

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 188 MAL 2012
	:	
Petitioner	:	Petition for Allowance of Appeal from the
	:	Memorandum Opinion and Order of the
	:	Superior Court dated December 21, 2011,
v.	:	at 2789 EDA 2010, vacating and
	:	remanding the order of the Court of
	:	Common Pleas of Montgomery County
MICHAEL ALPHONSE POTTER,	:	dated July 29, 2010, at CP-46-CR-
	:	0007337-2007.
Respondent	:	

**ORDER**

**PER CURIAM**

**DECIDED: December 27, 2012**

**AND NOW**, this 27<sup>th</sup> day of December 2012, the Petition for Allowance of Appeal is **GRANTED** and the Order of the Superior Court is **VACATED**. The Superior Court vacated and remanded the dismissal order of the Post Conviction Relief Act (“PCRA”)<sup>1</sup> court premised upon a claim of PCRA counsel ineffectiveness that was not raised in the PCRA court, without passing on respondent’s other issues. In so doing, the panel did not account for Commonwealth v. Pitts, 981 A.2d 875, 880 n.4 (Pa. 2009) and its progeny. In Pitts, this Court held that:

Pitts's failure, prior to his PCRA appeal, to argue PCRA counsel's ineffectiveness ... results in waiver of the issue of PCRA counsel's ineffectiveness. Pitts's attempt to obtain review, on collateral appeal, of an issue not raised in the proceedings below amounts to a serial PCRA petition on PCRA appeal. Although Pitts asserts his PCRA appeal was

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<sup>1</sup> 42 Pa. C.S. §§ 9541-46.

the first opportunity he had to challenge PCRA counsel's stewardship because he was no longer represented by PCRA counsel, he could have challenged PCRA counsel's stewardship after receiving counsel's withdrawal letter and the notice of the PCRA court's intent to dismiss his petition pursuant to Pa.R.Crim.P. 907, yet he failed to do so. Thus, the issue of whether PCRA counsel was ineffective for failing to raise the direct appeal issue was waived, and the Superior Court should not have reached it.

Pitts, 981 A.2d at 880, n.4 (Pa. 2009). See also Commonwealth v. Colavita, 993 A.2d 874, 893 n.12 (Pa. 2010) (“Moreover, claims of PCRA counsel ineffectiveness may not be raised for the first time at the direct appeal level, much less at the discretionary appeal level.”) (citing Pitts).

Accordingly, the case is **REMANDED** to the Superior Court for reconsideration in light of the above precedent and for appropriate disposition.