IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Reginald Edwards, Petitioner	:	
v.	:	No. 1760 C.D. 2007
	:	Submitted: March 28, 2008
Pennsylvania Board of Probation and Parole, Respondent	:	

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SMITH-RIBNER FILED: June 5, 2008

Lowell T. Williams, Esquire, has filed an application for leave to withdraw as counsel to Reginald Edwards (Petitioner) in his petition for review of an order of the Pennsylvania Board of Probation and Parole (Board) that denied him administrative relief from a Board recommitment order. Petitioner states that the Board erred by failing to recalculate properly his new maximum expiration date and his parole review date. Counsel contends that Petitioner's appeal is frivolous, and he has submitted a "no-merit" letter pursuant to *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988), in support of his application.

Petitioner was paroled May 12, 2003 when he was serving a sentence of ten-to-forty years of imprisonment for aggravated assault with a maximum expiration date of January 5, 2033. On October 30, 2005, Petitioner was arrested and charged with carrying firearms without a license, carrying firearms on public streets and, later, carrying firearms as a convicted felon. On October 31, 2005, he

posted bail but was detained on the Board's warrant from October 31, 2005 to October 19, 2006. On October 19, 2006, Petitioner was found guilty of the charges in the Court of Common Pleas of Philadelphia County. His bail was forfeited, and he was held in custody at SRCF-Mercer. He was sentenced on November 30, 2006 to serve five-to-ten years of imprisonment followed by four years of probation.

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

On July 12, 2007, Petitioner wrote a letter to Chief Counsel of the Board in which he stated that, although the issue of 109 days of credit had been resolved, the Board still had not addressed the issue of "the time frame of 10-20-06 thru 2-19-07 ie 123 days that was not accounted for." C.R. at 78 - 79. Citing *Martin v. Pennsylvania Board of Probation and Parole*, 576 Pa. 588, 840 A.2d 299 (2003), Petitioner argued that all time spent in custody must be credited to either the original or new sentence and that the 123 days must be credited to his original sentence. He also cited *Mitchell v. Pennsylvania Board of Probation and Parole*, 375 A.2d 902 (Pa. Cmwlth. 1977), *aff'd*, 491 Pa. 291, 420 A.2d 1324 (1980), and argued that the Board had no discretion to credit the period between October 20, 2006 and February 19, 2007 to the new sentence imposed following his conviction

on the new charges, and it could not be assumed that the 123 days would be credited to the new sentence. In fact, he was given only 20 days of credit toward the new sentence for incarceration time prior to his posting bail. On July 15, 2007, Petitioner sent a letter containing the same arguments to parole staff technician Randy Flood; he asserted that he would have completed the 18 months of backtime in May 2007 with the correct calculation.

By letter of July 22, 2007, Petitioner 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, which is consistent with the 900 days I spent on parole.
>
> 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. Petitioner's proposed new maximum and parole review dates appear to be approximately 123 days earlier than the Board's calculations.

The Board responded to Petitioner by letter dated August 20, 2007, stating the following:

> This is a response to your **petitions for administrative review** received July 17, 2007, July 19, 2007 and August 2 [sic] 2007, all of which object to the Board decision mailed July 13, 2007….
>
> When you were paroled on May 12, 2003 [sic] your max [sic] 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. (citation omitted). 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. (Emphasis in original).

C.R. at 87. Although the Board deemed all three of Petitioner's July 2007 letters to be his petitions for administrative review, it did not address whether he was due backtime credit of 123 days. Petitioner thereafter filed his petition for review with the Court, and appointed counsel, Lowell T. Williams, has filed the application to withdraw currently before the Court. Counsel notified Petitioner of the application and advised him to retain a new counsel or to proceed *pro se.*

Court-appointed counsel seeking to withdraw as counsel based upon a frivolous appeal must file a "no-merit" letter that details the nature and extent of counsel's review, the issues raised by the petitioner and the analysis conducted in reaching counsel's conclusion. *Presley v. Pennsylvania Board of Probation and Parole*, 737 A.2d 858 (Pa. Cmwlth. 1999). If the letter meets all requirements, the Court may conduct independent review and must agree with counsel's assessment before granting leave to withdraw. *Hill v. Pennsylvania Board of Probation and Parole*, 707 A.2d 1214 (Pa. Cmwlth. 1998). Counsel must fully comply with *Turner* to ensure that each of the claims has been considered and that counsel has a substantive reason for concluding that each claim is frivolous. *Vandermark v. Pennsylvania Board of Probation and Parole*, 685 A.2d 628 (Pa. Cmwlth. 1996).

The Court has reviewed counsel's no-merit letter and finds that it fails to meet the *Turner* requirements. Counsel failed to identify or to address the main issue: miscalculation of the maximum expiration and parole review dates arising from the Board's alleged failure to credit Petitioner 123 days from October 20, 2006 to February 19, 2007. Nowhere in the no-merit letter does counsel state the issue that underlies Petitioner's petition for administrative review and petition for review to this Court. The Board deemed Petitioner's July 12, 15 and 22, 2007 letters to be petitions for administrative review, which clearly stated the issue, but counsel's letter merely reiterates the Board's calculation of the dates. Had counsel properly reviewed the July letters, counsel would have discerned that Petitioner's complaint is about not having received the additional 123 days of credit due him.

In *Presley* the Court held that counsel's no-merit letter was defective because he "failed to conduct a conscientious review of the record" by omitting an accurate identification of the issues raised. *Id*., 737 A.2d at 861. In *Vandermark* the Court held that the letter was defective because it only addressed the issues of whether the Board imposed excessive backtime and whether the Board's decision was supported by substantial evidence when the specific issue was whether it erred in allowing into evidence an inaccurate police report that constituted hearsay. Although the Court neither encourages nor condones frivolous appeals, it however will not accept the compromise of Petitioner's right to counsel. *Hill*. The Court therefore denies counsel's application and foregoes independent review of the merits until counsel discharges his duty by submitting a no-merit letter to comply with *Turner* or by determining upon further review to withdraw his application.

DORIS A. SMITH-RIBNER, Judge

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O R D E R

AND NOW, this 5th day of June, 2008, the Court denies the application of Lowell T. Williams, Esquire, for leave to withdraw as counsel to Petitioner Reginald Edwards. Counsel shall submit a no-merit letter that complies with the requirements of *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988), or upon further review shall file the necessary brief on behalf of Petitioner within thirty days from the date of this order.

DORIS A. SMITH-RIBNER, Judge