

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL ALLEN WOLF,	:	No. 177 MDA 2012
Appellant	:	

Appeal from the Order Dated December 27, 2011,
in the Court of Common Pleas of Lebanon County
Criminal Division at No. CP-38-CR-0000128-2005,
CP-38-CR-0000129-2005

BEFORE: FORD ELLIOTT, P.J.E., PANELLA AND ALLEN, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: Filed: February 4, 2013

Appellant appeals the dismissal of his first petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. Finding that the PCRA court failed to properly ascertain that appellant wished to proceed *pro se*, we vacate the order below and remand for further proceedings.

On August 11, 2006, a jury found appellant guilty of several sex and related offenses appellant committed in 2004. Appellant, who was a schoolteacher at Cedar Crest High School in South Lebanon Township, molested two teenaged girls who attended the school. On December 19, 2006, appellant was sentenced to an aggregate term of 42 months' to 15 years' imprisonment. On appeal, on January 6, 2009, this court vacated the

sentence imposed for endangering the welfare of children graded as felonies and remanded for resentencing. ***Commonwealth v. Wolf***, 968 A.2d 799 (Pa.Super. 2009) (unpublished memorandum). On March 18, 2009, the trial court resentenced appellant, but maintained the same sentencing scheme. On November 18, 2009, this court affirmed the judgment of sentence. ***Commonwealth v. Wolf***, 988 A.2d 733 (Pa.Super. 2009) (unpublished memorandum).

Appellant filed the instant PCRA petition, *pro se*, on November 18, 2010. The petition requested the appointment of counsel if an evidentiary hearing was granted. Therefore, the PCRA court did not appoint counsel. (Opinion, entered 12/28/11 at 1.) Initially, the trial court issued notice, pursuant to Pa.R.Crim.P., Rule 907, 42 Pa.C.S.A., of its intention to dismiss the petition without hearing as untimely. However, following appellant's response, the PCRA court issued an order on July 21, 2010, acknowledging the timeliness of the petition. Nonetheless, on December 28, 2011, the PCRA court entered an order dismissing appellant's petition on the merits. This timely appeal followed.

We find that we must vacate the order below and remand this case so that the PCRA court can conduct a hearing, pursuant to ***Commonwealth v. Grazier***, 552 Pa. 9, 713 A.2d 81 (1998), and properly determine whether appellant knowingly, intelligently, and voluntarily waived his right to counsel for the prosecution of his PCRA petition. In ***Commonwealth v. Robinson***,

970 A.2d 455 (Pa.Super. 2009) (*en banc*), this court held that a PCRA court must hold a **Grazier** hearing for a first-time PCRA petitioner who expresses a desire to proceed *pro se*. The court indicated that the **Grazier** hearing was necessary even though the right to counsel for a first-time PCRA petitioner is rule-based rather than constitutionally required. **Robinson** overruled **Commonwealth v. Murray**, 836 A.2d 956 (Pa.Super. 2003), which held that the standard **Grazier** colloquy need not be given in the PCRA setting where the petitioner has expressed an unequivocal desire to proceed *pro se*, and also appears to be adequately representing him or herself. *See Murray*, 836 A.2d at 959, n.1.

This court also recently further held that we may raise this issue *sua sponte* even where, as here, appellant does not raise this issue on appeal by arguing that he was entitled to counsel. **Commonwealth v. Stossel**, 17 A.3d 1286, 1290 (Pa.Super. 2011). Thus, we must remand this case for a **Grazier** hearing.

Accordingly, we will vacate the order below and remand for a **Grazier** hearing. If the court determines that the waiver of counsel was not proper, counsel shall be appointed and an amended petition may be filed.

Order vacated. Case remanded. Jurisdiction relinquished.