

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

PHILIP WAGMAN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 937 WDA 2012

Appeal from the PCRA Order May 24, 2012
In the Court of Common Pleas of Lawrence County
Criminal Division at No(s): CP-37-CR-0001236-2004

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

CONCURRING STATEMENT BY STRASSBURGER, J. Filed: March 20, 2013

While I agree with the Majority's disposition, I believe it is unnecessary for this Court to direct the PCRA court to appoint **new** counsel in the unlikely event that Appellant chooses not to waive his right to counsel and proceed *pro se*. Rather, I would leave it up to the PCRA court to make the determination about whether to appoint new counsel. I point out that

[i]t is "well established that a defendant has a constitutional right to choose any lawyer he may desire, at his own cost and expense." ***Commonwealth v. Rucker***, 563 Pa. 347, 761 A.2d 541, 542 (2000). However, "[t]he situation is different for a defendant who is not employing counsel at his own expense, and who, at public expense, seeks court-appointed counsel. Such a defendant does not have a right to choose the particular counsel to represent him." ***Id.*** at 542 n. 1 (citations omitted).

* Retired Senior Judge assigned to the Superior Court.

Commonwealth v. Patterson, 931 A.2d 710, 715 (Pa. Super. 2007).

A defendant has the right to counsel for his first PCRA. ***Commonwealth v. Robinson***, 970 A.2d 455, 457 (Pa. Super. 2009) (“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.”); **see also** Pa.R.Crim.P. 904(c). Whether he is entitled to new counsel is not so clear, and I would not circumscribe the PCRA court’s options.