsel's review, (2) listing issues that the parolee wishes to raise, and (3) explaining why those issues lack any merit. *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988); *Epps v. Pennsylvania Board of Probation & Parole*, 129 Pa.Cmwlth. 240, 565 A.2d 214 (1989).

In *Epps* the Court stated that "[w]hen a reviewing court agrees with counsel's assessment of a frivolous appeal, counsel has fully discharged his duty" and will be granted leave to withdraw. *Id.*, 565 A.2d at 216.¹

¹Counsel's second no-merit letter states in part as follows:

1. Petitioner's first argument in [sic] that [the Board] erred by failing to properly re-calculate petitioner's new maximum date. When Petitioner was paroled on May 12, 2003, his maximum date was January 5, 2033. He was incarcerated solely on [the Board's] warrant from the date Petitioner's bond was posted, October 30, 2005 until the date Petitioner's bond was forfeited, October 19, 2006. He became available to begin serving his backtime on the date he was recommitted as a parole violator, February 20, 2007.

(Footnote continued on next page...)

Here, Counsel satisfied the technical requirements necessary to withdraw: Counsel notified Edwards of the application, filed a no-merit letter with a copy to Edwards and advised him to retain new counsel or to proceed *pro se*. *Presley*. The no-merit letter also satisfied the requirements under *Turner*. Counsel averred that he reviewed the record and the applicable law. Counsel addressed Edwards' main contention that the Board erred in calculating his maximum expiration date and parole review date; noted Edwards' receipt of credit for 353 days spent in custody solely on the Board's warrant from October 30, 2005 to October 19, 2006; and provided the trial court's sentence status summary for Edwards showing that the trial court credited 123 days from October 20, 2006 to February 20, 2007 to Edwards' new sentence from his 2006 conviction.

(continued...)

Petitioner's new parole violation maximum date was correctly calculated to be October 20, 2035.

....

The period of time from the forfeiture of petitioner's bond on October 19, 2006 until the revocation of petitioner's parole on February 20, 2007 was properly credited to Petitioner's new conviction at docket number CP-51-CR-0111501-2006 of the Court of Common Pleas of Philadelphia County. A true and correct copy of Petitioner's sentence status summary is attached hereto as Exhibit "A."

2. Petitioner's second argument is that the Respondent Board erred by failing to properly calculate Petitioner's parole review date. Petitioner was committed to serve eighteen months backtime for his parole violations. Subtracting the 353 days of backtime credit from the eighteen months backtime, with a recommitment date of February 20, 2007, yields a review date in or after September 2007.

Having found that Counsel has satisfied the technical requirements to withdraw, the Court now conducts an independent review to determine whether it agrees with Counsel's assessment. *Epps*. An appeal is considered wholly frivolous when it completely lacks points that arguably might support an appeal. *Id.* In *Davis v. Cuyler*, 394 A.2d 647, 649 (Pa. Cmwlth. 1978), this Court held that "where the Board's detainer is the *sole reason* the prisoner is being confined, the Board must apply the time in confinement to the prisoner's original sentence." *See Martin* (recognizing that *Mitchell* was modified by *Davis*). The Supreme Court in *Martin* stated that for a parolee who "is incarcerated on new criminal charges and does not post bail or has his bail revoked, time spent in jail is not credited to the parolee's original sentence ... because the parolee was not incarcerated solely on the Board's warrant." *Id.*, 576 Pa. at 598, 840 A.2d at 305.

Having reviewed the record, it is apparent that Edwards' petition lacks any points that arguably might support an appeal, and therefore it is frivolous. Edwards' sole contention is that his original sentence was not credited with the 123 days he spent in custody from October 20, 2006 until recommitment as a convicted parole violator on February 20, 2007. The record establishes that he received all available credit due him, including 123 days credited to his new sentence by the trial court. *See* Sentence Status Summary, No-Merit Letter, Exhibit A. Following Edward's conviction on October 19, 2006 and the revocation of his bail, he was no longer being held solely on the Board's warrant. *Martin*. Accordingly, the Court grants Counsel's application for leave to withdraw and affirms the Board's order.

DORIS A. SMITH-RIBNER, Judge

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Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 23rd day of October, 2008, the Court grants Counsel's application for leave to withdraw as appointed counsel and affirms the order of the Pennsylvania Board of Probation and Parole.

DORIS A. SMITH-RIBNER, Judge