

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-286-2018
 :
 vs. :
 :
 :
 RASHAWN LOGAN, : Opinion and Order Denying
 Defendant : Petition to Withdraw as Counsel

OPINION AND ORDER

Before the Court is counsel’s petition to withdraw filed on June 22, 2021.

By way of background, by Information filed on March 2, 2018, Defendant was charged with two counts of robbery and numerous related offenses. Defendant was first represented by Matthew Welickovitch of the Public Defender’s office.

Counsel requested pretrial discovery and the case was placed on the trial list. On April 27, 2018, Attorney James Protasio entered his appearance on behalf of the defendant. On May 1, 2018, Mr. Welickovitch filed a request for leave to withdraw appearance which was granted by Order of Court dated May 21, 2018.

The case continued on the trial list and was not reached through the April term. On April 11, 2019, Defendant filed a motion to appoint new counsel alleging that there was “sufficient reason to believe that Mr. Protasio will not be able to represent” him to the best of Mr. Protasio’s ability due to the fact that Mr. Protasio was “facing his own criminal charges.” Defendant also alleged that he made “countless attempts to contact Mr. Protasio” but that Mr. Protasio had not contacted him in “over 365 days following his initial arrest.”

From a review of the court file, no action was taken on Defendant’s pro se request. The case continued on the trial list.

On August 27, 2019, Defendant through Mr. Protasio filed a Rule 600

Motion to Dismiss. A hearing was held on September 19, 2019 after which the court denied Defendant's motion. On that same date, the court discharged Mr. Protasio at Defendant's request and appointed the Lycoming County Public Defender's office to represent Defendant. In sum, Mr. Protasio's representation of Defendant was from April 27, 2018 to September 19, 2019, or approximately seventeen months.

On September 23, 2019, Mr. Welickovitch filed a motion to continue on behalf of Defendant and on November 4, 2019, formally entered his appearance on behalf of the defendant. The case continued on the jury trial list.

In a letter to the court dated May 17, 2020, Defendant claimed that he had "absolutely no paper work for the case." He also indicated that he tried to call Mr. Welickovitch and write him numerous times but that Mr. Welickovitch did not return any of his "requests." The court considered the letter from Defendant as a motion to remove Mr. Welickovitch. A hearing was held on June 9, 2020 and the motion was "dismissed."

On July 30, 2020, Defendant entered a counseled plea of guilty to a handful of the charges. Defendant's sentencing was scheduled for October 1, 2020. Ultimately, Defendant's sentencing hearing was held on February 4, 2021.

Defendant received an aggregate sentence of state incarceration, the minimum of which was 12 and the maximum of which was 25 years. The court sua sponte reconsidered the sentence and, on February 11, 2021, sentenced Defendant to an aggregate period of state incarceration, the minimum of which was eight and the maximum of which was 16 years. Defendant did not appeal the sentence. On April 12, 2021, Defendant filed a pro se "motion for post-conviction collateral relief." By Order of Court dated April 20, 2021, the court appointed Jeana Longo, Esquire to represent the defendant.

In Defendant's pro se PCRA, Defendant claims that Mr. Protasio was ineffective.

On June 22, 2021, PCRA counsel Jeana Longo filed a petition to withdraw as counsel, and attached a Turner/Finley letter that she sent to the defendant. The Turner/Finley letter concludes that there is no basis in which to file an amended PCRA. Ms. Longo indicated that Defendant was represented by the Public Defender's office for "a majority" of his case, that there was nothing to indicate that Mr. Protasio did or did not do anything to prejudice Defendant, and that the defendant's sentence was actually reduced by being represented by Mr. Welickovitch.

In the petition to withdraw, counsel incorrectly notes that Mr. Protasio represented Defendant from April 27, 2018 to May 25, 2018. Counsel notes that Petitioner does not claim that Mr. Protasio did or failed to do anything "in that short period of time in 2018" that caused him to be prejudiced when he was sentenced "two years later." Counsel also notes that Petitioner was not prejudiced "simply because he was briefly represented by an attorney who faced criminal charges."

The court cannot grant counsel's petition to withdraw for several reasons.

First, it is factually incorrect. Mr. Protasio did not represent Defendant for a short period of time from April 27, 2018 to May 25, 2018. Mr. Protasio represented Defendant for approximately 17 months from April 27, 2018 to September 19, 2019. As well, Defendant was not sentenced "two years later" after Mr. Protasio was removed from the case. Defendant was sentenced approximately four and a half months after Mr. Protasio was removed from the case. Lastly, Defendant was incarcerated on January 17, 2018. His preliminary hearing was held on February 15, 2018. Mr. Welickovitch represented Defendant

at his preliminary hearing. Mr. Protasio did not briefly represent Defendant during the period of time between February 15, 2018 and February 4, 2021 when Petitioner pled guilty. Out of the approximately 36 months, the petitioner was represented by the Public Defender's office 19 of those months while Mr. Protasio represented Defendant 17 of those months.

Next, counsel limited her evaluation of the merits of Defendant's claims to only the conduct of Mr. Protasio. Counsel did not review the record or investigate whether prior or subsequent counsel was ineffective. Of concern to the court are a few matters. First, Defendant clearly was not satisfied with the representation he received from Mr. Welickovitch at least at some point during Mr. Welickovitch's representation of him. He requested to proceed pro se, waiving his right to counsel and indicated that he wanted Mr. Welickovitch to be removed because of allegations regarding no contact and no paperwork.

Further, in every case where a defendant has filed a motion for post-conviction collateral relief for the first time and is unable to afford counsel or otherwise procure counsel, counsel must be appointed. The purpose of appointing counsel is to "aid [a defendant] in his efforts to obtain relief by way of the PCRA route." *Commonwealth v. Kaufmann*, 592 A.2d 691, 696 (Pa. Super. 1991). It is essential that counsel explore the legal grounds for the petition, investigate the underlying facts and fashion a meaningful and articulate statement of the claims. *Id.* at 697. "Counsel for a...petitioner can more ably explore legal grounds for complaint, investigate underlying facts, articulate claims for relief, and promote efficient administration of justice." *Kaufmann, Id.*, citing *Commonwealth v. Finley*, 440 A.2d 1183, 1184 (Pa. 1981).

Counsel may seek to withdraw only after a thorough review of the record has been made and where non-frivolous issues justifying the pursuit of post-conviction collateral

relief are lacking. *Kaufmann*, 592 A.2d at 698.

Further, in this Commonwealth, the PCRA is the sole means of obtaining collateral relief following a conviction and sentence. 42 Pa. C.S. § 9542. The cases mandate an independent review of the record by competent counsel before a PCRA court can authorize an attorney's withdrawal. *Commonwealth v. Rykard*, 55 A.3d 1177, 1184 (Pa. Super. 2012), *appeal denied*, 64 A.3d 631 (Pa. 2013). The necessary independent review requires counsel to file a no merit letter detailing the nature and extent of the review and list each issue the petitioner wishes to have examined, explaining why each issue is meritless. *Id.*; see also *Commonwealth v. Pitts*, 981 A.2d 875, 876 n.1 (Pa. 2009).

Counsel's obligation is not to simply clarify a defendant's claims and to present them in a more articulate manner consistent with the requisites of the PCRA. Counsel's role is to use the PCRA petition filed by the defendant as a starting point and to then review the record, obtain the file, speak with the petitioner and perhaps others, speak with trial counsel and then determine if there is a basis for a PCRA. Without such an obligation, not only would the requirement for appointed counsel be rendered insignificant but many defendants would be deprived of a fair opportunity to challenge their conviction.

In order that this opinion is clear, the court is not asking counsel to review the record to determine if any conceivable claims have merit. Counsel need not address issues not raised by Defendant or which are not apparent from the record. *Commonwealth v. Pitts*, 981 A.2d 875 (Pa. 2009); *Commonwealth v. Porter*, 728 A.2d 890, 895 (Pa. 1999). The obligations are to review the record as it relates to the issues set forth by Defendant. If a *Turner/Finley* letter is submitted, it must: (1) detail the nature and extent of counsel's review; (2) list each issue Defendant wished to have reviewed; and (3) explain why Defendant's

issues are meritless.

Practically speaking, the PCRA is a defendant's "only shot." Only an attorney can ensure that the defendant gets a good and fair opportunity to take that shot.

ORDER

AND NOW, this ___ day of September 2021, following a review of the record, the Petition to Withdraw as Counsel, the attached *Turner/Finley* letter and the conference in this matter, the Court denies the Petition to Withdraw as Counsel. Counsel shall review these matters further and then file an Amended Petition or a Supplemental Motion to Withdraw and *Turner/Finley* letter on or before November 5, 2021. A conference in this matter is scheduled for **November 9, 2021 at 1:30 p.m. in Courtroom No. 1** of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Jeana Longo, Esquire
Gary Weber, Esquire
Judge Lovecchio