

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DANIEL LEE WEASE,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1338 MDA 2012

Appeal from the Order of June 18, 2012,
in the Court of Common Pleas of Adams County,
Criminal Division at No. CP-01-CR-0000904-2006

BEFORE: PANELLA, SHOGAN and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: March 20, 2013

This is an appeal from an order denying Appellant's petition filed pursuant to the Post Conviction Relief Act ("PCRA"). In addition, Appellant's counsel has filed a petition in this Court in which he seeks to withdraw his representation of Appellant. We grant counsel's petition to withdraw and affirm the order dismissing Appellant's PCRA petition.

The PCRA court summarized the background underlying this matter in the following manner.

On March 19, 2008, Appellant [] entered a plea of guilty to one count of false reports to law enforcement officials as a misdemeanor of the second degree, 18 Pa.C.S.A. § 4906. Appellant was sentenced pursuant to a negotiated plea agreement to 12 months of intermediate punishment all of which

* Retired Senior Judge assigned to the Superior Court.

to be served on probationary phases. The sentence was imposed consecutive to a sentence which Appellant was serving in the state of Maryland. The sentencing order permitted Appellant to participate in work release programming while incarcerated in Maryland in the event that jurisdiction determined work release to be appropriate. In order to permit [] Appellant the opportunity to participate in work release programming in the state of Maryland, and to ensure that a detainer from the state of Pennsylvania would not unnecessarily require Appellant to remain incarcerated in Maryland beyond his minimum, the [trial court] entered an Order dated January 14, 2009 which directed [] Appellant to appear at the office of the Adams County Department of Probation and Parole within 48 hours of his release date from custody in Maryland.

Appellant was released from his Maryland sentence on January 18, 2009. When he failed to report to Adams County, the Adams County Department of Probation and Parole initiated revocation proceedings which resulted in the issuance of an arrest warrant for Appellant on July 31, 2009. Appellant was ultimately produced before the [trial court] on December 30, 2010 as a result of the warrant. At that time, he entered a counseled acknowledgement for violation of his sentence of intermediate punishment. Pursuant to agreement, Appellant was resentenced to serve no less than one year nor more than two years in a state correctional institution. [] Appellant did not file either post sentence motions or a direct appeal from the resentencing proceedings. Rather, on January 11, 2012, Appellant filed a P.C.R.A. Petition challenging counsel's effectiveness at his revocation proceeding. P.C.R.A. counsel was subsequently appointed to represent Appellant. The [PCRA court] also provided Appellant with notice of its intent to dismiss the P.C.R.A. Petition without hearing as the Petition failed to allege a basis for relief cognizable under the [PCRA].

On March 26, 2012, P.C.R.A. counsel filed an Amended Petition raising two claims: (1) revocation counsel was ineffective in failing to pursue a defense based upon Appellant's alleged commitment to a medical facility during the relevant time period; and (2) revocation counsel was ineffective in promising Appellant would be released on parole after having served nine months of the sentence imposed following revocation. After hearing on June 18, 2012, [] Appellant's P.C.R.A. Petition was denied. . . .

PCRA Court Opinion, 11/06/12, at 1-2.

Appellant timely filed a notice of appeal. PCRA counsel subsequently petitioned this Court for leave to withdraw his representation of Appellant. The following statement of the law guides our consideration of such matters.

Counsel petitioning to withdraw from PCRA representation must proceed . . . under [**Turner**], and [**Finley**].^[1] **Turner/Finley** counsel must review the case zealously. **Turner/Finley** counsel must then submit a “no-merit” letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel's diligent review of the case, listing the issues which the petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw.

Counsel must also send to the petitioner: (1) a copy of the “no-merit” letter/brief; (2) a copy of counsel's petition to withdraw; and (3) a statement advising petitioner of the right to proceed *pro se* or by new counsel.

If counsel fails to satisfy the foregoing technical prerequisites of **Turner/Finley**, the court will not reach the merits of the underlying claims but, rather, will merely deny counsel's request to withdraw. Upon doing so, the court will then take appropriate steps, such as directing counsel to file a proper **Turner/Finley** request or an advocate's brief.

However, where counsel submits a petition and no-merit letter that do satisfy the technical demands of **Turner/Finley**, the court-trial court or this Court-must then conduct its own review of the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief. By contrast, if the claims appear to have merit, the court will deny counsel's request and grant relief, or at least instruct counsel to file an advocate's brief.

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

Commonwealth v. Wrecks, 931 A.2d 717, 721 (Pa. Super. 2007) (citations omitted).

Counsel has substantially complied with ***Turner/Finley***. We, therefore, will conduct a review of the merits of the case.

This Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record.

Commonwealth v. Turetsky, 925 A.2d 876, 879 (Pa. Super. 2007) (citations omitted).

According to counsel, Appellant wishes to challenge the stewardship of revocation counsel. For the reasons that follow, we conclude that Appellant's PCRA petition is moot.

This Court has held that, when a person files a PCRA petition when he is in custody but subsequently is unconditionally released from custody, the PCRA petition is rendered moot. ***Commonwealth v. Ahlborn***, 683 A.2d 632 (Pa. Super. 1996). In its opinion, the PCRA court noted the following:

Appellant was resentenced following revocation on December 30, 2010 to a sentence of no less than one year nor more than two years in a state correctional institution. The effective date of this sentence was December 30, 2010 with credit in the amount of 48 days for the time previously spent in custody. By [the trial court's] calculation, Appellant has served his sentence in full as of November 12, 2012. Accordingly, as of November 12, 2012, the instant appeal is properly quashed as Appellant is no longer entitled to relief under the P.C.R.A. as he is no longer serving sentence. ***See Commonwealth v. Ahlborn***, 883 A.2d 632 (Pa. Super. 1996).

PCRA Court Opinion, 11/06/12, at 4 n.1.²

Our review of the record confirms that the trial court sentenced Appellant to one to two years in prison. Furthermore, the PCRA court is accurate in reporting that the trial court stated that Appellant's sentence became effective on December 30, 2010, and that Appellant was credited with 48 days of back time. Thus, by the time this appeal reached this panel for disposition, Appellant no longer was currently serving his sentence. Consequently, Appellant's PCRA petition is moot. We, therefore, ultimately agree with PCRA counsel that Appellant's claim is meritless.

Order affirmed. Petition to withdraw granted.

² We also point out that, in his letter to Appellant, counsel informed Appellant that his issues "are no longer reviewable by the Court due to the fact that you are no longer serving the subject sentence." *Turner/Finley* Brief, Exhibit C, at 3-4.