

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JESUS ROSARIO TORRES

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1160 EDA 2013

Appeal from the PCRA Order March 26, 2013
In the Court of Common Pleas of Pike County
Criminal Division at No(s): CP-52-CR-0000286-2008

BEFORE: PANELLA, J., MUNDY, J., and FITZGERALD, J.*

DISSENTING STATEMENT BY FITZGERALD, J. **FILED DECEMBER 04, 2013**

I respectfully dissent from the majority's conclusion that Appellant was not entitled to counsel. It is well settled that a PCRA petitioner is entitled to "at least one meaningful opportunity to have . . . issues reviewed" and that counsel not only be appointed, but also "participate meaningfully" ***Commonwealth v. Karanicolas***, 836 A.2d 940, 945 (citations omitted).

In my view, even if the PCRA court previously permitted appointed counsel to withdraw pursuant to ***Turner/Finley***, Appellant possessed a right to counsel after the court ordered an evidentiary hearing to consider issues raised in Appellant's *pro se* amended petition. **See** Pa.R.Crim.P. 904(C), (F)(2) (setting forth general rule-based right to counsel in first time PCRA

* Former Justice specially assigned to the Superior Court.

proceedings); **see also** 908(C) (stating, *inter alia*, that court when ordering PCRA hearing “shall provide the defendant an opportunity to have counsel”). Therefore, under the unique circumstances of this case, I would conclude that the court was obligated to ensure Appellant had the benefit of counsel to develop and litigate his intended claims. Accordingly, I would vacate the order denying Appellant’s PCRA petition and remand to the PCRA court to appoint counsel for further proceedings.