

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

OTIS LEE WILLIAMS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 345 WDA 2012

Appeal from the Order entered July 20, 2011,
in the Court of Common Pleas of Cambria County,
Criminal Division, at No(s): CP-11-CR-0000751-2006.

BEFORE: ALLEN, WECHT, and STRASSBURGER,* JJ.

MEMORANDUM BY ALLEN, J.:

Filed: February 15, 2013

Otis Lee Williams ("Appellant") appeals *pro se* from the order dismissing his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. sections 9541-9546. We reverse and remand.

The pertinent facts and procedural history are as follows: Appellant was convicted of two counts of robbery and related offenses after he and another man robbed two men at gunpoint. On December 19, 2006, the trial court sentenced Appellant to an aggregate term of nine to twenty-seven years of imprisonment. Appellant filed a timely appeal to this Court in which he raised claims of trial court error and a challenge to the sufficiency of the evidence. Finding no merit to these claims, we affirmed Appellant's convictions in an unpublished memorandum filed on May 13, 2008.

*Retired Senior Judge assigned to Superior Court.

Commonwealth v. Williams, 954 A.2d 44 (Pa. Super. 2008). However, because the trial court sentenced Appellant for crimes that should have merged with his robbery convictions, we vacated Appellant's judgment of sentence and remand for resentencing. ***Id.***

After a hearing on June 27, 2008, the trial court sentenced Appellant to the same aggregate sentence of nine to twenty-seven years of imprisonment. Appellant filed a timely appeal to this Court. In an unpublished memorandum filed on October 14, 2009, this Court affirmed Appellant's judgment of sentence after concluding that he failed to preserve his sentencing claim by filing a post-sentence motion. ***Commonwealth v. Williams***, 987 A.2d 827 (Pa. Super. 2009).

On December 4, 2009, Appellant filed a *pro se* PCRA petition in which he raised multiple claims of trial counsel's ineffectiveness. The PCRA court appointed PCRA counsel. On February 12, 2010, PCRA counsel filed an amended petition in which the only issue raised related to appeal counsel's failure to preserve Appellant's sentencing claims. By order entered August 12, 2010, the PCRA court reinstated Appellant's right to appeal *nunc pro tunc*. Thereafter, Appellant filed a post-sentence motion. The trial court held an evidentiary hearing on August 24, 2010, and ultimately denied the motion. Appellant filed a timely appeal. In an unpublished memorandum filed on May 3, 2011, this Court affirmed Appellant's judgment of sentence. ***Commonwealth v. Williams***, 30 A.3d 526 (Pa. Super. 2011). Appellant did not file a petition for allowance of appeal.

Appellant filed another *pro se* PCRA petition on June 9, 2011, in which he raised multiple claims, including the ineffective assistance of prior counsel and newly discovered evidence. On June 17, 2011, the PCRA court gave Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's petition. According to the PCRA court, all of the issues raised in Appellant's PCRA had been "previously raised, litigated and ruled upon." Rule 907 Notice, at 1. The PCRA court further noted "[s]econd or subsequent petitions will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred." *Id.* (citing ***Commonwealth v. Szuchon***, 633 A.2d 1098, 1099 (Pa. 1993)). Because "no such showing [was] demonstrated," the PCRA court gave notice to the parties of its intent to dismiss Appellant's petition. Appellant filed a response on June 30, 2011. By order entered July 21, 2011, the PCRA court dismissed Appellant's petition. This appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

When examining a post-conviction court's grant or denial of relief, we are limited to determining whether the court's findings were supported by the record and whether the court's order is otherwise free of legal error. ***Commonwealth v. Quaranibal***, 763 A.2d 941, 942 (Pa. Super. 2000). We will not disturb findings that are supported in the record. *Id.* The PCRA provides no absolute right to a hearing, and the post-conviction court may

elect to dismiss a petition after thoroughly reviewing the claims presented, and determining that they are utterly without support in the record. *Id.*

Within his brief, Appellant raises nine claims of ineffectiveness of prior counsel. Before addressing these claims, we note that Appellant's appellate rights were reinstated following the filing of his first PCRA petition. In this circumstance, Appellant's latest filing is to be treated as his first petition for post-conviction relief. "It is now well-established that a PCRA petition brought after an appeal *nunc pro tunc* is considered an appellant's first PCRA petition". ***Commonwealth v. Figueroa***, 29 A.3d 1177, 1181 (Pa. Super 2011) (citation omitted). Appellant was thus entitled to counsel. It is clear from a review of Appellant's *pro se* PCRA petition in the present case that he wished to be represented by counsel. ***See*** PCRA Petition, 6/9/11, at 4.

Given the above, we reverse the PCRA court's order denying Appellant's latest PCRA petition and remand for the appointment of PCRA counsel. Thereafter, Appellant may file an amended PCRA petition or a "no merit" letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

Order reversed. Case remanded with instructions. Jurisdiction relinquished.