

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

JASON CISNE

Appellant

No. 1133 EDA 2013

Appeal from the PCRA Order March 22, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): No. CP-51-CR-0006829-2008`

BEFORE: BENDER, P.J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J.:

FILED DECEMBER 05, 2013

Jason Cisne appeals *pro se* from the order entered on March 22, 2013, in the Philadelphia County Court of Common Pleas denying him relief on his first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9541 *et seq.* For the reasons that follow, we remand for the filing of either a counseled brief, or a petition to withdraw as counsel and accompanying **Turner/Finley**¹ “no merit” letter.

On March 1, 2010, Cisne entered a negotiated guilty plea to charges of third degree murder, possession of an instrument of crime, and possession

* Retired Senior Judge assigned to the Superior Court.

¹ **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

of a firearm by a prohibited person² for the shooting death of Phillip Underwood on October 17, 2003. That same day, the trial court imposed an aggregate sentence of 25 to 50 years' imprisonment. No direct appeal was filed.

On January 13, 2011, Cisne filed a timely, *pro se* PCRA petition. Lee Mandell, Esq., was appointed to assist Cisne in litigating his petition. However, on January 8, 2013, Mandell filed a motion to withdraw as counsel and accompanying **Turner/Finley** "no merit" letter. Thereafter, on February 22, 2013, the PCRA court sent Cisne notice, pursuant to Pa.R.Crim.P. 907, of its intent to dismiss his petition without a hearing. Cisne filed a *pro se* response to the court's Rule 907 notice on March 21, 2013, challenging counsel's petition to withdraw, and including additional claims for relief. However, on March 22, 2013, the PCRA court entered an order dismissing Cisne's PCRA petition. The PCRA court did not, either explicitly or implicitly, grant counsel's petition to withdraw.³

Pennsylvania Rule of Criminal Procedure 904 makes clear that an indigent, first-time PCRA petitioner is entitled to the appointment of counsel.

² **See** 18 Pa.C.S. §§ 2502(c), 907(a), and 6105(a)(1), respectively.

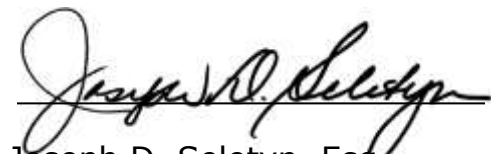
³ Included in the certified record is a letter from the PCRA court to Mandell dated March 22, 2013. The letter indicates that the PCRA court enclosed a copy of its order dismissing Cisne's petition. In addition, the court states, "you have thirty (30) days from the date of this order within which to appeal." Letter, dated 3/22/2013, from The Honorable Sandy L.V. Byrd to Lee Mandell, Esquire.

Pa.R.Crim.P. 904(C). Furthermore, the Rule provides that “the appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.” Pa.R.Crim.P. 904(F)(2). This Court has held that “once [PCRA] counsel has entered an appearance on a defendant’s behalf he is obligated to continue representation until the case is concluded **or he is granted leave by the court to withdraw his appearance.**” *Commonwealth v. White*, 871 A.2d 1291, 1293 (Pa. Super. 2005) (emphasis supplied), quoting *Commonwealth v. Quail*, 729 A.2d 571, 573 (Pa. Super. 1999).

Here, Mandell was not granted leave to withdraw. Therefore, he is still Cisne’s attorney of record and was obligated to continue representation for this appeal. Accordingly, we remand this case and direct counsel within 30 days of the filing of this memorandum to either file an advocate’s brief, or petition this Court to withdraw pursuant to the mandates of *Turner/Finley*.

Case remanded for proceedings consistent with this Memorandum.
Panel jurisdiction retained.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/5/2013