

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,  
Appellee

v.

CHRISTOPHER MICHAEL MUMFORD,  
Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 528 MDA 2015

Appeal from the PCRA Order Entered March 9, 2015  
In the Court of Common Pleas of Lebanon County  
Criminal Division at No(s): CP-38-CR-0000654-2014

BEFORE: BENDER, P.J.E., SHOGAN, J., and PLATT, J.\*

MEMORANDUM BY BENDER, P.J.E.:

**FILED FEBRUARY 01, 2016**

Appellant, Christopher Michael Mumford, appeals from the post-conviction court's March 9, 2015 order denying his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. After careful review, we are compelled to vacate the PCRA court's order and remand for further proceedings.

We briefly summarize the pertinent facts and procedural history. On July 2, 2014, Appellant pled guilty to fleeing and eluding a police officer, driving at unsafe speeds, and driving with a suspended license. He was sentenced on January 15, 2015, to an aggregate term of one to four years' incarceration. Appellant did not file a direct appeal.

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\* Retired Senior Judge assigned to the Superior Court.

On January 27, 2015, Appellant filed a timely, *pro se* PCRA petition, using the standard form drafted by the Department of Corrections (DOC). Therein, Appellant asserted that his sentence is illegal because his sentencing hearing was not conducted within 90 days of his guilty plea. **See** Pa.R.Crim.P. 704(A)(1) (“Except as provided by Rule 702(B), sentence in a court case shall ordinarily be imposed within 90 days of conviction or the entry of a plea of guilty or *nolo contendere*.”). On page 7 of the petition, Appellant checked the box next to the statement, “I do not want a lawyer to represent me[,]” and he added a handwritten note stating, “(at this time).” **See** Appellant’s *Pro Se* PCRA Petition, 1/27/15, at 7. Accordingly, the PCRA court did not appoint counsel for Appellant. On March 5, 2015, the PCRA court issued an order (and accompanying opinion) denying Appellant’s petition without a hearing. Prior to issuing that order, the court did not provide Appellant with notice of its intent to dismiss his petition without a hearing, as mandated by Pa.R.Crim.P. 907. Appellant filed a timely *pro se* notice of appeal, and also timely complied with the PCRA court’s order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.

On May 4, 2015, this Court issued a *per curiam* order directing the PCRA court “to conduct an on-the-record inquiry to determine whether [A]ppellant desires counsel on appeal.” Order, 3/4/15. The order further directed the court to appoint counsel if Appellant so desired, or to conduct a hearing in accordance with ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1988), if Appellant wished to proceed *pro se*. The PCRA court conducted the

requisite hearing, and issued an order on July 29, 2015, appointing counsel to represent Appellant in the instant appeal.

On September 3, 2015, Appellant's counsel filed an appellate brief on his behalf. Therein, counsel makes no mention of the fact that Appellant was effectively denied his right to counsel before the PCRA court on this petition, which is his first. **See** Pa.R.Crim.P. 904(C) (stating that "when an unrepresented defendant satisfies to the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction relief").<sup>1</sup> However, in ***Commonwealth v. Stossel***, 17 A.3d 1286, 1290 (Pa. Super. 2011), we expressly held "that where an indigent, first-time PCRA petitioner was denied his right to counsel – or failed to properly waive that right – this Court is required to raise this error *sua sponte* and remand for the PCRA court to correct that mistake." Also pertinent to the present case is our acknowledgment in ***Stossel*** that a PCRA court may not decline to appoint counsel simply because the *pro se* petitioner "check[ed] a box indicating that they do not want counsel to be appointed" on the DOC's standard, fill-in-the-blank petition. ***Id.*** Instead, "when a first-time

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<sup>1</sup> There is no indication in the record that the PCRA court made a determination regarding Appellant's indigency. However, prior to the entry of Appellant's guilty plea, the trial court approved his application for court-appointed representation by the Lebanon County Public Defender's Office, suggesting that Appellant is indigent.

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 [Pa.R.Crim.P.] 121 and [**Commonwealth v.**] **Robinson**, [970 A.2d 455, 457 (Pa. Super. 2009),] before permitting the petitioner to proceed *pro se*." **Stossel**, 17 A.3d at 1290.

Here, the PCRA court did not appoint an attorney to represent Appellant in litigating his first PCRA petition, nor did it conduct a **Grazier** hearing before permitting him to proceed *pro se* below. The fact that the PCRA court appointed counsel to represent Appellant on appeal does not cure this error where current counsel did not have the opportunity to file an amended petition on Appellant's behalf.<sup>2</sup> **See Commonwealth v. Figueroa**, 29 A.3d 1177, 1182 (Pa. Super. 2011) (stating that indigent PCRA petitioners not only have "a right to counsel on appeal, but [are] ... also entitled to a counseled amended petition and representation before the

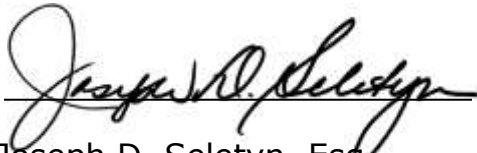
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<sup>2</sup> The importance of ensuring a petitioner is afforded his right to counsel before the PCRA court, and assistance in amending his petition, is evident in this case. The PCRA court rejected Appellant's claim that he is entitled to relief based on the trial court's delay in sentencing him because Appellant "utterly failed to show that the delay caused him any prejudice whatsoever." PCRA Court Opinion, 3/9/15, at 6. Our review of Appellant's *pro se* petition confirms that he did not argue that he suffered prejudice due to the belated sentencing. However, in Appellant's brief to this Court, his attorney develops such an argument, which could have been raised in an amended petition, had counsel been appointed below. **See** Appellant's Brief at 17.

PCRA court[;]" such information must be explained to them during a **Grazier** colloquy). Accordingly, we are compelled to vacate the PCRA court's order denying Appellant's petition, and remand for the court to permit Appellant's current counsel to review his case and file an amended petition on his behalf, if counsel so chooses. Additionally, we direct the PCRA court to comply with the notice requirements of Rule 907 if it again intends to dismiss Appellant's petition without a hearing.

Order vacated. Case remanded for further proceedings. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 2/1/2016