

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JAMES DONALD GILLIN,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 139 WDA 2015

Appeal from the PCRA Order of January 5, 2015
In the Court of Common Pleas of Fayette County
Criminal Division at No(s): CP-26-CR-0001473-1999

BEFORE: BOWES, OLSON AND STRASSBURGER,* JJ.

MEMORANDUM BY OLSON, J.:

FILED FEBRUARY 02, 2016

Appellant, James Donald Gillin, appeals *pro se* from an order entered on January 5, 2015, wherein the court, pursuant to Pa.R.Crim.P. 907, entered notice of its intent to dismiss Appellant's petition under the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. Because Appellant failed to appeal from a final order, we quash.

We briefly summarize the facts and procedural history of this case as follows. On January 19, 2001, a jury convicted Appellant of first-degree murder, abuse of a corpse, and criminal conspiracy in connection with the murder of his 25-year-old, mentally challenged, adopted daughter. This Court affirmed Appellant's judgment of sentence on March 4, 2002. On February 7, 2006, Appellant filed a *pro se* PCRA petition and stated that he wished to proceed *pro se*. The PCRA court conducted a hearing and

*Retired Senior Judge assigned to the Superior Court.

determined Appellant knowingly, voluntarily and intelligently waived his right to counsel. On April 4, 2006, the PCRA court ultimately dismissed Appellant's PCRA petition because it was untimely, not subject to exception, and, therefore, the PCRA court lacked jurisdiction.

On February 12, 2014, eight years later, Appellant filed his second *pro se* PCRA petition, which is the subject of the current appeal. On March 21, 2014, the PCRA entered its notice of intent to dismiss the PCRA petition without a hearing pursuant to Pa.R.Crim.P. 907. After an additional response from Appellant, the PCRA court appointed counsel to represent him on June 12, 2014. The PCRA court entered an order granting appointed counsel additional time to file an amended PCRA petition. On December 23, 2014, appointed counsel petitioned the PCRA court to withdraw from representation. The PCRA court granted the request by order entered on December 26, 2014. Thereafter, on January 5, 2015, the PCRA court entered its notice of intent to dismiss the PCRA petition without a hearing pursuant to Pa.R.Crim.P. 907.

On January 20, 2015, Appellant filed a *pro se* notice of appeal purporting to appeal from an order entered on January 12, 2015. On March 27, 2015, the PCRA court filed a statement in lieu of an opinion. In that statement, the PCRA court noted it did not enter an order on January 12, 2015 and assumed Appellant was appealing from its Rule 907 notice. The

PCRA court stated, however, it had “not yet filed an [o]rder pursuant to Pa.R.Crim.P. 907(4)[.]”¹ Statement in Lieu of Opinion, 3/27/2015, at 1.

On appeal, Appellant filed a *pro se* brief that does not conform to our Rules of Appellate Procedure. The appellate brief is four pages in length and merely provides a narrative of Appellant’s version of events surrounding the murder at issue. Appellant provides no legal analysis and does not set forth any questions for our review.²

Before we are permitted to review the merits of an appeal under the PCRA, we must determine if we have jurisdiction. “An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of

¹ It is for these reasons that we read Appellant’s *pro se* notice of appeal purporting to challenge an order entered on January 12, 2015 as an appeal from the January 5, 2015 order wherein the PCRA court announced its intention to dismiss Appellant’s petition pursuant to Pa.R.Crim.P. 907.

² We have previously determined:

When issues are not properly raised and developed in briefs, when the briefs are wholly inadequate to present specific issues for review, a court will not consider the merits thereof. The Rules of Appellate Procedure clearly provide that an appeal may be quashed ‘if the defects are in the brief ... of the appellant and are substantial’ Pa.R.A.P. 2101.

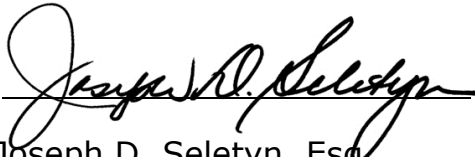
Commonwealth v. Sanford, 445 A.2d 149, 150-151 (Pa. Super. 1982) (internal case citations omitted). Here, Appellant’s appellate brief is fatally defective. We could quash the appeal for this reason. However, as discussed *infra*, we lack jurisdiction to entertain this appeal because the PCRA court never entered a final order.

appeal.” Pa.R.Crim.P. 910. Upon review of the certified record, there is no such order in the record or on the docket, only the notice of intent to dismiss pursuant to Pa.R.Crim.P. 907 filed on January 5, 2015. With exceptions not applicable here, this Court lacks jurisdiction to review an appeal from anything but a final order. **See** Pa.R.A.P. 301. A notice of intent to dismiss pursuant to Rule 907 is not a final order. **See** Pa.R.A.P. 341. Pursuant to Pa.R.A.P. 905(a)(5), an appeal may be regarded as prematurely filed, but then perfected once a final order is subsequently entered. **See** Pa.R.A.P. 905(a)(5)(“A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.”). Herein, the record reveals that the PCRA court never issued an order of dismissal (even after Appellant filed his notice of appeal) and, thus, never announced its final determination with respect to dismissal of Appellant’s PCRA petition. Therefore, we have no jurisdiction to review this purported appeal. **See *Commonwealth v. Abdul-Salaam***, 996 A.2d 482, 488 (Pa. 2010) (quashing misleadingly characterized appeal as a legal nullity for failing to appeal from a final order).

Appeal quashed.

J-S04020-16

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: February 2, 2016