

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MARQUIS FARROW,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1920 WDA 2016

Appeal from the PCRA Order Entered October 14, 2016  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0011202-2013

BEFORE: BENDER, P.J.E., DUBOW, J., and PLATT, J.\*

MEMORANDUM BY BENDER, P.J.E.:

FILED DECEMBER 08, 2017

Appellant, Marquis Farrow, appeals pro se from an October 14, 2016 order entered by the post-conviction court during the litigation of his first, timely petition filed under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. After careful review, we dismiss this appeal, and remand with instructions.

On March 11, 2015, Appellant pled guilty to various offenses, including fourteen counts of possession with intent to deliver a controlled substance (namely, heroin). According to the PCRA court,

the underlying facts to the charges to which Appellant pled [guilty] indicate that he was running a heroin processing mill. At the time of his arrest, police recovered 200 grams of heroin, thousands of empty stamp bags, and several other items

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\* Retired Senior Judge assigned to the Superior Court.

indicative of drug dealing. Appellant was arrested with \$8,800.00 in drug money on his person. Appellant was the subject of a two[-]month investigation which included dozens of drug transactions observed.

PCRA Court Opinion (PCO), 5/15/17, at 4.

On the same day that Appellant entered his guilty plea, he was sentenced to an aggregate term of 6 to 12½ years' incarceration, followed by 6 years' probation. Appellant did not file post-sentence motions, or a direct appeal.

Instead, on April 6, 2016, Appellant filed a timely, pro se PCRA petition. Counsel was appointed, but rather than filing an amended petition on Appellant's behalf, PCRA counsel instead filed a petition to withdraw and a Turner/Finley no-merit letter.<sup>1</sup> On June 29, 2016, the PCRA court issued a Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's petition. Therein, the court stated, in pertinent part, that it "INTENDS TO DISMISS the Petition and INTENDS TO GRANT the Petition to Withdraw." Pa.R.Crim.P. 907 Notice, 6/29/16 (capitalization in original). On July 15, 2016, Appellant filed a pro se response to the court's Rule 907 notice.

The next action in Appellant's case occurred on September 30, 2016, when he filed a pro se "Petition for Extension of Time to File Appeal of P.C.R.A. Denial." In that petition, Appellant seemingly asked the PCRA court

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<sup>1</sup> See Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988), and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988) (en banc).

to reinstate his right to appeal from the purported denial of his PCRA petition; however, the court had not at that point entered any order disposing of his petition.

Adding to this confusing procedural posture, on October 14, 2016, the PCRA court issued an order stating:

AND NOW, to-wit, this 14<sup>th</sup> day of October, 2016, upon consideration of [Appellant's] Petition for Extension of Time to File Appeal of P.C.R.A. Denial, and having reviewed the criteria for Nunc Pro Tunc appeals, this Court finds that [Appellant's] failure to timely file a Notice of Appeal in his P.C.R.A. case does not constitute an extraordinary circumstance meriting relief. See Commonwealth v. Hall, 771 A.2d 1232 (Pa. 2001). Therefore, it is hereby ORDERED that the Petition is DENIED.

PCRA Court Order, 10/14/16 (capitalization in original). It is from this order that Appellant filed a timely, pro se notice of appeal. In his pro se appellate brief, he argues that the court erred by denying his PCRA petition. In the PCRA court's Pa.R.A.P. 1925(a) opinion, it states that the October 14, 2016 order dismissed Appellant's petition without a hearing. See PCO at 2-3.

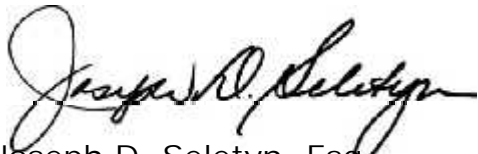
However, our review of the certified record demonstrates that the October 14, 2016 order from which Appellant has appealed did not deny his PCRA petition; that order denied his "Petition for Extension of Time to File Appeal of P.C.R.A. Denial." In fact, no order denying Appellant's underlying PCRA petition has been entered by the court; thus, it appears that Appellant's PCRA petition is technically still pending. Moreover, even if the October 14, 2016 order could be construed as denying his PCRA petition, the certified record does not contain any order disposing of PCRA counsel's

petition to withdraw. Consequently, Appellant should not be proceeding pro se before this Court on appeal. *Commonwealth v. White*, 871 A.2d 1291, 1294 (“[The] right [to representation by counsel for a first PCRA petition] exists ‘throughout the post-conviction proceedings, including any appeal from disposition of the petition for post-conviction relief. It is equally clear that once counsel has entered an appearance on a defendant’s behalf he is obligated to continue representation until the case is concluded or he is granted leave by the court to withdraw his appearance.’”) (citation omitted).

Under these unusual circumstances, we conclude that it is appropriate to dismiss Appellant’s present appeal, and remand his case to the PCRA court for it to issue an order ruling on Appellant’s pending PCRA petition, and to also dispose of counsel’s petition to withdraw.

Appeal dismissed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/8/2017