

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-929-2017
	:	CR-1286-2017
vs.	:	
	:	
MICHAEL WILLITS,	:	
Defendant	:	

OPINION AND ORDER

Before Court is a Motion for Grazier Hearing filed by the Defendant on September 16, 2021, wherein he alleges that he made numerous attempts to contact his prior appointed PCRA counsel to no avail, and that his attempts to make the courts aware of his counsel's abandonment were not acknowledged. Also before the Court is a PCRA hearing scheduled pursuant to the Opinion and Order by the Honorable Marc Lovecchio dated October 29, 2021, wherein the Court appointed Julian Allatt, Esquire, as new PCRA counsel for the Defendant and directed him to file an Amended PCRA and/or any witness certifications on or before December 1, 2021. The Court notes this hearing was originally scheduled for December 10, 2021, but was continued two times – once due to the unavailability of advance communication technology at the State Correctional Institution where the Defendant is housed on the date of the original hearing and once due to the unavailability of Defendant's counsel.

By way of background, on October 29, 2018 under Information 929-2017 Petitioner pleaded guilty to fleeing or attempting to elude law enforcement, a felony of the third degree; two counts of endangering the welfare of children (EWOC), felonies of the third degree; possession of drug paraphernalia; possession of a small amount of marijuana and various

traffic summaries. Under Information 1286-2017, following a trial on October 22, 2018, Petitioner was convicted of tampering with physical evidence, possession of a small amount of marijuana, and possession of drug paraphernalia.

On February 12, 2019, the court sentenced Petitioner to an aggregate term of six (6) to fifteen (15) years' incarceration in a state correctional institution, consisting of one and one-half (1 ½) to three (3) years for fleeing and eluding, two (2) to five (5) years for each count of EWOC, and six (6) months to two (2) years for tampering with physical evidence.

On February 22, 2019, Petitioner filed a motion to reconsider in which he asserted that the court failed to take into consideration that Petitioner pleaded guilty and took responsibility for his actions and that his sentence was unduly harsh and excessive. In an order dated March 6, 2019 and docketed on March 12, 2019, the court denied Petitioner's motion to reconsider.

Petitioner filed a notice of appeal. In the concise statement that counsel filed on behalf of Petitioner, counsel asserted that the sentence was excessive despite each individual sentence being within the standard range and that the court abused its discretion in determining that Petitioner did not suffer from any significant mental health and substance abuse issues despite the provided documentation the court had for sentencing and was a result of the court's conclusion that Petitioner was not particularly amenable to a more rehabilitation-based sentence.

Petitioner waived his right to counsel and elected to represent himself on appeal. On November 20, 2019, the Pennsylvania Superior Court dismissed Petitioner's appeal for

failure to file a brief.

Petitioner filed a timely pro se Post Conviction Relief Act (PCRA) petition. The court appointed Trisha Hoover Jasper, Esquire, to represent Petitioner and directed counsel to file either an amended PCRA petition or a *Turner/Finley* no merit letter.¹ Counsel filed a no-merit letter and a motion to withdraw on November 23, 2020. On January 6, 2021, Defendant's response to the no-merit letter in the form of a letter to Suzanne Fedeles, former Prothonotary of Lycoming County, was docketed. On March 10, 2021, Defendant filed a request for replacement counsel in which he elaborated on his PCRA claims and asserted additional claims.

In its Opinion and Order dated October 29, 2021, the Court addressed some of Defendant's issues presented in his request for replacement counsel. The court found that the Defendant could not prevail on many of his stated claims as a matter of law. First, Defendant waived those claims. Defendant could have challenged on appeal the court's alleged improper use of the assessment and the court's failure to impose either a county sentence or a shorter state sentence. Instead, Defendant chose to represent himself and then failed to file an appellate brief in support of the claims. Since these claims could have been pursued on appeal but were not due to Defendant's failure to file a brief, these claims were waived. The Court addressed the merits of some of Defendant's other claims in its Opinion and Order dated October 29, 2021, and indicated that the court understood that Defendant was not happy with his sentence but at times it was not clear to the court what Defendant was

¹ *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988); *Commonwealth v. Finley*, 379 Pa. Super. 390,

contending counsel should have done or how Defendant believed counsel's act or failure to act negatively impacted him, his sentence or his case.

In its Opinion and Order dated October, 29, 2021, the Court notified Defendant of its intention to dismiss his claims of trial court error related to the discretionary aspects of his sentencing as both waived and not cognizable under the PCRA, as those claims must be presented in the context of a claim of ineffective assistance of counsel. Additionally, the court noted that, prior to the Court entering a final PCRA order, Defendant asserted a claim that PCRA counsel was ineffective in failing to investigate, develop and address his claims and instead mischaracterized the entirety of the issues he wished to raise. Therefore, the court appointed Julian Allatt, Esquire, as new counsel to represent Defendant to assist him in developing his claims of ineffective assistance of sentencing counsel and PCRA counsel.

At the time set for the hearing, Attorney Allatt indicated to the Court that he had several conversations with the Defendant regarding the PCRA petition and that he and the Defendant were not in agreement regarding the merit of the issues Defendant wishes to raise. Therefore, Attorney Allatt did not comply with the deadline to file an amended PCRA petition on behalf of the Defendant. Defendant again renewed his request to proceed *pro se* so that his claims may be addressed by the Court. This Court attempted to colloquy the Defendant to ensure that his request to proceed *pro se* was knowing, intelligent, and voluntary. However, throughout the course of the colloquy it became evident to both the Court and Defendant's appointed counsel that he has made this request somewhat under

duress because he expressed a desire to have counsel to represent him, but wants his appointed counsel to do what he wants, which is to raise claims that his current appointed counsel feels he cannot do because they lack merit.

Multiple times during the colloquy, the Court attempted to explain to the Defendant that appointed PCRA counsel has two choices after reviewing a file and ascertaining a Defendant's proposed claims: file an Amended PCRA petition articulating the meritorious claims or file a *Turner/Finley* no merit letter if there are none. Attorney Allatt indicated that the Defendant is intelligent and strongly feels entitled to his day in court to present his myriad of claims. Attorney Allatt further indicated that he has no desire to argue against his client, and essentially wishes to "get out of his way." Martin Wade, Esquire, on behalf of the Commonwealth, strongly objected to the Defendant being permitted to proceed *pro se*. While this understandably places appointed counsel in a difficult position, it is clear to the Court that Defendant's waiver of counsel would not be *voluntary*, as he reiterated several times that he wants counsel to assist him, but that he is forced to request to proceed *pro se* because his prior appointed counsel have all been ineffective, abandoned him, or refused to raise claims he insists have merit. Accordingly, the Defendant's request to proceed *pro se* must be denied, and his court appointed PCRA counsel shall proceed accordingly.

ORDER

AND NOW, this 29th day of March 2022, the Defendant's request to proceed *pro se* is **DENIED**. Julian Allatt, Esquire, on or before 5:00 p.m. on April 1, 2022, shall file either a *Turner/Finley* no merit letter, or an amended PCRA petition and/or any witness

certifications for any witness other than Petitioner. Additionally, at the conclusion of the hearing on March 29, 2022, the Defendant requested a transcript of the proceeding. Attorney Allatt is directed to prepare and submit the transcript request on behalf of the Defendant.

By the Court,

Ryan M Tira, Judge

RMT/jel

cc: District Attorney (M. Wade, Esquire)
Julian Allatt, Esquire
Rehmeyer & Allatt
1317 N Atherton St
State College PA 16803
(814)-325-9535
Michael Willits, NT7630
SCI Coal Township, 1 Kelley Drive, Coal Township PA 17866
Gary Weber, Esquire
CR-929-2017