

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
v.	:	<b>CR-477-2018</b>
	:	<b>CR-660-2018</b>
	:	
<b>SHARIEF CLAY,</b>	:	
<b>Petitioner</b>	:	<b>PCRA/WITHDRAWAL</b>
	:	<b>GRANTED</b>

**OPINION AND ORDER**

On June 5, 2019, Counsel for Sharief Clay (Petitioner) filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988). After an independent review of the entire record, this Court agrees with Post Conviction Relief Act (PCRA) counsel and finds that Petitioner has failed to raise any meritorious issues in his PCRA Petition. Therefore his petition shall be dismissed.

***Background***

On June 28, 2018, Petitioner pled guilty to two counts of Delivery of a Controlled Substance,<sup>1</sup> one count of Possession with the Intent to Deliver a Controlled Substance,<sup>2</sup> and Possession of a Firearm by a Minor.<sup>3</sup> Petitioner was sentenced to an aggregate term of a minimum of three and one half (3 ½) years to a maximum of seven (7) years. Petitioner then filed and litigated Post-Sentence Motions, which were denied by this Court on August 31, 2018. On September 19, 2018, Petitioner filed an appeal. On February 5, 2019, the Pennsylvania Superior Court granted appellate counsel’s Motion to Withdraw and affirmed this Court’s judgment of sentence.

Petitioner filed a Motion for Post Conviction Collateral Relief challenging the knowing, intelligent, and voluntary nature of his guilty plea. This Court then assigned Donald Martino, Esq. on March 20, 2019. Subsequently a conflict was discovered and Petitioner was reassigned Attorney Trisha

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<sup>1</sup> 35 P.S. § 780-113(a)(30).

<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> 18 Pa. C.S. § 6110.1(a).

Hoover-Jasper as counsel on March 25, 2019. Assigned counsel reviewed the Motion and all documents pertaining to Petitioner's guilty plea and sentencing prior to sending Petitioner a *Turner/Finley* letter and filing her Petition to Withdraw from Representation of Post-Conviction Collateral Relief. After an independent review of the record, this Court agrees with Attorney Hoover-Jasper that Petitioner is ineligible for relief.

### ***Analysis***

Before determining whether Petitioner is substantively entitled to relief, Petitioner must establish jurisdiction. *Commonwealth v. Robinson*, 837 A.2d 1157, 1161 (Pa. 2003). Here Petitioner cannot establish jurisdiction and therefore his PCRA Petition is ineligible for relief. To be eligible for relief a petitioner must prove "[t]hat the allegation of error has not been previously litigated or waived." 42 Pa. C.S. § 9543(a)(3). An issue is considered previously litigated if "the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue." 42 Pa. C.S. § 9544(a)(2).

Petitioner raises the issue of whether his plea was voluntary. The Pennsylvania Superior Court has already made a finding on the merits of the issue and determined:

[Petitioner] said that after thoroughly discussing the case with trial counsel, he wanted to plead guilty because it was his best option. Although [Petitioner] briefly noted that he suffered mental and emotional problems, this was the sole evidence that he was less than fully competent to proceed. During the plea colloquy, he denied being under any treatment for such issues and the trial court inquired at length regarding his competence. The record in no way calls into question the voluntariness of [Petitioner]'s plea.

*Commonwealth v. Clay*, 2019 WL 441410 at \*3 (Pa. Super. 2019).

Therefore Petitioner is ineligible for relief under 42 Pa. C.S. § 9543(a)(3).

### ***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant Petitioner's PCRA petition or to examine the substantive merits of his claim. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this

Court's intention to deny Petitioner's PCRA Petition. Petitioner may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an Order dismissing the Petition.

**ORDER**

**AND NOW**, this 13<sup>th</sup> day of June, 2019, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed June 5, 2019, is hereby **GRANTED** and Trisha Hoover-Jasper, Esq. may withdraw her appearance in the above captioned matter.
3. **Petitioner will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Trisha Hoover-Jasper, Esq.  
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NLB/kp