

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Mariah Rivers,	:
Petitioner	:
	:
v.	:
	: No. 2209 C.D. 2007
Pennsylvania Board of Probation	: Submitted: August 22, 2008
and Parole,	:
Respondent	:

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
          HONORABLE RENÉE COHN JUBELIRER, Judge  
          HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY  
JUDGE BUTLER**

**FILED: October 9, 2008**

Mariah Rivers (Petitioner), an inmate currently imprisoned at the State Correctional Institution at Huntingdon, petitions for review of the order of the Pennsylvania Board of Probation and Parole (Board) denying his request for administrative relief. Petitioner's counsel has filed an application for leave to withdraw her appearance on behalf of Petitioner on the ground that the appeal is frivolous and has submitted a letter in support of the application. For reasons set forth in this opinion, we grant counsel's petition for leave to withdraw and affirm the order of the Board.

On May 10, 1993, the Court of Common Pleas of Philadelphia County sentenced Petitioner to a term of three to ten years imprisonment for involuntary manslaughter and possessing an instrument of crime. Petitioner's original maximum sentence date was December 25, 2002. On February 10, 1999, Petitioner was paroled to a community corrections center. On June 5, 2001, Petitioner was recommitted as a technical violator to serve six months backtime. On October 17, 2001, Petitioner was recommitted as a convicted parole violator to serve twenty-four months backtime to run concurrently with his term of six months backtime for a total of twenty-four months backtime. Petitioner's maximum sentence date thus changed to April 3, 2005. The Board mailed its decision on October 29, 2001.

The Board received a letter from Petitioner on November 19, 2001, which the Board treated as a pro se, timely filed, request for administrative relief. On December 19, 2001, the Board mailed its decision denying Petitioner's administrative appeal. On January 3, 2002, the Board received another letter from Petitioner questioning the denial of his appeal and seeking to appeal the decision. The Board treated this letter as a subsequent administrative appeal, and thus took no action. The Board received a pro se Petition for Administrative Appeal from Petitioner on September 19, 2007. On October 26, 2007, the Board mailed its decision dismissing Petitioner's request for administrative review as untimely. On January 4, 2008, Petitioner's counsel timely filed a petition for review.<sup>1</sup>

The Board filed a motion to limit the issue on appeal to whether the Board properly dismissed the petition for administrative relief as untimely. This Court granted the Board's motion. Petitioner's counsel filed an application for

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<sup>1</sup> By order dated December 7, 2007, this Court directed Petitioner's counsel to file a petition for review within thirty days of said order.

leave to withdraw her appearance on behalf of Petitioner and a no merit letter as required by *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988).

In reviewing an application for leave to withdraw, this Court must make an independent evaluation of the proceedings before the Board to determine whether the petitioner's appeal is wholly frivolous. In this regard, we are mindful that this Court has previously determined that counsel must fully comply with the procedures outlined in *Turner* to ensure that each of the petitioner's claims has been considered and that counsel has a substantive reason for concluding that those claims are meritless.

*Vandermark v. Pennsylvania Bd. of Probation and Parole*, 685 A.2d 628, 628-629 (Pa. Cmwlth. 1996) (citations omitted).

In the instant case we are limited to only one issue, whether the petition for administrative relief was timely filed.<sup>2</sup> Section 73.1 under Title 37 of the Pennsylvania Code (Section 73.1) provides in pertinent part:

Petitions for administrative review shall be received at the Board's Central Office within 30 days of the mailing date of the Board's determination. When a timely petition has been filed, the determination will not be deemed final for purposes of appeal to a court until the Board has mailed its response to the petition for administrative review.

37 Pa. Code §73.1 (b)(1). Section 73.1 further states: “[s]econd or subsequent petitions for administrative review and petitions for administrative review which are out of time under this part will not be received.” 37 Pa. Code §73.1 (b)(3).

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<sup>2</sup> The scope and standard of review for this Court's review of an action of the Board is limited to a determination of whether the Board's findings are supported by substantial evidence, whether an error of law was committed, or whether any of the parolee's constitutional rights were violated. *Petty v. Pennsylvania Bd. of Probation and Parole*, 896 A.2d 698 (Pa. Cmwlth. 2006).

In the instant case the Board mailed its decision on October 29, 2001. The Board received Petitioner's first and only timely filed request for administrative review on November 19, 2001, and denied that request. The Board received Petitioner's second request for administrative review on January 3, 2002, but did not act on that request. The Board received Petitioner's third request for administrative review<sup>3</sup> on September 19, 2007, and dismissed that request as untimely. Clearly, the petition, having been received by the Board almost six years after the mailing of the decision, was properly dismissed under the regulation. We therefore agree with counsel that Petitioner's appeal is wholly frivolous.

Accordingly, having made an independent evaluation of the issue presented and having found counsel's no merit letter adequately addressed the issue, this Court grants the application for leave to withdraw appearance, and affirms the Board's order dismissing the petition for administrative appeal as untimely.

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**JOHNNY J. BUTLER, Judge**

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<sup>3</sup> Although this request was Petitioner's third, it is the first that was labeled "Petition for Administrative Appeal." The prior requests were in the form of letters questioning the Board's decision.

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**ORDER**

AND NOW, this 9<sup>th</sup> day of October, 2008, the application of counsel for leave to withdraw appearance is granted, and the order of the Pennsylvania Board of Probation and Parole is affirmed.

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**JOHNNY J. BUTLER, Judge**