

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard Gaston,	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Parole Board,	:	No. 10 C.D. 2025
Respondent	:	Submitted: March 3, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STELLA M. TSAI, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE TSAI

FILED: August 31, 2026

Petitioner Richard Gaston (Gaston) petitions for review of an order of the Pennsylvania Parole Board (Board). The Board denied Gaston’s petition for administrative relief, in which he sought to challenge the Board’s recalculation of his maximum sentence date following his recommitment as a convicted parole violator. Gaston’s counsel, David Crowley, Esquire (Counsel), filed an application for leave to withdraw as counsel. Counsel asserts, as expressed in his “no-merit” letter, also referred to as a *Turner* letter,¹ “that the issues raised in [Gaston’s]

¹ In *Anders v. California*, 386 U.S. 738 (1967), the Supreme Court of the United States 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. *Anders*, 386 U.S. at 744. An appeal is completely or “wholly” frivolous when there are no factual or legal justifications that support the appeal. *Craig v. Pa. Bd. of Prob. & Parole*, 502 A.2d 758, 761 (Pa. Cmwlth. 1985). In seeking to withdraw, counsel must submit an application to withdraw and a brief “referring to anything in the record that might arguably support the appeal.” *Cmwlth. v. Baker*, 239 A.2d 201, 202 (Pa. 1968) (citing *Anders*, 386 U.S. at 744).

administrative appeal and petition for review lack merit and that there exists no legal basis to challenge the Board[’s] determinations,” such that he is required to file an application to withdraw as counsel. For the reasons set forth below, we grant Counsel’s application for leave to withdraw and affirm the Board’s order.

In 2017, Gaston pleaded guilty to drug-related charges and was sentenced to one year, ten months, and 15 days to five years’ incarceration. Certified Record (C.R.) at 1. Gaston began to serve this sentence effective April 14, 2020, after being paroled from an earlier sentence. *Id.* The Board granted Gaston parole and released him from confinement on August 26, 2021. C.R. at 4-6. At that time, Gaston’s maximum sentence date was October 11, 2024. C.R. at 5.

Thereafter, the Board declared Gaston delinquent, effective August 29, 2022, and issued a warrant to commit and detain him. C.R. at 17-18. On May 24, 2023, the East Lampeter Township Police Department arrested Gaston for technical parole violations and arrested him on new drug-related charges. C.R. at 22-23. On June 2, 2023, the Board issued a notice of charges and hearing, charging Gaston with technical parole violations. C.R. at 19. The Board conducted a parole revocation hearing on June 13, 2023, related solely to the technical parole violations. C.R. at 31-44. By order to recommit dated June 27, 2023, the Board recommitted Gaston as a technical parole violator to serve six months’ backtime and calculated his parole violation maximum date as July 6, 2025. C.R. at 71-75.

The Supreme Court of Pennsylvania, however, has 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 of the reasons why counsel believes the issues have no merit. *Cmwlth. v. Turner*, 544 A.2d 927, 928-29 (Pa. 1988).

As to his criminal charges, Gaston pleaded guilty to drug-related charges, and the Court of Common Pleas of Lancaster County convicted him on May 2, 2024. C.R. at 78. Gaston received no further penalty for those convictions. C.R. at 83. The Board conducted a hearing on June 23, 2024. C.R. at 90-103. By Board decision recorded on August 5, 2024, the Board recommitted Gaston as a convicted parole violator to serve nine months' backtime and recalculated his parole violation maximum date to be July 9, 2026.² C.R. at 149-50. In so doing, the Board credited Gaston with all the time he had been detained on the Board's warrant since his arrest on May 24, 2023, through May 2, 2024 (344 days), the latter being the date on which he was sentenced for his new criminal convictions. C.R. at 147-48. The Board did not award credit for any time at liberty on parole. C.R. at 147-50.

As to this latest Board decision, Gaston filed a petition for administrative relief with the Board on August 30, 2024, challenging the Board's recalculation of his maximum parole violation date. C.R. at 151-52. Specifically, Gaston, through Counsel, maintained that "[t]he recalculated parole violation maximum date fails to credit the original sentence with all the time to which Gaston is entitled," as "Gaston avers that he was *recommitted as a technical parole violator* on or about January 4, 2022[,] and confined at the Keystone Community [Corrections] Center [(Keystone CCC)] until his reparole on or about June 23, 2022," and that "[t]he Board err[ed] in failing to credit his original sentence with confinement credit in the [o]rder to recommit." *Id.* (emphasis added). By letter dated December 23, 2024, the Board denied Gaston's petition for administrative relief, reasoning, in relevant part:

² This opinion is being filed after Gaston's recalculated parole violation maximum date of July 7, 2026, has passed. We have proceeded to disposition of this appeal because neither the Board nor Gaston have filed a suggestion of mootness with this Court.

Effective June 30, 2021, the Prisons and Parole Code^[3] provides in relevant part that “[a] parolee is at liberty on parole when the parolee is residing at a community corrections center [(CCC)], community corrections facility or group-based home for purposes of this section. This paragraph does not apply to parolees detained on the [B]oard’s warrant or recommitted as a technical parole violator to a community corrections center or community corrections facility.” 61 Pa. C.S. § 6138(a)(2.3). The record reveals that during the period in question, from January 4, 2022[,] to June 23, 2022, your client was a resident at the Keystone CCC. In this instance, he was not there for technical parole violations, and neither the Board[] nor the Department of Corrections had a warrant lodged against him. The new crimes resulting in . . . Gaston’s revocation occurred on May 24, 2023, after the change to the Prisons and Parole Code went into effect. Thus, . . . Gaston is not entitled to any credit for the time in question, pursuant to the statute.

C.R. at 153 (footnote added).

Gaston then filed a petition for review with this Court, generally asserting that “the Board lacks sufficient evidence for its factual findings, the Board’s action violates applicable Board Regulations, or the Board’s actions violate [Gaston’s] protections to due process of law under the Pennsylvania and United States Constitutions.” Petition for Review (Petition) at 2, ¶ 5. More specifically, Gaston asserts that “the Board erred in recalculating his parole violation maximum date by failing to [credit] his original sentence with the time to which he was entitled.” Petition at 2, ¶ 6.

Before evaluating the merits of Gaston’s challenge, we must first address Counsel’s application for leave to withdraw from his representation of Gaston. When no constitutional right to counsel is involved in a parole case, an attorney seeking to withdraw from representing a prisoner may file a no-merit letter, as compared to an *Anders* brief. *Seilhamer v. Pa. Bd. of Prob. & Parole*, 996 A.2d 40,

³ 61 Pa. C.S. §§ 101-7301.

42 n.4 (Pa. Cmwlth. 2010). A constitutional right to counsel in a parole matter arises only when the prisoner's case includes

[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.

Hughes v. Pa. Bd. of Prob. & Parole, 977 A.2d 19, 25-26 (Pa. Cmwlth. 2009). The record in this matter contains no suggestion by Gaston that he did not commit the crime for which he pleaded guilty, nor does Gaston suggest any reasons constituting justification or mitigation for his new criminal conviction. Thus, Gaston has only a statutory right to counsel under Section 6(a)(10) of the Public Defender Act,⁴ and a no-merit letter appropriately satisfies Counsel's responsibilities in seeking to withdraw from his representation of Gaston.

In order to satisfy the procedural requirements associated with no-merit letters, 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 or to submit to the Court a brief of his own raising any arguments that he may believe are meritorious. *Reavis v. Pa. Bd. of Prob. & Parole*, 909 A.2d 28, 33 (Pa. Cmwlth. 2006). Counsel has complied with these procedural requirements.⁵ In seeking to

⁴ Act of December 2, 1968, P.L. 1144, *as amended*, 16 P.S. § 9960.6(a)(10).

⁵ Counsel served Gaston with his application for leave to withdraw as counsel and his no-merit letter. Counsel avers in his application that he advised Gaston of his right to retain substitute counsel or to file a brief on his own behalf. In addition, Counsel served Gaston with a copy of this Court's order dated March 17, 2025, wherein this Court explained that Gaston could obtain substitute counsel to file a brief in support of his petition for review or file a brief on his own behalf. Counsel has, therefore, complied with these procedural requirements.

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). Counsel's no-merit letter includes a thorough recitation of the pertinent factual and procedural history in this case, identifies the issue raised in the petition for review, discusses the key factual elements that are pertinent to the issue, and applies the holding of relevant decisions of this Court to the facts. Thus, Counsel has also complied with the substantive requirements for withdrawal applications, and we will, therefore, proceed to consider the question of whether Counsel is correct in asserting that the issue that Gaston has raised is without merit.

Gaston's sole issue on appeal is that the Board, in recalculating his parole violation maximum date, failed to give him credit under Section 6138(a)(2.3) of the Prisons and Parole Code, 61 Pa. C.S. § 6138(a)(2.3), for time he spent at Keystone CCC while on parole. Our review of the record reveals that Keystone CCC was Gaston's approved residence from January 4, 2022, until June 23, 2022, as a sanction for Gaston moving to an unapproved residence and multiple problems relating to his GPS monitor curfew. C.R. at 19, 85. Gaston's residency at Keystone CCC was a "Special Condition[] of Parole," which Gaston acknowledged on January 4, 2022. C.R. at 14.

As to convicted parole violators and time spent at liberty, the Prisons and Parole Code provides generally that a parolee "shall be given no credit for the time at liberty on parole." Nonetheless, the Board may exercise its discretion to award credit for time spent at liberty on parole unless certain circumstances exist, such as the crime committed while on parole was a crime of violence or a crime relating to

the registration of sex offenders. 61 Pa. C.S. § 6138(a)(2), (2.1). Any credit awarded by the Board for liberty on parole, however, “is subject to forfeiture . . . if an offender is subsequently recommitted as a convicted parole violator.” 61 Pa. C.S. § 6138(a)(2.2).

Most relevant to the issue now before this Court, Section 6138(a)(2.3) of the Prisons and Parole Code, 61 Pa. C.S. § 6138(a)(2.3), provides:

A parolee is at liberty on parole when the parolee is residing at a community corrections center, community corrections facility or group-based home for purposes of this section. This paragraph does not apply to parolees detained on the [B]oard’s warrant or recommitted as a technical parole violator to a community corrections center or community corrections facility.

(Emphasis added.) Thus, under Section 6138(a)(2.3), a parolee is considered to be at liberty on parole and *not* entitled to credit when the parolee is residing at a community corrections center; this section, however, does not apply to a parolee who is “detained on the [B]oard’s warrant or recommitted as a technical parole violator to a community corrections center or community corrections facility.” 61 Pa. C.S. § 6138(a)(2.3). In other words, if the parolee resided at the community corrections center or community corrections facility under a Board’s warrant to detain or was recommitted as a technical parole violator to serve time at a community corrections center or community corrections facility, the time spent at the center or facility does not count as time spent “at liberty” on parole under Section 6138(a)(2.3). *See id.* If the parolee’s time spent at the center or facility was time spent “at liberty” on parole, the parolee receives no credit for the time. *See id.*

In order for Gaston to be entitled to credit for time he spent at Keystone CCC under Section 6138(a)(2.3) of the Prisons and Parole Code, Gaston would have to establish that he resided at Keystone CCC based on a Board warrant to detain or as

part of a recommitment as a technical parole violator. *See* 61 Pa. C.S. § 6138(a)(2.3). Neither Counsel nor this Court could find any factual support in the record for the averment that Gaston was detained at Keystone CCC as a technical parole violator. In fact, the record does not reveal that he was recommitment as a technical parole violator at any time prior to the Board's order recorded on June 27, 2023. There is also no evidence of record that Gaston resided at Keystone CCC because of a Board warrant to detain. Rather, as Gaston acknowledges, the record shows that he lived at Keystone CCC from January 4, 2022, until June 23, 2022, as a special condition of parole after moving to an unapproved residence and having multiple problems relating to his GPS monitor curfew. C.R. at 14, 19, 85. On this record, it is clear that Gaston was not entitled to credit under Section 6138(a)(2.3) for time he spent at Keystone CCC.

Based on the foregoing, we agree with Counsel that Gaston's petition for review lacks merit, and, therefore, we grant Counsel's application for leave to withdraw as counsel. Moreover, because we have concluded that Gaston's appeal lacks merit, we affirm the Board's order.

STELLA M. TSAI, Judge

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ORDER

AND NOW, this 31st day of August, 2026, the application for leave to withdraw as counsel filed by David Crowley, Esquire, is hereby GRANTED, and the order of the Pennsylvania Parole Board is hereby AFFIRMED.

STELLA M. TSAI, Judge