

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

NATHANIEL JOHN CLARK

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 895 MDA 2012

Appeal from the Order Entered April 30, 2012
In the Court of Common Pleas of Lycoming County
Criminal Division at No(s): CP-41-CR-0000342-2006

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, J., and ALLEN, J.

MEMORANDUM BY PANELLA, J.

Filed: February 21, 2013

Appellant, Nathaniel John Clark, appeals *pro se* from the order entered April 30, 2012, by the Honorable Nancy L. Butts, Court of Common Pleas of Lycoming County, which denied his petition filed pursuant to the Post Conviction Relief Act.¹ We affirm.

On October 24, 2006, a jury convicted Clark of possession with intent to deliver a controlled substance, criminal use of a communication facility, and possession of a firearm by a prohibited person. On January 26, 2007, the trial court sentenced Clark to an aggregate term of seven years and nine months to twenty years' incarceration. This Court affirmed Clark's judgment of sentence on direct appeal. ***Commonwealth v. Clark***, No. 341 MDA 2007

¹ 42 PA.CON.S.TAT.ANN. §§ 9541-9546.

(Pa. Super., filed April 6, 2009) (mem. op.). The Pennsylvania Supreme Court denied Clark's petition for allowance of appeal on May 3, 2010.

On June 18, 2010, Clark filed a *pro se* PCRA petition, after which, counsel was appointed. Appointed counsel filed a motion to withdraw as counsel with the PCRA court on August 20, 2010, on the basis that Clark's PCRA petition was untimely. The trial court granted counsel's motion to withdraw and dismissed Clark's PCRA petition on October 13, 2010. On appeal, this Court determined that the PCRA court erred in permitting PCRA counsel to withdraw on a mistaken belief that Clark's petition was untimely, reversed the PCRA court's order dismissing Clark's PCRA petition, and remanded for the appointment of new PCRA counsel. ***Commonwealth v. Clark***, 2108 MDA 2010 (Pa. Super., filed Oct. 12, 2011) (mem. op.).

On remand, the PCRA court appointed Donald F. Martino, Esquire, as PCRA counsel. On February 13, 2012, newly appointed counsel filed a filed a Petition to Withdraw as PCRA Counsel pursuant to ***Commonwealth v. Turner***, 518 Pa. 491, 544 A.2d 927 (1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988), and provided Clark a copy thereof. On April 2, 2010, the PCRA court granted counsel permission to withdraw and issued notice of its intent to dismiss Clark's petition without a hearing. The court ultimately dismissed Clark's petition on April 30, 2010. This timely *pro se* appeal followed.

On appeal, Clark raises the following issue for our review:

Whether the PCRA court erred in permitting counsel to withdraw from the case without amending Appellant's claim that his trial counsel violated his right under the 6th Amendment to the U.S. Constitution for failing to object to the Commonwealth's extensive use of a non-testifying witness's statements to prove key elements of its case without providing Appellant Clark an opportunity to cross-examine said witness.

Appellant's Brief at 5.

Our standard of review of a PCRA court's denial of a petition for post-conviction relief is well-settled: We must examine whether the record supports the PCRA court's determination and whether the PCRA court's determination is free of legal error. **See *Commonwealth v. Hall***, 867 A.2d 619, 628 (Pa. Super. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **See *Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa. Super. 2001). Our scope of review is limited by the parameters of the PCRA. **See *Commonwealth v. Heilman***, 867 A.2d 542, 544 (Pa. Super. 2005).

Herein, Clark argues that PCRA counsel should have amended his PCRA petition to argue trial counsel's ineffectiveness for failing to object to the use of a confidential informant's out-of-court statements at trial. Preliminarily, we note that we are perplexed by Clark's argument on appeal, as this issue was indeed raised in Clark's *pro se* PCRA petition, addressed by PCRA counsel in his ***Turner/Finley*** no-merit letter, and dismissed by the PCRA court in its Rule 1925(a) memorandum opinion. Moreover, as noted by the PCRA court, trial counsel did in fact seek suppression of the confidential informant's statements, which the trial court granted. **See N.T.**,

Jury Trial, 10/24/06 at 29-30. Although the trial court did not permit police officers to introduce the informant's statements for the truth of those statements, it allowed use of the statements "for the very limited purpose of explaining the officers' acts in connection with their investigation." *Id.* at 30. The trial court further instructed the jury on multiple occasions that reference to the informant's statements were to be considered for the limited purpose of explaining the officers' actions in the course of their investigation. *Id.* at 58-59; 109-110. We find no error in the PCRA court's analysis.

As we find the PCRA court did address and dismiss this issue as meritless in its October 13, 2010, memorandum opinion, we find no error in the court's decision to permit PCRA counsel to withdraw. Accordingly, Clark's issue on appeal is without merit.

Order affirmed.