

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

LAFAYETTE M. MORELAND

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 310 WDA 2013

Appeal from the PCRA Order February 5, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0002216-2001

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED DECEMBER 18, 2013

Lafayette M. Moreland appeals from the order entered on February 5, 2013, in the Court of Common Pleas of Allegheny County, that dismissed, pursuant to the Post Conviction Relief Act¹ ("PCRA"), his petition filed as a Petition for Writ of *Coram Nobis*. Contemporaneous with this appeal, appointed counsel has filed a **Turner/Finley**² "no merit" letter and petition seeking leave to withdraw from representation. Based upon the following, we affirm, and grant counsel leave to withdraw.

The PCRA court summarized the background of this case as follows:

¹ 42 Pa.C.S. §§ 9541–9546.

² **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

On March 2, 2004, Defendant Lafayette Moreland pled guilty [in a negotiated plea agreement] before this Court at CC No. 200102216 to one count of Possession with Intent to Deliver a Controlled Substance, as well as two related counts. [Moreland] was sentenced to 9 to 23 months' incarceration and 5 years' probation for the first count, with no further penalty at the remaining counts. [Moreland] was represented by Stephen D. Collafella, Esq., and no direct appeal or post-sentence motion was taken from this judgment of sentence. On May 23rd, 2006, [Moreland] through counsel Robert G. DelGreco, Jr., Esq. filed a Motion to Terminate Probation, which was granted by this Court.

On June 15, 2010, [Moreland] pled guilty in the United States District Court for the Western District of Pennsylvania to one count of Conspiracy to Distribute and Possess with Intent to Distribute 50 grams or more of crack cocaine. The Hon. David S. Cercone issued a Memorandum Order and Tentative Findings and Rulings on September 1st, 2010, noting that [Moreland's] status as a career criminal based upon his convictions and sentence in the matter previously before this Court; and on September 3rd, 2010, Defendant was sentenced to a term of incarceration of 240 months.

On September 27th, 2012, [Moreland], represented by Robert X. Medonis, Esq., filed a Petition for Writ of *Coram Nobis* with this Court, claiming ineffectiveness of counsel (Attorney Colafella) in regard to the guilty plea before this Court, which was subsequently used to enhance his federal sentence from a 10-year mandatory minimum to a 20-year mandatory minimum. After an order from this Court, the Commonwealth timely filed a response and a Motion to Dismiss the Petition. This Court issued an Order on October 17th, 2012, giving [Moreland] the Court's Notice of Intent to Dismiss the Petition for Writ of *Coram Nobis*.

Attorney Medonis passed away on November 5th, 2012, and the Court granted [Moreland's] *pro se* Motion to Extend Time to Respond to the Notice of Intent to Dismiss. Charles R. Pass, III, Esq., was appointed as counsel for [Moreland]. On February 4th, 2013, [Moreland], through Attorney Pass, timely filed a Response to the Notice of Intent to Dismiss the Petition for Writ of *Coram Nobis*. Upon review of [Moreland's] response, on February 6th, 2013, this Court issued an order dismissing the Petition for Writ of *Coram Nobis*[.]

PCRA Court Opinion, 3/19/2013, at 1-2.

The court treated Moreland's Petition for Writ of *Coram Nobis* as a PCRA petition and, finding that that the petition was time-barred and without support in the record, dismissed the petition without a hearing. This timely appeal followed.³

Prior to reviewing the merits of this appeal, we must first address the question whether counsel has fulfilled the procedural requirements for withdrawing as counsel:

Counsel petitioning to withdraw from PCRA representation must proceed . . . under [***Turner, supra*** and ***Finley, supra***] . . . must review the case zealously. ***Turner/Finley*** counsel must then submit a "no-merit" letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel's diligent review of the case, listing the issues which petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw. Counsel must also send to the petitioner: (1) a copy of the "no merit" letter/brief; (2) a copy of counsel's petition to withdraw; and (3) a statement advising petitioner of the right to proceed *pro se* or by new counsel.

* * *

[W]here counsel submits a petition and no-merit letter that ... satisfy the technical demands of ***Turner/Finley***, the court — trial court or this Court — must then conduct its own review of the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief.

³ Moreland timely complied with the order of the PCRA court to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.

Commonwealth v. Doty, 48 A.3d 451, 454 (Pa. Super. 2012) (citations omitted).

Here, counsel has complied with the procedural aspects of **Turner/Finley** by filing a no-merit letter, providing Moreland with a copy of the letter and the petition to withdraw, and advising him of his right to proceed *pro se* or with private counsel. **See** Application for Leave to Withdraw as Counsel, 6/17/2013. Therefore, we proceed to consider whether the PCRA court erred in dismissing the petition.⁴ **See Doty, supra.**

Our standard of review for an order denying post conviction relief is whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. **See Commonwealth v. Hart**, 911 A.2d 939, 941 (Pa. Super. 2006). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **See id.**

The PCRA statute is clear that it is "the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies ..., including habeas corpus and coram nobis." 42 Pa.C.S. § 9542. Therefore, "if the underlying substantive claim is one that could potentially be remedied under the PCRA, that claim is **exclusive to** the PCRA."

⁴ It bears mention that Moreland, following receipt of the Commonwealth's brief, which he stated he received on July 5, 2013, filed a *pro se* reply brief, dated August 5, 2013, and time-stamped in this Court on August 8, 2013.

Commonwealth v. Pagan, 864 A.2d 1231, 1233 (Pa. Super. 2004), *cert. denied*, 546 U.S. 909 (2005) (emphasis in original). Here, since Moreland's claim for relief is grounded upon a claim of ineffective assistance of plea counsel, the PCRA court properly determined that Moreland's claim implicated the PCRA. **See** 42 Pa.C.S. § 9543(a)(2)(ii); ***Commonwealth v. Padden***, 783 A.2d 299, 315 (Pa. Super. 2001) ("[T]he proper interpretation of Section 9543(a)(2)(ii) of the PCRA permits ***all*** constitutionally cognizable claims of ineffective assistance of counsel to be raised in a PCRA proceeding." (emphasis in original)).

Under the PCRA, in order to be eligible for relief, a petitioner is required to plead and prove, by a preponderance of the evidence that "the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted ... currently serving a sentence of imprisonment, probation or parole for the crime." 42 Pa.C.S. § 9543(a)(1)(i). In ***Commonwealth v. Ahlborn***, 699 A.2d 718 (Pa. 1997), the Supreme Court of Pennsylvania held: "To be eligible for relief a petitioner must be *currently* serving a sentence of imprisonment, probation or parole. To grant relief at a time when appellant is *not* currently serving such a sentence would be to ignore the language of the statute." ***Id.*** at 720 (emphasis in original).

In this case, the record reflects that when Moreland filed the present petition, he was **not** currently serving a sentence of imprisonment, probation

or parole on the underlying convictions, since his sentence had terminated on May 23, 2006. **See** Order, 5/23/2006 (granting Moreland's petition to terminate probation and releasing him from probation); **see also** PCRA Court Opinion at 3 ("On May 23rd, 2006, this Court terminated [Moreland's] probation."). Therefore, under the PCRA, Moreland was ineligible for relief, and his petition for post conviction relief was properly dismissed by the PCRA court.⁵ **See Commonwealth ex rel. Strobe v. District Attorney of Bradford County**, 789 A.2d 218 (Pa. Super. 2001), *appeal denied*, 805 A.2d 518 (Pa. 2002) (petitioner's request for *habeas corpus* relief, alleging ineffectiveness and seeking vacation of his conviction and sentence allegedly used to enhance his federal sentence as relief, was preempted by PCRA; PCRA relief was not available to petitioner, as he was not currently in state prison, or on probation or parole). **See also Commonwealth v. Turner**, ___ A.3d ___, ___ (Pa. November 22, 2013) ("due process does not require the legislature to continue to provide collateral review when the offender is no longer serving a sentence"; petitioner's ineffectiveness of counsel claims

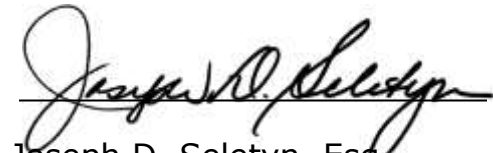
⁵ While the PCRA court's February 5, 2013 order indicated that Moreland's petition was time barred, the PCRA court, in its Pa.R.A.P. 1925(a) opinion, opined that the petition was also properly dismissed because Moreland was no longer serving the sentence for which relief was requested. **See** PCRA Court Opinion, 3/19/2013. Here, we have addressed, as a threshold issue, the PCRA's "currently serving" requirement, since a petitioner who is not "currently serving" his sentence *may never* trigger the court's jurisdiction over his PCRA petition, regardless of timeliness. Because Moreland cannot meet the "currently serving" requirement, there is no need to reach the question of the timeliness of the petition.

were cognizable under the PCRA and remedies of *habeas corpus* and *coram nobis* were not available).

As mandated by law, we have independently reviewed the record and agree with counsel that the issue presented on appeal is wholly frivolous. ***See Commonwealth v. Woods***, 939 A.2d 896, 898 (Pa. Super. 2007). Accordingly, we affirm and grant counsel's application for leave to withdraw.

Order affirmed. Application for leave to withdraw as counsel granted.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/18/2013