

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

James J. Dietrick,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 660 C.D. 2007
	:	SUBMITTED: November 2, 2007
Pennsylvania Board of Probation	:	
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  
PRESIDENT JUDGE LEADBETTER**

**FILED: January 24, 2008**

James J. Dietrick petitions for review of the order of the Pennsylvania Board of Probation and Parole (Board), denying his administrative appeal from his recommitment as a technical and convicted parole violator. In addition, Dietrick's appointed counsel, Joseph J. Hylan, of the Montgomery County Public Defender's Office, petitions for leave to withdraw on the ground that Dietrick's appeal is frivolous.

On August 16, 2004, Dietrick was released on re-parole from his aggregate 8-year, 2-month to 17-year sentence with a maximum date of April 28, 2006. On August 24, 2005, Philadelphia police arrested him on new criminal

charges. On September 8, 2005, Montgomery Township police arrested Dietrick (in Philadelphia custody) on new criminal charges; Dietrick posted bail and was released the same day. The Board continued Dietrick on parole so that he could receive medical treatment for cancer of the throat. After Dietrick failed to report and failed to appear for his preliminary hearing in Montgomery County, the Board declared him delinquent effective November 3, 2005, and issued a warrant for his arrest. On November 26, 2005, he was arrested in North Carolina for traffic violations and possession of a stolen automobile, sentenced to time served, and returned to Pennsylvania custody on the Board's warrant on December 9, 2005. On February 28, 2006, Bucks County authorities arrested Dietrick for crimes committed on November 21, 2005. Dietrick remained in custody on the Bucks County charges and/or serving the Montgomery County sentence until October 24, 2006.

By decision recorded on April 25, 2006, the Board recommitted Dietrick as a technical and convicted parole violator (based on the North Carolina conviction) to serve a total of 12 months of backtime when available. Dietrick pleaded guilty on June 27, 2006, in Montgomery County and received a concurrent sentence of 6 to 12 months. He pleaded guilty to the Bucks County charges on August 21, 2006, received a sentence of time served to no more than 23 months and was immediately paroled to a Philadelphia detainer. The Philadelphia charges were dismissed.

Following a revocation hearing held on October 10, 2006, the Board recommitted Dietrick as a technical and convicted parole violator to serve a total of 12 months of backtime and recalculated his parole violation maximum date to

March 3, 2009.<sup>1</sup> The Board denied Dietrick's request for administrative review in which he challenged the recalculation of his maximum date. Dietrick filed a *pro se* petition for review in this court, reasserting his objection to the new maximum date.

Dietrick's court-appointed appellate counsel filed a petition to withdraw as counsel and a *Turner* letter<sup>2</sup> in support thereof. In his *Turner* letter, Hylan adequately details the issue raised, which is discussed at length in our analysis below, the nature and extent of his review, and his analysis in concluding that the appeal is frivolous. *See Hont v. Pa. Bd. of Prob. and Parole*, 680 A.2d 47, 48 (Pa. Cmwlth. 1996) (establishing requisite elements of adequate *Turner* letter). Hylan notified Dietrick of the withdrawal request, provided him with a copy of the *Turner* letter, and advised him of his right to obtain substitute counsel or to raise any points that he deemed worthy of merit in a *pro se* brief to this court. In so doing, Hylan complied with the technical requirements of *Craig v. Pa. Bd. of Prob. and Parole*, 502 A.2d 758 (Pa. Cmwlth. 1985). Dietrick did not file a brief or obtain substitute counsel.

In reviewing the motion to withdraw in conjunction with Dietrick's appeal, we independently evaluate the record to determine whether the appeal is frivolous. *Dear v. Pa. Bd. of Prob. and Parole*, 686 A.2d 423, 426 (Pa. Cmwlth. 1996). Dietrick avers that the Board improperly extended his maximum sentence

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<sup>1</sup> Based on correspondence from Dietrick seeking credit for time spent at Kintock-Wood Center from August 16, 2004, to February 2, 2005, the Board scheduled an evidentiary hearing to determine the custodial nature of the time spent at Kintock-Wood. Dietrick appeared and stated he did not want to have a hearing but requested review of his parole violation maximum; Dietrick stated he is suffering with advanced sarcoma, receives nutrition by feeding tube only, and needs surgery he cannot have while incarcerated.

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

by roughly three years; more specifically, he avers that the Board may not impose backtime that exceeds the entire remaining balance of his unexpired term. After reviewing the record, we conclude that the Board did not err.

Dietrick avers in his petition for review that the Board illegally extended a judicially imposed sentence that expired on April 28, 2006. The petition for review does not specifically seek credit for any particular period of time; rather it avers only that the Board altered a judicially imposed sentence and imposed a period of backtime that exceeded the balance of his original sentence. We disagree.

As counsel explains in the *Turner* letter, when Dietrick was paroled on August 16, 2004, his maximum date was April 28, 2006; he had 620 days remaining on his sentence. Because he was convicted of committing new crimes while on parole and recommitted as a convicted parole violator, he is not entitled to credit against the original sentence for any period of time spent at liberty on parole. Section 21.1(a) of the Act commonly referred to as the Parole Act,<sup>3</sup> 61 P.S. § 331.21a(a). The period of time subject to forfeiture includes not only time served since he was most recently re-paroled in 2004, but also time served while on parole in good standing prior to his recommitment for earlier technical violations. *Dorsey v. Pa. Bd. of Prob. and Parole*, 854 A.2d 994 (Pa. Cmwlth. 2004); *Houser v. Pa. Bd. of Prob. and Parole*, 682 A.2d 1365 (Pa. Cmwlth. 1996). Adding 176 days that Dietrick was previously on parole from November 8, 1999, to May 2, 2000, and 149 days when he was on parole from February 10, 2002, to July 9, 2002, to 620 days equals a total of 945 days remaining on the original sentence.

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<sup>3</sup> Act of August 6, 1941, P.L. 861, *as amended*, added by Section 5 of the Act of August 24, 1951, P.L. 1401.

The Board credited Dietrick with 84 days spent in custody solely on its warrant from December 6, 2005, to February 28, 2006.<sup>4</sup> Dietrick became available to serve his backtime on October 24, 2006, the date he was released from the Montgomery County sentence.<sup>5</sup> Adding 945 days to October 24, 2006, results in a new parole violation maximum date of March 3, 2009. Because we conclude that the Board properly recalculated Dietrick's parole violation maximum date, we need not address his contention that his backtime exceeds the remainder of his original sentence.

Accordingly, we affirm the order of the Board and grant appointed counsel's petition for leave to withdraw.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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<sup>4</sup> This period represents the date Dietrick was returned to Pennsylvania from North Carolina to the date he was arrested on the Bucks County charges.

<sup>5</sup> Because Dietrick's new sentences were to be served in county facilities, the service of these new sentences preceded the service of the balance of his original sentence. 61 P.S. § 331.21a(a).

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	:	
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**ORDER**

AND NOW, this 24th day of January, 2008, the petition to withdraw as counsel 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