

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

HEATHER K. HOUSEWEART

Appellant

No. 1760 MDA 2013

Appeal from the PCRA Order September 12, 2013
In the Court of Common Pleas of Lycoming County
Criminal Division at No(s): CP-41-CR-0001036-2011

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

JUDGMENT ORDER BY PANELLA, J.:

FILED APRIL 30, 2014

Appellant, Heather K. Houseweart, appeals from the order entered on September 12, 2013, in the Court of Common Pleas of Lycoming County, which dismissed her petition for relief filed pursuant to the Post-Conviction Relief Act, 42 PA.CON.S.STAT.ANN. §§ 9541-9546 After careful review, we vacate the order and remand for the appointment of new counsel.

It appears, upon a review of the certified record provided to this Court, that Houseweart was chronically unrepresented by appointed counsel, James R. Protasio, Esquire. It is well-established that, "once an appearance is entered, the attorney is responsible to diligently and competently represent the client until his or her appearance is withdrawn." ***Commonwealth v. Librizzi***, 810 A.2d 692, 693 (Pa. Super. 2002). Furthermore, "Pennsylvania courts routinely recognized the right to effective PCRA counsel."

Commonwealth v. Henkel, ___ A.3d ___, ___, 2014 WL 1409107, *6 (Pa. Super., filed April 11, 2014).

Here, counsel filed a PCRA petition on April 4, 2013, raising ineffective assistance of trial counsel claims. Following a PCRA conference on June 27, 2013, the PCRA court directed counsel to file an amended PCRA petition on or before August 20, 2013, and to arrange for the preparation of the trial transcripts. **See** Order, 6/27/13, at 1. Counsel failed to comply with either directive.

At the time of the PCRA conference on September 11, 2013, the PCRA court admonished counsel for his complete lack of preparation to proceed on Houseweart's PCRA claims. **See** Order 9/11/13, at 1. The PCRA court documented counsel's non-compliance with its order of June 27, 2013, and dismissed Houseweart's PCRA petition on what it termed "procedural grounds"—in other words, PCRA counsel's ineffectiveness. PCRA Court Opinion, 10/30/13, at 1. Houseweart subsequently filed in the PCRA court two *pro se* motions for withdrawal of counsel predicated on ineffectiveness and requested the appointment of new PCRA counsel. Both motions were denied.

In its Pa.R.A.P. 1925(a) opinion, the PCRA court stated the following:

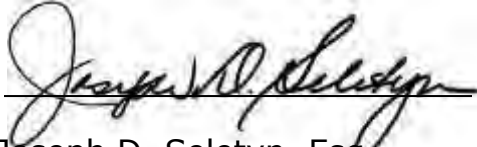
It is acknowledged that [PCRA] counsel's action have effectively deprived [Houseweart] of her right to assistance of counsel. Therefore the court expects that the matter will be remanded for the appointment of *effective* counsel.

Id., at 2.

Due to PCRA counsel's patent ineffectiveness, which was expressly raised in the PCRA court, we vacate the order dismissing the PCRA petition and remand to the PCRA court for the appointment of new counsel.

Order vacated. Case remanded for proceedings consistent with this memorandum. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/30/2014