

2001, Jackson received a sentence of two to four years for a drug offense, with a maximum sentence date of April 15, 2005, (C.R. at 1-3); (2) a Board decision mailed on June 13, 2006, showing that the Board recommitted Jackson to serve twenty-four months in backtime, when available, for drug and firearm convictions, (*id.* at 4-5); (3) a Board decision mailed on June 8, 2010, showing that the Board set Jackson's re-parole eligibility date as February 5, 2010, and re-set his maximum date as December 8, 2012, (*id.* at 6-8); (4) a Board decision mailed on June 30, 2010, showing that the Board modified Jackson's re-parole eligibility date to be February 6, 2012, (*id.* at 9-11); and (5) the administrative review filings of Jackson and the Board, (*id.* at 12-26).

In his June 24, 2010, administrative review request, Jackson claimed that: (1) in re-computing his maximum date in its June 8, 2010 decision, the Board denied him credit for the time he was held on a Board detainer from April 15, 2004, the date of his arrest in Pennsylvania for unspecified charges, to January 18, 2007, the date before he was transferred to federal prison to begin serving a federal sentence; and (2) the Board denied him a timely parole revocation hearing. (*Id.* at 12-13.) Jackson reiterated these claims in a July 21, 2010, request for administrative review of the Board's June 30, 2010, decision. (*Id.* at 15-18.)

The Board decided that Jackson's challenge to the timeliness of his revocation hearing was untimely because it was not filed within thirty days of the Board's June 13, 2006, parole revocation decision. (*Id.* at 22.) With respect to the credit issue, the Board stated:

You received 84 days of credit for the time you were incarcerated from April 15, 2004 (initial date of arrest) to July 8, 2004 (date federal detainer was lodged) because the

state criminal charges were dismissed thereby leaving you incarcerated solely on the Board's warrant during this period. However, you did not receive any credit on your original sentence for any period you were incarcerated between July 9, 2004 and January 17, 2006 (date of federal conviction) because you were not incarcerated solely on the Board's warrant during this period. . . .

Purely for your information, federal authorities gave you pre-sentence credit from July 9, 2004, to January 16, 2006 and then commenced your sentence on January 17, 2006. So you did in fact receive credit for every day of your incarceration. For your reference, copies of the federal sentence computation data sheet and the Board's PBPP 39 are enclosed.

(Id. at 22-23.) Thus, the Board dismissed as untimely Jackson's challenge to the timeliness of his revocation hearing and denied Jackson's claim that he was not given all appropriate credit. *(Id. at 23.)*

In his petition for review to this court, Jackson reiterates his credit and untimely hearing claims. Jackson further asserts that he was entitled to a second revocation hearing within 120 days after his return to Pennsylvania from federal prison on May 4, 2010. In support of this assertion, Jackson attaches a November 3, 2009, letter that the Board sent him, stating that Jackson would receive a revocation hearing upon his release from federal prison. *(See* Petition for Review, Attachment.)

Subsequently, the Board filed a motion to limit the issues on appeal, which this court granted. Thus, the issues on appeal are limited to: (1) whether the Board correctly dismissed as untimely Jackson's administrative appeal of the June 13, 2006, revocation decision; and (2) whether the Board correctly affirmed the Board's June 30, 2010, recalculation order. *(See* 11/18/10 Order.)

Counsel then filed a motion to withdraw, stating that the issues raised by Jackson are frivolous. Counsel addressed the issues in a brief filed in support of the motion. With respect to whether Jackson received a timely revocation hearing on May 13, 2006, Counsel asserts that: (1) Jackson waived the issue by failing to raise it within thirty days of the Board's 2006 revocation decision; (2) even if Jackson had not waived the issue, his May 13, 2006, revocation hearing was within 120 days of Jackson's return to state custody on January 19, 2006; and (3) to the extent Jackson believes he was entitled to a hearing after his return to state custody on May 4, 2010, Jackson is mistaken. With respect to whether Jackson received all appropriate credit, Counsel asserts that, based on state and federal calculation sheets, Jackson received all appropriate credit.

In response to Counsel's motion to withdraw, Jackson filed a *pro se* brief on his own behalf. With respect to whether he received a timely revocation hearing, Jackson notes that the Board advised him in a letter that he would receive a hearing after his return from federal custody, but the Board never provided such a hearing. With respect to whether Jackson received all appropriate credit, Jackson asserts that, contrary to statements of the Board and Counsel, the credit in question was not applied to his federal sentence.

In *Encarnacion v. Pennsylvania Board of Probation and Parole*, 990 A.2d 123, 125 (Pa. Cmwlth. 2010), this court stated that, when counsel believes the issues raised by a parolee are frivolous, counsel may be permitted to withdraw if he: (1) notifies the parolee of his request to withdraw; (2) furnishes the parolee with a

copy of a no-merit letter or *Anders*² brief; and (3) advises the parolee of the right to retain new counsel or raise any new points he might deem worthy of consideration by submitting a brief on his own behalf. A brief or no-merit letter must set forth: (1) the nature and extent of counsel's review of the case; (2) the issues the parolee wishes to raise on appeal; and (3) counsel's analysis in concluding that the appeal is frivolous or lacks merit. *Id.* at 126. Once this court is satisfied that these requirements have been met, we will then make an independent evaluation of the proceedings before the Board to determine whether the parolee's appeal is frivolous or lacks merit. *Id.*

Here, the filings indicate that Counsel notified Jackson of the request to withdraw, provided Jackson with a copy of the *Anders* brief and advised Jackson of his right to submit a brief on his own behalf. Counsel's brief shows the nature and extent of his review of the case, sets forth the issues Jackson raised and provides Counsel's analysis in concluding that the appeal is frivolous. Because Counsel has satisfied these technical requirements, we shall now conduct an independent review to determine whether Jackson's appeal is frivolous or lacks merit.

Jackson first argues that, according to a letter he received from the Board, he was entitled to a hearing after he was returned to state custody on May 4, 2010. However, Jackson did not raise this issue in his administrative appeal to the Board; thus, the issue is waived. Moreover, this court has limited the issues on

² *Anders v. State of California*, 386 U.S. 738 (1967). We note that, where, as here, no constitutional right is involved, an attorney seeking to withdraw need only file a no-merit letter. *Seilhamer v. Pennsylvania Board of Probation and Parole*, 996 A.2d 40, 42 n.4 (Pa. Cmwlth. 2010). Where an *Anders* brief is filed when a no-merit letter would suffice, the *Anders* brief must at least contain the same information that is required to be included in a no-merit letter. *Id.* at 42-43.

appeal, and Jackson's right to a hearing after his return to state custody on May 4, 2010, is not one of the issues before us.

Jackson next argues that he should have received credit on his state sentence for the time he served from January 19, 2006, the date he was returned to state custody for a parole revocation hearing, to January 19, 2007, the date he was returned to federal custody to serve his federal sentence. Jackson asserts that he did not receive credit on his federal sentence for this time. However, the record contains a document titled "Sentence Monitoring Computation Data," (C.R. at 26), showing that Jackson began his federal sentence on January 17, 2006.³ (*See id.* at 6, 9, 23-24.) Thus, Jackson was serving his federal sentence from January 19, 2006, to January 19, 2007. The fact that Jackson was transferred temporarily to state custody for a revocation hearing is not relevant because, as a matter of law, Jackson was required to complete his federal sentence before serving his backtime.⁴

³ The document also shows that Jackson received credit on his federal sentence for the time he served from July 9, 2004, to January 16, 2006. (C.R. at 26.)

⁴ *See* section 6138(a)(5) of the Prisons and Parole Code, 61 Pa. C.S. §6138(a)(5) (indicating that, when a convicted parole violator is paroled from a state institution and is not sentenced to a state institution, the parolee must serve the new sentence first).

Because we conclude that the issues properly before us lack merit, we grant Counsel's motion to withdraw and affirm the Board.

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tyrone R. Jackson,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2056 C.D. 2010
	:	
Pennsylvania Board of Probation and	:	
Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 19th day of September, 2011, the motion to withdraw as counsel filed by the Public Defender of Allegheny County is granted, and the order of the Pennsylvania Board of Probation and Parole, dated September 1, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge