

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JOSE QUILES,	:	
	:	
Appellant	:	No. 1527 EDA 2011

Appeal from the Judgment of Sentence May 26, 2011
In the Court of Common Pleas of Delaware County
Criminal No(s): CP-23-CR-0005478-2009

BEFORE: FORD ELLIOTT, P.J.E., MUNDY, and FITZGERALD, * JJ.

MEMORANDUM BY FITZGERALD, J.:

Filed: February 25, 2013

Appellant, Jose Quiles, appeals from the judgment of sentence entered in the Delaware County Court of Common Pleas following his convictions for theft by unlawful taking¹ and possession of drug paraphernalia.² This case returns to us after we remanded on June 21, 2012, to have the trial court conduct a *Grazier*³ hearing within thirty days. The *Grazier* hearing occurred on October 18, 2012, and this Court received the transcript of that hearing on January 5, 2013. We again remand to the Honorable Michael F.

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 3921.

² 35 Pa.C.S. § 780-113(a)(32).

³ *Commonwealth v. Grazier*, 713 A.2d 81 (Pa. 1998).

X. Coll for a proper **Grazier** hearing to be held within thirty days. We further order that Appellant's counsel be present for the **Grazier** hearing.

We set forth the procedural history in our prior memorandum.⁴ Following our June 21, 2012 remand, on October 18, 2012, the trial court—after a delay of almost four months—held a **Grazier** hearing. Although this Court denied Appellant's counsel's petition to withdraw, counsel was inexplicably not present at the **Grazier** hearing. Further, at the hearing, Appellant indicated that he wished to withdraw the instant appeal. Thus, the trial court did not comply with Pennsylvania Rule of Criminal Procedure 121(A) and **Grazier**.

Because of the atypical procedural posture, however, as set forth in our prior memorandum, we again remand for a **Grazier** hearing to determine whether Appellant wishes to proceed *pro se* on appeal. Should he elect to proceed *pro se*, he may request this Court to withdraw his appeal. Should he opt to be represented by counsel, Appellant's counsel may ask this Court to withdraw his appeal. The trial court is instructed to ensure that counsel for Appellant is present at the **Grazier** hearing and that a transcript of that hearing be prepared forthwith and transmitted to this Court.

Case remanded with instructions. Panel jurisdiction retained.

⁴ The certified record presently includes the June 15, 2011 order instructing Appellant to comply with Pa.R.A.P. 1925.