



seeking review of the Board's decision. In his request for administrative relief, Feliciano-Morales raised the issue of whether the Board exceeded the presumptive ranges in computing his backtime. Certified Record ("C.R.") at 45-46. In a February 17, 2010 decision, the Board affirmed its prior decision, noting that when the recommitment period imposed by the Board falls within the correct presumptive range, it is not subject to challenge. *Smith v. Pa. Bd. of Prob. & Parole*, 524 Pa. 500, 574 A.2d 558 (1990).

On May 12, 2010, Aston filed a petition to withdraw as counsel and *Turner*<sup>1</sup> letter with this Court, both of which were served on Feliciano-Morales. In his petition and *Turner* letter, Aston outlined the issue raised by Feliciano-Morales and explained his reasons for concluding that a careful review of the record indicated that the instant appeal was frivolous. On May 14, 2010, this Court advised Feliciano-Morales of his right to retain substitute counsel or to file a brief on his own behalf.<sup>2</sup> Based on the foregoing, we are satisfied that counsel complied with the requisite procedural requirements. In reviewing the petition to withdraw, this Court must independently evaluate the merits of Feliciano-Morales's appeal. *Encarnacion v. Pa. Bd. of Prob. & Parole*, 990 A.2d 123 (Pa. Cmwlth. 2010).

The following facts are pertinent to the disposition of this case. In May 2007, Feliciano-Morales pleaded guilty to four counts of retail theft for which the common pleas court imposed four concurrent sentences of eight months to seven years. C.R. at 1. In March 2009, the Board released him on state parole subject to numerous conditions. C.R. at 11. In August 2009, the West Reading Police Department arrested him and charged him with loitering and prowling at

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<sup>1</sup> *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988).

<sup>2</sup> No brief was filed on behalf of Feliciano-Morales.

night time and possessing instruments of crime. C.R. at 21. Accordingly, the Board lodged a detainer against him, alleging that he had changed residences without permission (condition #2), failed to report as instructed (condition #3a) and failed to complete the re-entry program (condition #7). C.R. at 20. Feliciano-Morales waived a hearing before the Board, admitting the violations. C.R. at 33-34. As a result, the Board recommitted Feliciano-Morales as a technical parole violator to serve a twelve-month backtime, when available. In so doing, it found that Feliciano-Morales had demonstrated an “[e]arly failure on parole/reparole” and was “[n]ot amenable to parole supervision.” C.R. at 38. Feliciano-Morales filed a timely request for administrative relief, which the Board denied affirming its prior decision. Feliciano-Morales’s timely petition for review to this Court followed.

Despite his admission that he violated the three parole conditions at issue, Feliciano-Morales maintains that a twelve-month backtime is excessive in light of the nature of those infractions. Aston points out that because the twelve-month period of recommitment imposed falls within the presumptive range, the appeal is without merit.<sup>3</sup> We agree.

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<sup>3</sup> Notwithstanding Aston’s concession that the recommitment period imposed falls within the presumptive range, he maintains that the Board erred in determining that the correct range was nine to thirty-six months instead of nine to twenty-seven months. Specifically, he challenges the Board’s interpretation of 37 Pa. Code § 75.4, which provides, in relevant part, as follows:

<i>Violation of:</i>	<i>Single</i>	<i>Multiple</i>
...		
Condition 2	6 to 12 months	6 to 18 months
...		
Condition 3(a)	3 to 6 months	6 to 18 months
...		

**(Footnote continued on next page...)**

It is well-established that “[t]his court will not interfere with the Board’s discretion where the parole violations are supported by substantial evidence and the amount of backtime imposed . . . is within the applicable presumptive range.” *Davis v. Pa. Bd. of Prob. & Parole*, 841 A.2d 148, 151-52 (Pa. Cmwlth. 2004) (footnote omitted). Because the backtime imposed by the Board is well within the presumptive range for the admitted parole violations, Feliciano-Morales’s appeal is without merit. Accordingly, we grant Aston’s petition for leave to withdraw as counsel and affirm the Board’s order denying administrative relief.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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**(continued...)**

Special Condition [7]                      3 to 18 months                      See [37 Pa. Code §75.3(f) providing that “[b]acktime for a violation of a special condition shall be aggregated with other backtime, unless the revocation decision states otherwise”].

37 Pa. Code § 75.4.

Here, the Board interpreted Section 75.4 as providing that “[t]he presumptive range for violating more than one general condition of parole is 6 to 18 months.” C.R. at 51. Aston maintains that the Board’s construction has the effect of rendering obsolete 37 Pa. Code § 75.3(e), which provides that “[w]hen multiple violations occur, the presumptive range will be used which has the highest backtime range of those conditions violated.” He further argues that had the drafters of 37 Pa. Code § 75.4 intended single violations of multiple general conditions to constitute multiple violations for purposes of calculating presumptive ranges, there would have been no need to repeat the multiple violations presumptive range of six to eighteen months ten times in the regulation, once for each general condition.

Because the twelve-month backtime imposed falls at the lower end of both Aston’s proposed calculation and that of the Board, we decline to interfere with the Board’s discretion to impose backtime within the presumptive range. The Board’s finding that Feliciano-Morales was not amenable to parole supervision in that he had demonstrated an early failure on parole is supported by the record.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Joel Feliciano-Morales,	:	
Petitioner	:	
	:	
v.	:	No. 393 C.D. 2010
	:	
Pennsylvania Board of Probation	:	
and Parole,	:	
Respondent	:	

**ORDER**

AND NOW, this 15th day of September, 2010, the petition of Roarke Thomas Aston, Esquire, for leave to withdraw as counsel for Joel Feliciano-Morales in the above-captioned matter is hereby GRANTED, and the order of the Pennsylvania Board of Probation and Parole is AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge