NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. STEVEN CONNOLLY Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2973 EDA 2012

Appeal from the PCRA Order September 14, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0012322-2007

BEFORE: GANTMAN, J., OLSON, J., and WECHT, J.

MEMORANDUM BY GANTMAN, J.: **FILED DECEMBER 10, 2013**

Appellant, Steven Connolly, appeals from the order entered in the Philadelphia County Court of Common Pleas, which dismissed his first petition brought pursuant to the Post Conviction Relief Act ("PCRA").[1] We affirm.

In its opinion, the PCRA court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant raises the following issue for our review:

> WAS NOT TRIAL COUNSEL INEFFECTIVE FOR FAILING TO CONDUCT A PROPER PRE-TRIAL INVESTIGATION AND PREPARATION OF KNOWN MATERIAL WITNESSES AND

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[1] 42 Pa.C.S.A. §§ 9541-9546.

> OTHERWISE FAILING TO SECURE THE SERVICES OF AN INVESTIGATOR TO LOCATE AND INTERVIEW SAID MATERIAL WITNESSES; AND WAS NOT PCRA COUNSEL'S NO-MERIT LETTER DEFICIENT FOR FAILING TO ADEQUATELY INVESTIGATE AND ADDRESS THIS CLAIM?

(Appellant's Brief at 4).

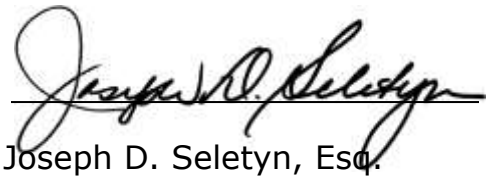
Our standard of review for the denial of a PCRA petition is limited to examining whether the evidence of record supports the court's determination and whether its decision is free of legal error. ***Commonwealth v. Conway***, 14 A.3d 101 (Pa.Super. 2011), *appeal denied*, 612 Pa. 687, 29 A.3d 795 (2011). This Court grants great deference to the findings of the PCRA court if the record contains any support for those findings; however, we give no deference to the court's legal conclusions. ***Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa.Super. 2012). "Traditionally, issues of credibility are within the sole domain of the trier of fact [because] it is the trier of fact who had the opportunity to personally observe the demeanor of the witnesses." ***Commonwealth v. Abu-Jamal***, 553 Pa. 485, 527, 720 A.2d 79, 99 (1998), *cert. denied*, 528 U.S. 810, 120 S.Ct. 41, 145 L.Ed.2d 38 (1999). "[A]s with any other credibility determination, where the record supports the PCRA court's credibility determinations, those determinations are binding" on this Court. ***Id.***

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable M. Teresa Sarmina, we conclude Appellant's issue merits no relief. The PCRA court

opinion comprehensively discusses and properly disposes of the question presented. (***See*** PCRA Court Opinion, dated May 15, 2013, at 5-12) (finding: Appellant, during colloquy with trial court, knowingly, intelligently, and voluntarily waived his right to call "material" witnesses to testify on his behalf; any evidence from these "material" witnesses that suggested Appellant was inside victim's home would have "utterly and disastrously contradicted" central piece of Appellant's trial testimony, that he could not have killed victim because he had not entered victim's home on day of murder; because Appellant voluntarily and freely chose to testify, his attorney would not have been ineffective for choosing not to set forth evidence which would have severely undermined Appellant's claims from witness stand; PCRA counsel's original and amended "no-merit" letters detailed extent of counsel's review, addressed each claim set forth by Appellant, and explained why counsel believed each claim was without merit; PCRA counsel sent Appellant copy of both "no-merit" letters; PCRA counsel advised Appellant of his right to proceed *pro se* or with privately retained counsel if and when PCRA court granted counsel's motion to withdraw). The record supports the PCRA court's decision; therefore, we see no reason to disturb it. Accordingly, we affirm on the basis of the PCRA court's opinion.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/10/2013

PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	**CP-51-CR-0012322-2007**
v.	:	**Superior Court Docket No.: 2973 EDA 2012**
STEVEN CONNOLLY	:	
Sarmina, J. **May 15, 2013**	:	

OPINION

PROCEDURAL HISTORY

On November 6, 2008, following a jury trial,[1] Steven Connolly (petitioner) was found guilty of murder of the third degree (F-1) and possessing instruments of crime (PIC) (M-1).[2] Sentencing was deferred until December 19, 2008, on which date petitioner was sentenced to a term of not less than 14 years nor more than 40 years confinement, to be followed by ten years reporting probation.[3] On December 29, 2008, petitioner filed post-sentence motions, which were denied by this Court on April 24, 2009. On May 21, 2009, petitioner filed a timely notice of appeal.[4] On March 22, 2010, the Superior Court affirmed petitioner's judgments of sentence.[5] On April 9, 2010, petitioner filed a Petition for Allowance of Appeal, which our Supreme Court denied on August 31, 2010.[6]

[1] Petitioner was represented at trial by Bernard L. Siegel, Esquire.

[2] 18 Pa.C.S. §§ 2502(c) and 907(a), respectively.

[3] As to the conviction for murder of the third degree, petitioner was sentenced to a term of not less than 14 years nor more than 30 years confinement, to be followed by five years of reporting probation. As to the conviction for PIC, petitioner was sentenced to a consecutive term of five years of reporting probation.

[4] Petitioner was represented on appeal by David Rudenstein, Esquire.

[5] Commonwealth v. Connolly, No. 1564 EDA 2009, slip op. (Pa.Super., Mar. 22, 2010) (memorandum opinion).

[6] Commonwealth v. Connolly, No. 162 EAL 2010, slip op. (Pa., Aug. 31, 2010) (memorandum opinion).

On April 25, 2011, petitioner filed a timely *pro se* petition pursuant to the Post Conviction Relief Act (PCRA).[7] Counsel was appointed[8] and, after investigation, filed a Finley[9] letter on March 23, 2012. After this Court advised counsel that his Finley letter was deficient, counsel filed an amended Finley letter on May 16, 2012. On June 2, 2012, petitioner filed an amended *pro se* PCRA petition. After considering these filings and conducting an independent review, this Court found that petitioner's claims lacked merit and, on August 15, 2012, sent petitioner notice pursuant to Pa.R.Crim.P. 907 (907 Notice) of its intent to deny his claims and dismiss his PCRA petition without a hearing. On September 10, 2012, petitioner responded to this Court's 907 Notice. On September 14, 2012, this Court denied petitioner's claims and dismissed his petition.[10]

FACTS

As of July 2007, petitioner had been purchasing crack cocaine from William Glover[11] (hereafter, victim) for ten to 15 years. Notes of Testimony (N.T.) 11/4/2008 at 98-99. Petitioner had frequented the victim's home, located on the second floor of 3404 North 10th Street in Philadelphia, where the two men would use drugs for extended periods of time. Id. at 124-25. On occasion, the victim permitted petitioner to purchase drugs on credit. Id. at 103, 132-33. Whenever that occurred, the same procedure was followed: the victim would hold onto petitioner's wallet and keys as collateral until petitioner settled the debt. Id. at 133.

On July 25 or July 26, 2007, petitioner arrived at the victim's house and began a drug binge. Id. at 102-03. After partying for multiple days, petitioner ran out of money. Id. The victim allowed

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[7] 42 Pa.C.S. § 9541 *et seq.*

[8] Barnaby Wittels, Esquire, was appointed to represent petitioner on collateral attack.

[9] Commonwealth v. Finley, 550 A.2d 213 (Pa.Super. 1988).

[10] On October 12, 2012, after receiving a timely *pro se* notice of appeal, this Court entered an amended order, clarifying that Mr. Wittels was no longer representing petitioner, as he had been permitted to withdraw as counsel.

[11] William Glover was also known as "Ghost." Notes of Testimony (N.T.) 11/4/2008 at 99.

petitioner to buy $60 of crack cocaine; petitioner followed the ordinary procedure and left his wallet and keys in the victim's control in exchange for the drugs. N.T. 11/4/2008 at 103, 134. Around 7:00 AM on the morning of July 28, 2007, petitioner left the victim's house to get money to pay for the drugs. Id. at 132.

After leaving the victim's house, petitioner sent a text message to his on-again, off-again girlfriend, Carolyn Lawlor (Lawlor), asking her to give him a ride to the victim's house to retrieve his wallet and keys. Id. at 152. Lawlor met petitioner at his house; on their ride to the victim's house, Lawlor told petitioner that she had cash if he needed it to pay his debt. Id. at 157. Petitioner responded, "No. It's okay. I don't need it." Id. He added, "I have and [sic] idea how to get my keys and wallet without paying for it." Id. Petitioner told Lawlor that he wanted to lure the victim's live-in girlfriend, Thelma Yancey (Yancey), out of the home so that he would be able to grab his wallet. N.T. 11/4/2008 at 157-58. Petitioner instructed Lawlor that if Yancey were to ask her for money, Lawlor was to tell her that she did not have any. Id. at 160.

Petitioner arrived back at the victim's home around 1:40 PM and found the victim sitting on a neighbor's bench reading the newspaper. Id. at 100. The two men walked upstairs where Yancey had been sitting, looking out of the window. Id. The victim told Yancey to hand petitioner his wallet and keys in exchange for money; petitioner responded, "No. Take it out to the car to my girlfriend, to the tan Suburban, and she'll give you the money. I want to talk to Ghost." Id. at 101. Yancey left the apartment, walked outside to the tan Suburban parked around the corner, and told Lawlor that she had been instructed by petitioner to ask Lawlor for money. Id. Lawlor responded, "I don't know what he's talking about." N.T. 11/4/2008 at 162. As Yancey turned to head back inside, petitioner sprinted from the door of 3404 N. 10th Street towards her. Id. at 101. He ran directly to her, and reached out and pulled his wallet and keys from her hands. Id., at 163. Petitioner quickly entered the driver's side of the tan Suburban, and sped away. Id. at 164. As

petitioner drove through multiple red lights, Lawlor asked whether something happened which caused him to appear very agitated. Id. at 165. Petitioner responded, "Don't worry about it," and added, "But he won't be getting up anytime soon." Id. Petitioner stopped the car at a nearby McDonald's so that he could clean blood off of his arm. Id. at 167-68. Then petitioner continued to drive to his home in Levittown, PA, where he told Lawlor to wait in the car; petitioner emerged from his home with a white plastic bag in hand, wearing different clothing. N.T. 11/4/2008 at 169-70. The next day, petitioner and Lawlor met for dinner, where petitioner instructed Lawlor to "get our stories straight." Id. at 173. Petitioner told her that "the story I should tell was that he went down and he gave them the money but then the girl [Yancey] went crazy because she wanted more money and there was a scuffle." Id.

Roughly five to six minutes passed between when Yancey left her home to ask Lawlor for the money and when she returned. Id. at 106. Yancey had not seen anyone enter or exit the house during that short window of time. Id. at 108. On her way back in, as soon as she reached the top of the stairs, Yancey heard the victim choking. Id. at 102.

> I get to the top of the steps; I could hear [the victim] choking. When I got to the bedroom, the blood was all over the place. It was coming out his neck [sic] and his throat. And he said, "That pussy [sic] stabbed me, Tiny." Then he said, "I can't breath [sic]," and he fell back on the bed.

N.T. 11/4/2008 at 102.

Assistant Medical Examiner Dr. Bennett Preston testified that the victim died as a result of multiple stab or slash wounds. Id. at 61.

LEGAL ANALYSIS

Petitioner raises the following issues on appeal:[12]

1. This Court erred when it denied petitioner's PCRA petition, as trial counsel was ineffective for failing to locate, investigate and call "material witnesses" in petitioner's defense at trial.[13]
2. PCRA counsel filed a deficient "no-merit letter" and failed to adequately investigate and address petitioner's claim about trial counsel's ineffectiveness for failing to secure witnesses.

1. Trial counsel was ineffective for failing to locate, investigate, and call "material" witnesses in his defense, and this Court erred

Petitioner claimed that trial counsel was ineffective for failing to locate, investigate and call "material" witnesses[14] who would have been able to provide evidence of the victim's "aggressive behavior" towards petitioner. Petitioner claimed that "Styme," "Janx,"[15] and an unknown female would have helped to support and develop "petitioner's claim of self-defense." *Pro se* Memorandum of Law, 11/8/2011, at 1. This Court properly denied the instant claim.

Counsel is presumed effective, and petitioner has the burden of proving by a preponderance of the evidence that petitioner's convictions or sentences resulted from ineffective assistance of counsel which "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S. § 9543(a)(2)(ii). To overcome the presumption that counsel was effective, petitioner must show that the underlying substantive claim has arguable merit,

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[12] These issues have been rephrased and reordered for ease of disposition.

[13] In petitioner's Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) (1925(b) Statement), he specified that counsel could have used the services of an investigator to "locate and interview" the "material witnesses." Whether trial counsel used an investigator or not, the proposed testimony of these "material witnesses" would have been the same. As discussed *infra*, their testimony would have contradicted petitioner's trial testimony, and counsel cannot be deemed ineffective for failing to present such contradictory evidence.

[14] In petitioner's 1925(b) Statement, he does not provide names of the "known material witnesses." In petitioner's pleadings, "Stymie," "Janx," and an unknown female were identified as material to his defense. This Court assumes that the "known material witnesses" alluded to in petitioner's 1925(b) Statement were those three individual identified in petitioner's PCRA pleadings.

[15] "Janx" is also referred to by petitioner as "Jynxs." This Court uses the spelling "Janx" throughout this Opinion.

that counsel did not have a reasonable basis for his or her actions or failure to act, and that petitioner suffered prejudice as a result of counsel's deficient performance. Commonwealth v. Ligons, 971 A.2d 1125, 1137 (Pa. 2009).

Preliminarily, the Superior Court has noted that the voluntary waiver of testimony – whether the testimony is proffered by a defendant or by a witness on the defendant's behalf – bars a later claim that counsel was ineffective for failing to present such testimony. Commonwealth v. Lawson, 762 A.2d 753, 756 (Pa.Super. 2000). "A defendant who voluntarily waives the right to call witnesses during a colloquy cannot later claim ineffective assistance and purport that he was coerced by counsel." Id.

During a colloquy with this Court, petitioner knowingly, intelligently and voluntarily waived his right to call Styme, Janx, or the unknown female to testify on his behalf:

> THE COURT: Were there any witnesses that you wanted to call or anything that you discussed with Mr. Siegel that is not going to happen during this trial?
> PETITIONER: As far as I know, Aaron Thorpe should be here for a character witness.
> MR. SIEGEL: He called Your Honor and he was stuck in traffic, but he's on his way.
> THE COURT: Other than Mr. Thorpe, was there anyone whatsoever?
> PETITIONER: No, Your Honor.

N.T. 11/5/2008 at 8-9.

But even if petitioner had not knowingly waived his right to present additional witnesses in his own defense, his claim would still have failed. An attorney will not be deemed ineffective for failing to set forth evidence which contradicts the testimony proffered by a defendant. Commonwealth v. Smith, 17 A.3d 873, 902 (Pa. 2011). "Where a defendant has denied committing a crime during his trial testimony, we will not find counsel ineffective for failing to present a defense that would have conflicted with such testimony." Id. Likewise, in Commonwealth v. McNeil, a defendant who had been charged with rape testified that he had never seen the woman before. 487 A.2d 802, 804 (Pa. 1985). After the jury convicted him, McNeil claimed that his attorney had been ineffective for failing to present a defense of consent. Id. at 805. Our Supreme Court held that

McNeil's claim of ineffective assistance of counsel "evaporate[d]" when "[e]xposed to the light of reality":

> The critical factor is that the newfound "victims [sic] conspiracy/consent" defense, and [a proposed witness's] testimony to support that defense, would not have been beneficial because it *would have utterly and disastrously contradicted appellee's trial testimony that he did not know the victim.* . . . Having freely and deliberately chosen to offer testimony which he now asserts was false, appellee stands before this Court and attempts to reap a windfall new trial on account of his own perjury. The criminal justice system cannot and will not tolerate such an obvious and flagrant affront to the integrity of the truth determining process thinly disguised under the rubric of "ineffective assistance."

Id. at 806-08 (emphasis in original).

Petitioner's claim closely paralleled McNeil's claim. At trial, petitioner testified[16] that he was actually innocent, as he had not encountered the victim on the day of the crime. N.T. 11/5/2008 at

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[16] The record demonstrates that petitioner's decision to testify at trial was knowing, intelligent and voluntary:

> THE COURT: [A]t this time I decided to have the discussion or colloquy with you about whether you wish to testify or not testify in this case. As you might recall from our earlier discussion, this is one of the decisions that is for you and you alone to make. Do you remember that?
> PETITIONER: Yes.
> THE COURT: So what is your decision in that regard, sir?
> PETITIONER: I will testify.
> THE COURT: So I'm going to ask you some questions about that decision, sir. Have you taken any drugs, alcohol, or medication in the last 12 hours?
> PETITIONER: No.
> THE COURT: Can you read, write, and understand the English language?
> PETITIONER: Yes.
> THE COURT: Have you ever been diagnosed with a mental illness?
> PETITIONER: No.
> THE COURT: I believe you and your attorney, Mr. Siegel, have discussed the fact that you have the right to testify or not to testify in this case; is that correct?
> PETITIONER: Correct.
> THE COURT: Did anybody pressure you or force you or threaten you in any way so that you would testify?
> PETITIONER: No.
> THE COURT: Is this decision to testify being made voluntarily and freely by you?
> PETITIONER: Voluntarily, yes.
> THE COURT: Not freely?
> PETITIONER: Freely?
> THE COURT: I'm asking. I asked if it was being made voluntarily and freely by you.
> PETITIONER: Voluntarily, I would think would mean volunteering to go up there and testify.
> THE COURT: Are you making that decision freely?
> PETITIONER: Yes.
> . . .
> THE COURT: And so the decision to testify, then, is your decision?
> PETITIONER: Yes.
> . . .
> (FN cont'd...)

116. Petitioner claimed that he approached 3404 North 10th Street and knocked on the door. Id. at 111. He stated that he waited outside the house for "three to four minutes" and then Yancey appeared at the front door. Id. at 111-12. After instructing Yancey to retrieve the money that he owed from Lawlor, petitioner asserted that he made small talk with Janx for a short while before he panicked and pushed Janx to the ground. Id. at 113. Petitioner claimed that he then ran after Yancey and wrestled his wallet and keys away from her before fleeing with Lawlor. Id. Petitioner explained that he had blood on his arm from wrestling with Yancey. Id. at 118. Petitioner maintained that, on the day of the murder, he never went inside the house where the victim was killed. N.T. 11/5/2008 at 137. "Absolutely not. I was on the front step." Id.

However, in the affidavit petitioner attached to his *pro se* PCRA petition, petitioner admitted that he lied at trial:

> The petitioner arrived at [the victim's] home and entered with [the victim behind him. . . . The petitioner entered the up-stairs bedroom and ask [sic] [the victim] to give the wallet to [Yancey] and that [Lawlor] had money down stairs. . . . [The victim] said something else and then picked up a 4 cell flashlight and swung it toward the petitioner. . . . [The victim] was coming toward the petitioner with the flashlight in hand and the petitioner responded by grabbing one of the knives and swung it towards [the victim's] right foot / ankle area. [The victim] turned around and went towards his night-stand where petitioner knows he keeps weapons. As [the victim] was attempting to go in the night-stand drawer the petitioner poked [the victim] in the back with the same knife.

Affidavit of Steven Connolly, 4/14/2011, at 3.

In his affidavit, petitioner claimed that Styme, Janx and an unknown female could have corroborated this claim of self-defense. However, any evidence suggesting that petitioner was inside

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MR. SIEGEL: Your Honor, I would just like to add as to the questioning –
THE COURT: You go ahead.
MR. SIEGEL: Mr. Connolly, the judge has now gone through a complete set of questions regarding your voluntary and free decision to testify. Is this an issue that I discussed with you?
PETITIONER: That it's my decision, yes.
MR. SIEGEL: Did I discuss with you your options?
PETITIONER: Yes, absolutely.
MR. SIEGEL: Without stating what it was, did I advise you what I thought was best?
PETITIONER: Yes.

N.T. 11/5/2008 at 4-7, 9-10.

the house at 3404 North 10th Street would have "utterly and disastrously contradicted" the central piece of his trial testimony: that he could not have killed the victim because, on the day of the crime, he had not entered those premises. As petitioner voluntarily and freely chose to testify, and testified as he did, his attorney would not have been ineffective for choosing not to set forth evidence which would have severely undermined petitioner's claims from the witness stand. Therefore, from both perspectives, this Court properly denied the instant claim.

2. PCRA counsel filed a deficient no-merit letter which failed to adequately investigate and address the claim above.

Petitioner alleges that PCRA counsel filed a deficient "no-merit" letter. Preliminarily, this Court notes that petitioner's challenge to the propriety of PCRA counsel's "no-merit" letter is appropriately before this Court. See Commonwealth v. Rykard, 55 A.3d 1177, 1184-86 (Pa. 2012) (reviewing the substance of PCRA counsel's "no-merit" letter on appeal from a PCRA court's denial of a PCRA petition).

Before court-appointed PCRA counsel may be permitted to withdraw, the attorney must have independently reviewed the record. Commonwealth v. Turner, 544 A.2d 297 (Pa. 1988); Commonwealth v. Finley, 550 A.2d 214 (Pa. 1988). Independent review requires proof of:

> (1) A "no-merit" letter by PCRA counsel detailing the nature and extent of his review;
> (2) The "no-merit" letter by PCRA counsel listing each issue the petitioner wished to have reviewed;
> (3) The PCRA counsel's "explanation," in the "no-merit" letter, of why the petitioner's issues were meritless;
> (4) The PCRA court conducting its own independent review of the record; and
> (5) The PCRA court agreeing with counsel that the petition was meritless.

Commonwealth v. Widgins, 29 A.3d 816, 818 (Pa.Super. 2011), *citing* Commonwealth v. Pitts, 981 A.2d 875, 876 n.1 (Pa. 2009).[17]

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[17] The Superior Court imposed an additional requirement for counsel seeking to withdraw in collateral attack proceedings in Commonwealth v. Friend:

> Consequently, we here announce a further prerequisite which must hereafter attend an application by counsel to withdraw from representing a PCRA petitioner, namely ***that PCRA counsel who seeks to withdraw must contemporaneously serve a copy on the petitioner of counsel's application to withdraw as counsel, and*** (FN cont'd...)

In petitioner's *pro se* petition, he essentially raised four claims[18]: (1) trial counsel was ineffective for failing to locate, secure, and call Styme, Janx and an unknown female to testify on his behalf;[19] (2) trial counsel was ineffective for failing to fully explore petitioner's toxicology report;[20] (3) trial counsel was ineffective for failing to present evidence supporting a defense of voluntary manslaughter, and for failing to ask the Court to charge the jury about that defense; (4) the trial court erred by allowing certain prejudicial testimony to be read back to the jury, but not allowing other beneficial testimony to be read back. After filing his *pro se* petition, petitioner wrote to this Court concerning an additional issue: trial counsel's failure to argue for a reduction of sentence in his post-sentence motions.[21]

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must supply to the petitioner both a copy of the "no-merit" letter and a statement advising the petitioner that, in the event that the court grants the application of counsel to withdraw, he or she has the right to proceed* pro se *or with the assistance of privately retained counsel.

896 A.2d 607, 614 (Pa.Super. 2006), *overruled on other grounds by* Pitts, 981 A.2d at 880 (emphasis in original).

The requirement that PCRA counsel serve a copy of his/her application to withdraw as counsel, and that he/she advise petitioner of his right to proceed *pro se* or with the assistance of privately retained counsel remains intact. See Widgins, 29 A.3d at 818-19 (finding that PCRA counsel's *representation* that he had advised petitioner that if the court granted counsel's motion to withdraw, petitioner would be permitted to proceed with privately retained counsel or *pro se* satisfied the requirements set forth in Friend). In the instant matter, PCRA counsel filed a Finley letter in which he represented to this Court, "I have complied with the requirements detailed in Commonwealth v. Friend and submit that having done so, this Court should grant the instant Motion for Leave to Withdraw as Counsel." Motion for Leave to Withdraw as Counsel, 3/23/2012, at 3.

[18] Petitioner labeled these as nine separate claims, however many are interrelated. After careful consideration, this Court renumbered the issues into four claims.

[19] As part of this claim, petitioner also alleged that appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness. Additionally, petitioner alleged that, had trial counsel located and secured these witnesses, petitioner would have testified differently at trial.

[20] As part of this claim, petitioner alleged that trial counsel was ineffective for failing to fully examine petitioner's toxicology report, that trial counsel was ineffective for failing to cross examine the forensic pathologist about the contents of the toxicology report, and petitioner questioned trial counsel's general "ethical fitness."

[21] Petitioner's claim that trial counsel was ineffective for failing to argue for a reduction of sentence in post-sentence motions failed, as trial counsel had made that *exact* argument:

> This motion seeks to modify and reduce the sentence of imprisonment imposed on the murder charge. Considering the sentencing code as a whole, *42 Pa.C.S.A. §§ 9721 et seq.*, the sentence of the court was harsh, disproportionate, and out of keeping with the facts of the case, and did not meet the goals of sentencing as set (FN cont'd...)

After this Court instructed PCRA counsel to supplement his Finley letter to address petitioner's claim that trial counsel was ineffective for failing to file a motion for reconsideration of sentence, PCRA counsel filed an amended Finley letter in which he addressed each aforementioned claim set forth by petitioner. In his amended Finley, PCRA counsel explained why he believed that each of the issues raised by petitioner were without merit. PCRA counsel sent petitioner a copy of both "no-merit" letters. After reviewing petitioner's pleadings and PCRA counsel's Finley letters, this Court sent petitioner a comprehensive 907 Notice in which it detailed why the claims that he raised were without merit. On October 12, 2012, as part of the order denying petitioner's PCRA petition, this Court reminded petitioner of his right to proceed *pro se* or to retain private counsel on appeal.

PCRA counsel's "no-merit" letters established the first three components of the "independent review" requirement set forth in Finley: PCRA counsel detailed the extent of his review, in which he addressed every issue raised by petitioner and explained why those issues lacked merit. This Court's independent review of the record and agreement with PCRA counsel that petitioner's petition lacked merit – as mandated by the fourth and fifth elements of Finley – is illustrated by the detailed 907 Notice this Court provided to petitioner. And finally, PCRA counsel's representation to this Court that he complied with the requirements of Friend sufficed to show that he provided a copy of his "no-merit" letter to petitioner[22] and advised petitioner of his right to

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> forth in the Sentencing Code. Therefore, the sentence constituted a gross abuse of the court's discretion in sentencing. Because the sentence demonstrates insensitivity to the purposes of the Sentencing Code and the sentencing guidelines, the sentence should be vacated and a resentencing ordered.

Post-Sentence Motions, 12/29/2008, at 1-2 (emphasis in original).

As trial counsel made the precise argument that petitioner claims he was ineffective for having failed to make, petitioner's claim failed.

[22] After receiving PCRA counsel's "no-merit" letter, petitioner filed an amended *pro se* PCRA petition on June 2, 2012, in which he first raised the contention that PCRA counsel's "no-merit" letter was deficient. On September 10, 2012, petitioner again asserted that PCRA counsel's "no-merit" letter was deficient in his response to this Court's 907 Notice.

proceed *pro se* or with privately retained counsel if and when this Court granted counsel's motion to withdraw. Therefore, this Court properly determined that PCRA counsel complied with the requirements of Finley and Friend, and permitted counsel to withdraw.

The denial of petitioner's claims and dismissal of his PCRA petition was proper and should be affirmed.

BY THE COURT:

M. TERESA SARMINA J.