

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CURTIS RODNEY JONES,	:	
	:	
Appellant	:	No. 1590 EDA 2011

Appeal from the PCRA Order June 1, 2011
 In the Court of Common Pleas of Delaware County
 Criminal Division No(s): CP-23-CR-0001758-2002

BEFORE: GANTMAN, OLSON, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

Filed: February 22, 2013

Appellant, Curtis Rodney Jones, appeals *pro se* from the order entered in the Delaware County Court of Common Pleas dismissing his timely, first Post Conviction Relief Act¹ ("PCRA") petition. He contends, *inter alia*, that trial counsel was ineffective by failing to suppress evidence, object to various arguments and evidence, and call a particular witness. We remand pursuant to Pa.R.A.P. 1925(c)(1) for a determination within twenty days as to whether the PCRA court granted Appellant's petition for an extension of time to file a Pa.R.A.P. 1925(b) statement. The PCRA court is also instructed to supplement the record as necessary if it ruled on Appellant's petition.

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

We adopt the facts and procedural history set forth in the PCRA court's opinion. **See** PCRA Ct. Op., 10/31/11, at 1-7. A jury convicted Appellant of first degree murder² and robbery.³ On September 7, 2005, the court sentenced Appellant to life imprisonment. Appellant did not file a post-sentence motion. He filed a timely notice of appeal on October 4, 2005.⁴

On appeal, Appellant claimed the trial court erred by denying his motion to suppress. This Court agreed and vacated his judgment of sentence in a reported opinion. **Commonwealth v. Jones**, 928 A.2d 1054 (Pa. Super. 2007). The Commonwealth appealed, and the Pennsylvania Supreme Court reversed this Court and reinstated the judgment of sentence. **Commonwealth v. Jones**, 988 A.2d 649 (Pa. 2010). Appellant filed a petition for a writ of *certiorari* with the United States Supreme Court, which was denied on October 4, 2010.

Appellant filed a timely *pro se* PCRA petition on November 3, 2010. The PCRA court appointed counsel, who filed a **Turner/Finley**⁵ letter on April 4, 2011. Appellant filed a *pro se* response to the **Turner/Finley** letter.

² 18 Pa.C.S. § 2502(a).

³ 18 Pa.C.S. § 3701.

⁴ The trial court stated an incorrect date of October 5, 2005. **See** Trial Ct. Op. at 8.

⁵ **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

On June 2, 2011,⁶ the court granted counsel's request to withdraw and dismissed Appellant's PCRA petition without a hearing.⁷ On June 9, 2011,⁸ Appellant filed a timely *pro se* notice of appeal.

On June 30, 2011, the court ordered Appellant to comply with Pa.R.A.P. 1925(b) within twenty-one days. The order, however, referenced an appeal from a non-existent May 26, 2011 judgment of sentence. Order, 6/30/11. Appellant claimed he timely filed a Rule 1925(b) statement on July 11, 2011, but the certified record does not reflect any such filing.

Recognizing that its June 30, 2011 order was flawed, the court issued a new order on August 3, 2011, instructing Appellant to comply with Rule 1925(b). On August 20, 2011, Appellant filed a petition for an extension of time to file his Rule 1925(b) statement. The record reflects no ruling by the PCRA court.

⁶ The trial court incorrectly stated the date was June 1, 2011. **See** Trial Ct. Op. at 9.

⁷ The court did not have to comply with Pa.R.Crim.P. 907 because it dismissed Appellant's petition more than twenty days after counsel filed the **Turner/Finley** letter. **See Commonwealth v. Hopfer**, 965 A.2d 270, 275 (Pa. Super. 2009) (holding, "that service of any notice of dismissal, whether in the form of a Rule 907 notice by the court or a **Turner/Finley** no-merit letter, must occur at least twenty days prior to an official dismissal order.").

⁸ The trial court overlooked the prisoner mailbox rule and therefore referenced an incorrect date in its opinion. **See Commonwealth v. Wilson**, 911 A.2d 942, 944 n.2 (Pa. Super. 2006) (discussing prisoner mailbox rule).

On September 12, 2011, Appellant filed a document that he titled an “amended” Rule 1925(b) statement. On September 13, 2011, Appellant filed a second Rule 1925(b) statement—this was not labeled an “amended” statement. The PCRA court filed its Rule 1925(a) decision addressing some, if not all, of the issues raised in Appellant’s Rule 1925(b) statements.

Pa.R.A.P. 1925(c)(1) states:

(1) An appellate court may remand in either a civil or criminal case for a determination as to whether a Statement had been filed and/or served or timely filed and/or served.

Pa.R.A.P. 1925(c)(1).

The record does not reflect any disposition of Appellant’s August 20, 2011 petition for an extension of time to file a Rule 1925(b) statement. Thus, this Court is unaware as to whether Appellant timely filed his Rule 1925(b) statements. Accordingly, we remand for a determination by the PCRA court within twenty days as to whether it granted or denied Appellant’s petition for an extension of time. If the PCRA court ruled on Appellant’s August 20, 2011 petition, then the court is instructed to supplement the record with its ruling.

Case remanded with instructions. Panel jurisdiction retained.