

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

DARIN LEE HAUMAN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 644 MDA 2012

Appeal from the Order March 6, 2012
In the Court of Common Pleas of Fulton County
Criminal Division at No(s): CP-29-CR-0000115-2001

BEFORE: MUNDY, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY MUNDY, J.:

Filed: March 12, 2013

Appellant, Darin Lee Hauman, appeals *pro se* from the March 6, 2012¹ order dismissing his first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we vacate the denial of PCRA relief and remand for proceedings consistent with this memorandum.

The relevant factual and procedural history of this case may be summarized as follows. On October 2, 2003, following a bench trial,

* Retired Senior Judge assigned to the Superior Court.

¹ Although Appellant purports to appeal from the order dated March 2, 2012, said order was not entered until March 6, 2012. “[N]o order of a court shall be appealable until it has been entered upon the appropriate docket in the lower court.” Pa.R.A.P. 301(a)(1). Accordingly, the caption has been amended to reflect the date that the order was entered.

Appellant was found guilty of eleven counts of sexual abuse of children.² Following a hearing, the trial court determined that Appellant met the criteria of a sexually violent predator (SVP) under Megan's Law³ and sentenced Appellant to an aggregate prison term of seven and one-half to 17 years' imprisonment, followed by an aggregate probation term of ten and one-half years. This Court affirmed the judgment of sentence on September 1, 2006, and our Supreme Court denied Appellant's petition for allowance of appeal on November 18, 2008. ***Commonwealth v. Hauman***, 909 A.2d 879 (Pa. Super. 2006) (unpublished memorandum), *appeal denied*, 961 A.2d 858 (Pa. 2008). Subsequently, Appellant petitioned the United States Supreme Court for a writ of *certiorari*, and said petition was denied on October 5, 2009. ***Hauman v. Pennsylvania***, 130 S. Ct. 145 (2009).

On July 14, 2010, Appellant timely filed the instant PCRA petition, his first. PCRA Counsel was appointed, and a hearing on the matter was held on March 22 and July 5, 2011. Subsequently, on February 29, 2012, following the hearing, Appellant requested to proceed *pro se* for the purpose of appealing to this Court. Thereafter, on March 6, 2012, the PCRA court denied Appellant's petition for post-conviction relief. On March 13, 2012, the PCRA court granted Appellant's request to proceed *pro se* and entered an

² 18 Pa.C.S.A. § 6312(d)(1).

³ 42 Pa.C.S.A. §§ 9791-9799.9.

order permitting PCRA counsel to withdraw. PCRA counsel did not seek permission to withdraw pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). Nor was a colloquy conducted to ascertain whether Appellant was making a knowing, voluntary, and intelligent decision to waive counsel pursuant to ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998), and its progeny. This timely *pro se* appeal followed.

“Pursuant to the rules of criminal procedure and interpretive case law, a criminal defendant has a right to representation of counsel for purposes of litigating a first PCRA petition through the entire appellate process.” ***Commonwealth v. Robinson***, 970 A.2d 455, 457 (Pa. Super. 2009) (*en banc*) (citation omitted). Thus, when a waiver of the right to counsel is sought during post-conviction proceedings, an on-the-record determination must be made that the waiver is knowing, intelligent, and voluntary. ***Id.*** Specifically, the ***Robinson*** Court held that a colloquy must be held to (1) determine that defendant understands he has a right to counsel, and the right to have counsel appointed if he is indigent; (2) that the defendant understands that if he or she waives the right to counsel, the defendant will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules; (3) that the defendant understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised in the PCRA petition, they may be lost

permanently; and (4) that the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely asserted, may be lost permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, these errors may be lost permanently. *Id.* at 460, *citing* Pa.R.Crim.P. 121.

In the instant case, the PCRA court failed to conduct the required colloquy. Accordingly, we vacate the denial of PCRA relief and remand for such a colloquy. *Id.* If Appellant retracts his desire to act as his own counsel, new counsel must be appointed. Once the appropriate proceedings are conducted, the order denying PCRA relief can be reinstated, and Appellant, or his counsel, can file an appeal.⁴

Order denying PCRA relief vacated. Case remanded for colloquy in accordance with this memorandum. Motion in opposition to 1925(a) opinion and motion to correct record denied. Jurisdiction relinquished.

⁴ In light of our disposition of this appeal, we deny Appellant's motion in opposition to the PCRA court's 1925(a) opinion, filed July 20, 2012, and motion to correct the record, filed February 7, 2013, as moot.