

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

PHILIP WAGMAN

Appellant

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.\*

MEMORANDUM BY MUNDY, J.:

Filed: March 20, 2013

Appellant, Philip Wagman, appeals from the May 24, 2012 order that dismissed his first petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we vacate the PCRA court's order and remand this case for the PCRA court to conduct a hearing in accordance with *Commonwealth v. Grazier*, 713 A.2d 81 (Pa. 1998).<sup>1</sup>

We summarize the relevant facts and procedural history of this case as follows. On May 10, 2006, Appellant was found guilty of 19 counts of the

---

\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> We may raise the issue of the need for a *Grazier* hearing and Rule 121 colloquy *sua sponte*. *Commonwealth v. Stossel*, 17 A.3d 1286, 1290 (Pa. Super. 2011).

Controlled Substance, Drug, Device and Cosmetic Act as well as one count each of criminal conspiracy and flight to avoid apprehension.<sup>2</sup> The jury found Appellant not guilty of eleven counts of the Fraud and Abuse Control Provider Prohibited Act as well as one count of criminal conspiracy to commit the same.<sup>3</sup> On July 20, 2006, the trial court imposed an aggregate sentence of 19 to 45 years' imprisonment plus an \$850,000.00 fine. On October 16, 2008, this Court affirmed Appellant's judgment of sentence and our Supreme Court denied Appellant's petition for allowance of appeal on June 17, 2009. ***Commonwealth v. Wagman***, 964 A.2d 447 (Pa. Super. 2008) (unpublished memorandum), *appeal denied*, 973 A.2d 1006 (Pa. 2009).

On September 24, 2009, Appellant filed a timely *pro se* PCRA petition. On September 25, 2009, the PCRA court appointed Laura M. Crable, Esquire (Attorney Crable) to represent Appellant. Attorney Crable represented Appellant at the PCRA hearing on August 3, 2010. At the conclusion of the PCRA hearing, the PCRA court gave Attorney Crable 60 days to file a brief in support of Appellant's PCRA petition. N.T., 8/3/10, at 57. On September 28, 2011, the PCRA court allowed Attorney Crable to withdraw as counsel due to Attorney Crable taking a new job. **See** Attorney Crable's Praecepto to

---

<sup>2</sup> 35 P.S. § 780-113(a)(14) and 18 Pa.C.S.A. §§ 903(a) and 5126, respectively.

<sup>3</sup> 62 P.S. § 1407(a)(6).

Withdraw as Counsel, 9/28/11, at ¶ 3. That same day, the PCRA court then appointed David DeRosa, Esquire (Attorney DeRosa) to represent Appellant. After successfully seeking three extensions, Attorney DeRosa filed said brief on February 13, 2012.

On March 14, 2012, Attorney DeRosa petitioned to withdraw as counsel citing a breakdown in the attorney-client relationship. **See** Attorney DeRosa's Motion to Withdraw as Counsel, 3/14/12, at ¶¶ 3, 8. Attorney DeRosa's motion to withdraw did not aver that he believed that Appellant's PCRA petition had no merit, as is normally required for withdrawal in accordance with **Turner/Finley**.<sup>4</sup> **See id.**; **see also Commonwealth v. Pitts**, 981 A.2d 875, 876 (Pa. 2009) (stating that in order to withdraw under **Turner/Finley**, PCRA counsel must file a "no-merit" letter detailing the nature of his or her review, each issue the petitioner wished to raise and an explanation as to why each issue lacks merit). On the same day as Attorney DeRosa filed his petition, the PCRA court granted Attorney DeRosa's motion to withdraw as counsel. However, the PCRA court did not appoint new counsel for Appellant nor did it conduct the required colloquy under **Grazier, Robinson** and Rule 121(A) prior to allowing Attorney DeRosa to withdraw. On May 24, 2012, the PCRA court dismissed

---

<sup>4</sup> **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

Appellant's PCRA petition. On June 15, 2012, Appellant filed a timely *pro se* notice of appeal.

In ***Commonwealth v. Robinson***, 970 A.2d 455 (Pa. Super. 2009) (*en banc*), this Court held that "in any case where a defendant seeks self-representation in a PCRA proceeding and where counsel has not properly withdrawn, a [***Grazier***] hearing must be held." ***Id.*** at 456. More specifically, "a colloquy [under Pa.R.Crim.P. 121(A)] must be held by the PCRA court of its own accord ... once the defendant has expressed a desire to proceed *pro se* as long as PCRA counsel has not properly withdrawn by complying with the dictates of ***Turner/Finley***." ***Id.*** at 460.

As noted above, the PCRA court allowed Attorney Crable to withdraw as counsel due to Attorney Crable taking a new job. The PCRA court then appointed Attorney DeRosa. The PCRA court subsequently allowed Attorney DeRosa to withdraw as counsel due to a breakdown in the attorney-client relationship. Neither Attorney Crable nor Attorney DeRosa sought permission to withdraw in accordance with ***Turner/Finley***. Additionally, the PCRA court did not appoint any new counsel for Appellant nor did it conduct the required colloquy under ***Grazier, Robinson*** and Rule 121(A). Although it is evident from the certified record that Appellant requested to proceed *pro se* multiple times through the PCRA proceedings below, our cases nevertheless require a full colloquy prior to allowing an appellant to proceed *pro se*. ***See Stossel, supra*** (stating, "we expressly hold that when a first-

time petitioner indicates in his *pro se* petition that he does not wish to be represented by an attorney, the PCRA court must still conduct a ***Grazier*** hearing, eliciting information in accordance with Rule 121 and ***Robinson***, before permitting the petitioner to proceed *pro se*["]).

Based on the foregoing, the PCRA court's May 24, 2012 order is vacated and the case is remanded for the PCRA court to conduct an on-the-record colloquy in accordance with ***Grazier*** and Rule 121. If Appellant retracts his desire to proceed *pro se*, the PCRA court must appoint new counsel. Once the PCRA court conducts the ***Grazier*** hearing and the Rule 121 colloquy, the order denying PCRA relief can be reinstated, and Appellant *pro se*, or his new counsel, can then file a notice of appeal.

Order vacated. Case remanded. Jurisdiction relinquished.

Judge Strassburger files a Concurring Statement.