IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ronald G. Robinson,		:	
	Petitioner	:	
		:	No. 2078 C.D. 2009
v.		:	Submitted: July 9, 2010
		:	
Pennsylvania Board of Probation and Parole,		:	
	Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** November 5, 2010

Petitioner Ronald G. Robinson (Robinson) petitions for review of an order (final determination) of the Pennsylvania Board of Probation and Parole (Board) that denied his request for administrative relief. Robinson's appointed counsel, Brian O. Williams, Esq. (Counsel), however, filed a motion to withdraw as counsel. Counsel asserts, as expressed in his "no merit" letter, that the issues Robinson raises in his petition for review are without merit. We grant Counsel's motion to withdraw and affirm the Board's order.

Robinson pleaded guilty to numerous criminal charges on December 22, 1983, including multiple counts of burglary, trespass, and receiving stolen

property.[1] Robinson was sentenced to concurrent periods of incarceration of five-to-twenty years for those convictions. (C.R. 1-2.) The Board granted Robinson parole, with a release date of September 1, 1988. (C.R. 8.) On June 20, 1989, the Board declared Robinson delinquent as of February 9, 1989. Robinson was arrested on September 5, 1989, and the Board issued a detainer for him on September 11, 1989. The Board issued a decision recorded on November 6, 1989, recommitting Robinson as a technical parole violator, directing him to serve six months backtime when available. (C.R. 12.) The Board recorded another decision on May 16, 1990, indicating that it was recommitting Robinson on the basis of new criminal convictions as a convicted parole violator to serve an additional thirty-six months (for a total of forty-two months backtime) when available. (C.R. 13.) On October 29, 1990, the Board recorded another decision, referring to the action it had taken in May and imposing a period of backtime of six months based upon Robinson's conviction for driving under the influence. (C.R. 14.) Ultimately, however, the Board issued an order, mailed March 14, 1991, rescinding the part of its May 1989 order imposing thirty-six months backtime upon Robinson as a convicted parole violator, and directing that Robinson "continue on parole" as to the above-noted new criminal charges that resulted in convictions on two counts of burglary and consequential prison terms of three-to-six years. (C.R. 15, 19.) The

[1] (Certified Record (C.R.) 1-2.)

Board's calculation of Robinson's maximum sentence date up until this point in time is not in dispute.

Of particular interest to the matter now before the Court, the Board granted reparole to Robinson by decision recorded January 6, 1994, directing that Robinson be paroled to a Board detainer on February 5, 1994 to serve the twelve-month backtime period described above (six months for technical parole violations and six months for Robinson's conviction for driving under the influence). (C.R. 16.) The order also directed that Robinson be reparoled on February 5, 1995 to an approved plan. (C.R. 17.) This notice of decision indicated that Robinson's new maximum sentence release date for his original sentence was February 5, 2009. On March 10, 1994, however, the Board modified that January 1994 order, changing Robinson's reparole date to May 4, 1994, and changing his maximum sentence date to May 4, 2008. (C.R. 22.)

Following this determination, Robinson's parole history reflects additional parole violations and new criminal convictions, engendering numerous additional Board orders. One such order that the Board issued, on June 9, 2005, granted parole to Robinson to a detainer sentence and listed his maximum sentence date as December 5, *2013*. (C.R. 50.) On April 10, 2007, the Board released Robinson on parole to a community corrections center. (C.R. 57.) This order provided that Robinson "must remain on reparole [until] 12/05/2013[, the] longest

remaining maximum for [his 1983 convictions]," but the maximum sentence date identified at the end of the order is May 11, 2010.[2] (C.R. 60.)

The Board issued a recommitment order on April 21, 2009, that, in part, modified its June 9, 2005, parole order, based upon an error the Board discovered regarding its 1994 order. Ultimately, the Board's April 21, 2009 order changed the maximum date on that 2005 order from December 5, *2013* (the maximum release date identified in its June 2005 recommitment order) to December 5, *2010*.

Robinson filed a petition for administrative review of the Board's April 21, 2009 order, seeking to challenge the Board's determination of his maximum sentence dates for his 1983 and 1991 convictions.[3] He asserted that his maximum sentence dates expired and, consequently, he is entitled to be released. The Board responded to Robinson's request for administrative review by letter mailed September 30, 2009. The Board's letter addressed all of the challenges Robinson mentioned in his request for administrative relief and affirmed its decision identifying December 5, 2010, as his maximum sentence date. Robinson then filed a petition for review with this Court, challenging the Board's September,

[2] This discrepancy may be explained based upon another maximum sentence date for one of Robinson's other prison sentences.

[3] As the Board points out in its final determination, Robinson's maximum sentence date for his 1991 convictions expired and is no longer relevant.

2009, final determination, asserting that the Board erred as a matter of law and "failed to produce substantial evidence" in reaching its determination.

On appeal, Robinson argues that the Board erred in (1) its January 6, *1994* order calculating the maximum sentence date to be May 4, 2005 instead of September 5, 2004[4] (Robinson alleges that the Board improperly extended his maximum date *at that time* by seven months and twenty-eight days); and (2) failing to credit his maximum sentence for the period from September 11, 1989 through June 12, 1990, when, he asserts, citing *Gaito v. Pennsylvania Board of Probation and Parole*, 488 Pa. 397, 412 A.2d 568 (1980), the Board's detainer was the sole basis for his confinement following his new criminal charges for which he posted bail. Robinson also requested that this Court appoint counsel to represent him. The Court issued an order on October 27, 2009, directing the Public Defender of Cumberland County to represent Robinson. Counsel thereafter filed the application for leave to withdraw as counsel now before the Court.

We begin by addressing Counsel's request to withdraw from his representation of Robinson. Where no constitutional right to counsel is involved, an attorney seeking to withdraw from representation in a probation and parole case

[4] Robinson's argument is addressed to the maximum date the Board identified in its January 6, 1994 order, rather than the corrected order the Board issued on March 10, 1994, wherein, as noted above, the Board changed Robinson's maximum date to May 4, *2008*.

need only file a no-merit letter, as opposed to an Anders[5] brief. *Hughes v. Pennsylvania Bd. of Probation and Parole*, 977 A.2d 19 (Pa. Cmwlth. 2009). A constitutional right to counsel arises when the petitioner presents a:

> colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.

Id. at 25-26 (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 790, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973)). Because Robinson is only challenging the Board's calculation of his maximum sentence date, he does not meet the test described in *Hughes*, and he does not have a constitutional right to counsel in this case. *See Hughes*, 977 A.2d at 25-26. Robinson only has a statutory right to counsel under Section 6(a) of the Public Defender Act, Act of December 2, 1968, P.L. 1144, *as amended*, 16 P.S. § 9960.6(a)(10). As such, Counsel properly filed a no-merit letter in order to withdraw from representation of Robinson**.**

[5] In *Anders v. California*, 386 U.S. 738 (1967), the United States Supreme Court held that, in order for a criminal defendant's counsel to withdraw from representing his client in an appeal, the counsel must assert that the case is completely frivolous, as compared to presenting an absence of merit. An appeal is completely or "wholly" frivolous when there are no factual or legal justifications that support the appeal. *Craig v. Pennsylvania Bd. of Probation and Parole*, 502 A.2d 758 (Pa. Cmwlth. 1985). However, in *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988), our Supreme Court held that in matters that are *collateral* to an underlying criminal proceeding, such as parole matters, a counsel seeking to withdraw from his representation of a client may file a "no-merit" letter that includes information describing the extent and nature of the counsel's review, listing the issues the client wants to raise, and informing the court by explaining the reasons why counsel believes the issues have no merit.

In filing a no-merit letter, counsel must comply with certain procedural requirements. Counsel must: (1) notify the parolee that he has submitted to the Court a request to withdraw; (2) provide the parolee with a copy of counsel's no-merit letter; and (3) advise the parolee that he has the right to obtain new counsel and to submit to the Court a brief of his own raising any arguments that he may believe are meritorious.[6] *Reavis v. Pennsylvania Bd. of Probation and Parole*, 909 A.2d 28, 33 (Pa. Cmwlth. 2006). In seeking to withdraw, an attorney must include the following descriptive information in the no-merit letter: (1) the nature and extent of counsel's review of the case; (2) the issues the parolee wants to raise; and (3) the analysis counsel used in reaching his conclusion that the issues are meritless. *Zerby v. Shanon*, 964 A.2d 956, 961 (Pa. Cmwlth. 2009).

Consequently, before considering whether the matter has no merit and proceeding to make an independent review of the merits of the case, we must first evaluate Counsel's no-merit letter to determine whether it complies with the requirements for withdrawal applications. Counsel's no merit letter includes a fair summary of Robinson's conviction and parole history, thus reflecting an adequate review of the record. Counsel has also sufficiently summarized the issues Robinson has raised in his petition for review and provided some legal analysis of

[6] Counsel has complied with these requirements.

the reasons why the issues have no merit.[7] We, therefore, will proceed to consider the question of whether counsel is correct in asserting that the issues Robinson has raised are without merit.

As indicated above, after the Board first granted parole in September 1988, Robinson (1) became delinquent, (2) was arrested, and (3) posted bail on new criminal charges. Because Robinson posted bail on the new criminal charges, once the Board issued its detainer on September 11, 1989, the prison authorities were holding Robinson solely on the basis of the Board's detainer. Consequently, and as recognized by the Board's citation of *Gaito* in its September 2009 final determination, Robinson was entitled to have that period of incarceration credited to his original five-to-twenty year sentence.

The Board's final determination described the process by which it arrived at the recalculated maximum date. With regard to the period of time and the Board's 1994 orders that appear to be the focus of Robinson's petition for review, the Board (1) identified the period of time Robinson had remaining on his original sentence when it first granted him parole, (2) subtracted from that remaining term the amount of time Robinson was incarcerated based solely on the

[7] We observe, however, that, given the limited issues Robinson has raised and the focus of those issues on the period from the point of his initial release on parole in 1988 through the Board's issuance of its 1994 order, Counsel could perhaps have similarly focused on that time period and the calculation the Board performed at that time.

Board's detainer before his conviction on the new charges—nine months and one day—to arrive at a period of fourteen years, two months, and twenty-nine days remaining on his original sentence, and (3) added that period to the date upon which Robinson became available to begin to serve his backtime on the original sentence—February 5, 1991, the date he began to serve his backtime. Adding fourteen years, two months, and twenty-nine days to February 5, 1991, results in a maximum sentence date of May 4, 2005.

Although Robinson asserts that the ultimate maximum date the Board calculated in its April 2009 decision is incorrect, he bases his petition for review solely on the claim that the Board erred in its *1994* orders. The Board has not disputed that it arrived at an erroneous maximum sentence date in 1994. The Board explains in its final determination how it arrived at its recalculation of what Robinson's maximum date should have been (May 4, 2005) when it issued its erroneous orders in 1994. Based upon the facts and procedural history leading up to the Board's 1994 orders, we cannot agree with Robinson that the Board's re-calculation in 2009 did not correct its erroneous determination of Robinson's maximum sentence date relevant to its 1994 orders. Thus, we agree with Counsel that this aspect of Robinson's claim has no merit. Further, as indicated above, the Board's corrected calculation relating to its 1994 determination reflects the nine month and one day period for which Robinson was entitled credit when he was

incarcerated solely on the Board's detainer while awaiting resolution of the new criminal charges. Thus, this issue also lacks merit.

Accordingly, we will grant counsel's motion to withdraw. Moreover, because we have concluded that Robinson's petition for review lacks merit, we dismiss his appeal and affirm the order of the Board denying his administrative appeal.

P. KEVIN BROBSON, Judge

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Pennsylvania Board of Probation and Parole, Respondent	:	

O R D E R

AND NOW, this 5th day of November, 2010, the motion to withdraw as counsel filed by Brian O. Williams, Esquire, is GRANTED, and the order of the Pennsylvania Board of Probation and Parole is AFFIRMED.

P. KEVIN BROBSON, Judge