

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Vance Sanders, :
 :
 Petitioner :
 :
 v. : No. 2177 C.D. 2007
 :
 Pennsylvania Board of Probation : Submitted: June 20, 2008
 and Parole, :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: August 6, 2008

Vance Sanders petitions for review of an order of the Pennsylvania Board of Probation and Parole (Board) denying his administrative appeal of a Board order recommitting him to serve 18 months' backtime as a convicted parole violator. Sanders asserts error in the Board's calculation of his maximum sentence date. Additionally, Sanders' appointed counsel, Harry J. Cancelmi, Jr., Esq. (Counsel), petitions to withdraw. We affirm the Board's order and grant Counsel's request.

Effective December 9, 1993, the Allegheny County Common Pleas Court (sentencing court) sentenced Sanders to a total of ten years' imprisonment for two drug-related offenses (original state sentence). Certified Record "C.R." at 1. The sentence had a minimum expiration date of December 9, 1998 and a

maximum expiration date of December 9, 2003. Id. On November 22, 1999, the Board paroled Sanders for the first time. Id. at 10.

Sanders remained on parole until the Allegheny County Police Department (police department) arrested him on July 30, 2003 for two drug-related offenses. Consequently, the Board declared Sanders delinquent as of his arrest date for control purposes. Id. at 15. Upon Sanders' conviction for the offenses, the Board recommitted Sanders as a convicted parole violator. It later re-paroled Sanders on June 5, 2005. Id. at 18. As of this date, 1,208 days remained on the original state sentence.

On May 5, 2006, the police department again arrested Sanders and charged him with two drug-related offenses (new charges). Id. at 23. Sanders did not post bail. Id. at 20. Also on May 5, the Board lodged a detainer against Sanders. Id. at 22. On April 3, 2007, Sanders pled guilty to the new charges and the sentencing court imposed a seven-year sentence (new state sentence). Id. at 67.

Relevant here, the Board subsequently charged Sanders again as a convicted parole violator. Id. at 23. The preliminary hearing examiner found probable cause to detain Sanders. Id. at 29. After Sanders waived his rights to counsel and a panel hearing, a single hearing examiner conducted a revocation hearing on July 25, 2007. Id. at 34-35; 46. At the hearing, a Board parole agent testified that Sanders pled guilty to the new charges on April 3, 2007. Id. at 52. For his part, Sanders admitted the new conviction. Id. at 52.

The Board recommitted Sanders as a convicted parole violator to serve 18 months' backtime. Id. at 73. The Board's order indicated Sanders became available to serve backtime on August 15, 2007, and a recalculated original state sentence maximum date of December 5, 2010. Id. at 71. Sanders sought administrative review of the Board's order, asserting he became available to serve the Board's backtime on April 3, 2007. Id. at 77. On that day the sentencing court imposed sentence on the new charges.

Denying the request for administrative relief, the Board noted Sanders did not become available to serve backtime until August 15, 2007. Id. at 87. Of particular note, the Board received all necessary signatures for recommitment on that date. Adding 1,208 days to August 15, 2007 resulted in a recalculated original state sentence maximum date of December 5, 2010.

Sanders filed a counseled petition for review with this Court.¹ He again alleges he became available to serve the Board-imposed backtime on April 3, 2007 and, as a result, the Board erroneously calculated his new original state sentence maximum date. On further review, however, Counsel filed a petition to withdraw. In his petition, Counsel states he conducted examination of the record, possible issues, and applicable case law to conclude Sanders' appeal is frivolous.

¹ On review, we are limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were made, and whether constitutional rights were violated. Prebella v. Pa. Bd. of Prob. & Parole, 942 A.2d 257 (Pa. Cmwlth. 2008).

In accord with Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988), Counsel provided Sanders a “no-merit” letter explaining the appeal is frivolous.² Counsel advised Sanders the Board correctly determined the date upon which he became available to serve backtime. Counsel also advised Sanders his new state sentence would be credited with time served between his sentencing on the new state charges and August 15, 2007.

Before this Court will grant a petition to withdraw, appointed counsel must satisfy the technical requirements set forth in Craig v. Pennsylvania Board of Probation & Parole, 502 A.2d 758 (Pa. Cmwlth. 1985). Appointed counsel must notify the parolee of his request to withdraw, furnish the parolee with a copy of a brief complying with Anders v. State of California, 386 U.S. 738 (1967), or a no-merit letter that, in part, informs the parolee of his right to retain new counsel or submit a brief on his behalf. Reavis v. Pa. Bd. of Prob. & Parole, 909 A.2d 28 (Pa. Cmwlth. 2006).

If appointed counsel provides a no-merit letter, the letter must contain the nature and extent of counsel’s review, the issues the parolee wishes to raise and counsel’s analysis in concluding the parolee’s appeal is frivolous. Id. We require counsel to comply with these requirements to ensure an inmate’s claims are considered and counsel has substantial reasons for concluding those claims are frivolous. Reavis. Once appointed counsel satisfies these requirements, it is our

² Although an indigent parolee is entitled to appointed counsel on appeal, this right does not require counsel to prosecute a frivolous appeal. Presley v. Pa. Bd. of Prob. & Parole, 737 A.2d 858 (Pa. Cmwlth. 1999). An appeal is “wholly frivolous” when it completely lacks factual or legal reasons that might arguably support the appeal. Id.

duty to conduct an independent evaluation of the merits of the appeal to determine whether it is wholly frivolous.

Here, Counsel notified Sanders of the request to withdraw and advised him of the right to file a brief on his own behalf or retain new counsel. Further, Counsel served Sanders with a copy of his petition to withdraw as counsel and a copy of the no-merit letter. Thus, Counsel complied with the technical requirements set forth in Turner. Additionally, Counsel's no-merit letter complies with Turner. It contains a statement indicating Counsel reviewed the certified record, corresponded with Sanders, and examined the legal issues. The no-merit letter also address the issue Sanders raised in his administrative appeal to the Board and the current petition for review. Finally, it sets forth Counsel's thorough analysis of the issue and the basis upon which he determined it is frivolous. Counsel's analysis is the same as the Court's analysis, which is set forth more fully below.

We next examine the record to determine whether the issue Sanders raises in his petition for review is wholly frivolous. From the record before us, we agree with Counsel's assessment the appeal is frivolous.

Sanders is not entitled to credit against his original state maximum sentence for the period of April 3 (sentencing on the new charges) to August 15,

2007. Section 21.1(a) of the commonly known Parole Act³ governs recommitment of convicted parole violators:

Any parolee under the jurisdiction of the [Board] released from any penal institution of the Commonwealth who, during the period of parole or while delinquent on parole, commits any crime punishable by imprisonment, from which he is convicted or found guilty by a judge or jury or to which he pleads guilty or nolo contendere at any time thereafter in a court of record, may, at the discretion of the [B]oard, be recommitted as a parole violator. If his recommitment is so ordered, he shall be reentered to serve the remainder of the term which said parolee would have been compelled to serve had he not been paroled. The [B]oard may, in its discretion, reparole whenever, in its opinion, the best interests of the prisoner justify or require the release of parole and it does not appear that the interests of the Commonwealth will be injured thereby. The period of time for which the parole violator is required to serve shall be computed from and begin on the date that he is taken into custody to be returned to the institution as a parole violator.

(Emphasis added).

Section 21.1(a) also requires a convicted parole violator to serve the balance of his original sentence before beginning service of a newly-imposed sentence. 61 P.S. §331.21a. This rule is only operative when “parole has been revoked and the remainder of the original sentence becomes due and owing.” Campbell v. Pa. Bd. of Prob. & Parole, 409 A.2d 980, 982 (Pa. Cmwlth. 1980) quoting Richmond v. Commonwealth, 402 A.2d 1134, 1135 (Pa. Cmwlth. 1979).

³ Act of June 6, 1941, P.L. 861, as amended, added by the Act of August 24, 1951, P.L. 1401, 61 P.S. §331.21a.

Accord McCaskill v. Pa. Bd. of Prob. & Parole, 631 A.2d 1092 (Pa. Cmwlt. 1993); Oliver v. Pa. Bd. of Prob. & Parole, 570 A.2d 1390 (Pa. Cmwlt. 1990).

The remainder of an original sentence becomes due and owing upon authorized Board action. Section 4 of the Parole Act, 61 P.S. §331.4, authorizes the Board to act on revocation decisions in panels consisting of two persons. Here, a hearing examiner conducted Sanders' revocation hearing and determined his parole should be revoked. Two weeks later, a Board member agreed with the hearing examiner's determination, as evidenced by the member's August 15, 2007 signature on the revocation hearing report. C.R. at 45. Once the Board obtained the second required signature, it was authorized to revoke Sanders' parole. Hence, the remainder of Sanders' original state sentence became due and owing on August 15. Campbell.

Adding the time remaining on Sanders' original state sentence (1,208 days) to August 15, 2007, yields a new original state sentence maximum of December 5, 2010. The Board's original state sentence maximum calculation is therefore correct. Sanders' appeal is frivolous and, accordingly, we grant Counsel's petition to withdraw.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Vance Sanders,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2177 C.D. 2007
	:	
Pennsylvania Board of Probation	:	
and Parole,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 6th day of August, 2008, the order of the Pennsylvania Board of Probation and Parole is **AFFIRMED**, and Counsel's Petition to Withdraw is **GRANTED**.

ROBERT SIMPSON, Judge