

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| TODD STORM, | : | |
| | : | |
| Appellant | : | No. 2303 EDA 2013 |

Appeal from the PCRA Order July 23, 2013
in the Court of Common Pleas of Monroe County
Criminal Division at No(s): CP-45-CR-0001442-2011

BEFORE: ALLEN, STABILE, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED APRIL 15, 2014**

Todd Storm (Appellant) appeals from the July 23, 2013 order which denied his petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. Additionally, Appellant’s counsel, Hillary Madden, Esquire, has filed a petition to withdraw and brief pursuant to **Anders v. California**, 386 U.S. 738 (1967), **Commonwealth v. McClendon**, 434 A.2d 1185 (Pa. 1981), and **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009). Upon review, we deny counsel’s petition to withdraw and order counsel to file a supplemental brief.

On May 2, 2012, Appellant pled guilty to arson (reckless burning or exploding).¹ Appellant was sentenced to 39 to 84 months of incarceration on

¹ 18 Pa.C.S. § 3301(d).

* Retired Senior Judge assigned to the Superior Court

July 13, 2012. Appellant timely filed a motion for reconsideration of sentence, which was denied. Appellant did not file a direct appeal.

On July 30, 2012, Appellant filed a petition for writ of *habeas corpus*, which was treated as a timely-filed *pro se* PCRA petition. Michael A. Ventrella, Esquire, was appointed to represent Appellant, and an amended PCRA petition was filed. An evidentiary hearing was held on December 14, 2012. On May 2, 2013, Appellant filed a *pro se* notice of appeal while still represented by Attorney Ventrella.² This Court entered a *per curiam* order on July 15, 2013, which quashed the appeal as interlocutory.

Appellant's PCRA petition was denied on July 23, 2013. Attorney Ventrella timely filed a second notice of appeal. The PCRA court ordered Appellant to file a concise statement of errors complained of on appeal, and Appellant, through Attorney Ventrella, timely complied.

On November 8, 2013, Attorney Ventrella filed with this Court an **Anders** brief, wherein he asserted that Appellant's appeal was wholly frivolous and requested this Court's permission to withdraw. However, on January 7, 2014, before we ruled on Appellant's appeal and Attorney Ventrella's request to withdraw, Attorney Ventrella filed with this Court a simultaneous withdrawal of appearance as to himself, and entry of appearance as to a new attorney, Attorney Madden. A review of the PCRA

² Appellant purported to appeal "from the, (Rule 600 petition) P.C.R.A. [hearing], held on December 14th, 2012." Notice of appeal, 5/2/2013.

court's docket reveals that on December 30, 2013, the PCRA court appointed Attorney Madden as Appellant's new PCRA counsel.³

Because Attorney Ventrella had already withdrawn from the case, we denied his request to withdraw as moot. Further, we ordered Attorney Madden to file a new brief. On March 21, 2014, Attorney Madden attempted to comply with our order by filing a petition for leave to withdraw as counsel and an **Anders** brief.

We begin our review by addressing counsel's request to withdraw from representation. We first note that counsel has confused the required procedures for withdrawing from representation on direct appeal and withdrawing on a PCRA appeal. Direct appeal counsel seeking to withdraw from representation must comply with the requirements set forth in **Anders**, **McClendon**, and **Santiago**. The procedural requirements set forth in **Commonwealth v. Turner**, 544 A.2d 297 (Pa. 1998), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1998) (*en banc*), govern withdrawal by counsel from representation on PCRA appeals. To withdraw from representation on a PCRA appeal,

counsel must review the case zealously. **Turner/Finley** counsel must then submit a "no-merit" letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel's diligent review of the case, listing the issues which the

³ In her **Anders** brief, Attorney Madden indicates that she was appointed "due to [A]ttorney Ventrella's resignation as conflict counsel in Monroe County." *Anders* Brief at 12.

petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw.

Counsel must also send to the petitioner: (1) a copy of the "no-merit" letter/brief; (2) a copy of counsel's petition to withdraw; and (3) a statement advising petitioner of the right to proceed *pro se* or by new counsel.

If counsel fails to satisfy the foregoing technical prerequisites of **Turner/Finley**, the court will not reach the merits of the underlying claims but, rather, will merely deny counsel's request to withdraw. Upon doing so, the court will then take appropriate steps, such as directing counsel to file a proper **Turner/Finley** request or an advocate's brief.

However, where counsel submits a petition and no-merit letter that do satisfy the technical demands of **Turner/Finley**, the court - trial court or this Court - must then conduct its own review of the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief. By contrast, if the claims appear to have merit, the court will deny counsel's request and grant relief, or at least instruct counsel to file an advocate's brief.

Commonwealth v. Wrecks, 931 A.2d 717, 721 (Pa. Super. 2007).⁴

Instantly, in her **Anders** Brief and petition to withdraw, Attorney Madden indicates that she has reviewed the record in this case, and has concluded that Appellant's appeal is without merit. Attorney Madden examines the issues presented in Appellant's PCRA petition, and discusses her reasons for concluding that Appellant is not entitled to relief. Attorney Madden avers that she sent a letter to Appellant apprising him of her intent

⁴ We note that an **Anders** brief which complies substantially with the requirements of **Turner/Finley** is sufficient to allow withdrawal. **Commonwealth v. Daniels**, 947 A.2d 795, 798 (Pa. Super. 2008).

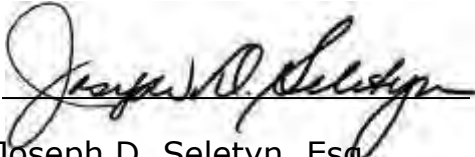
to withdraw, and a copy of this letter is attached to Attorney Madden's petition to withdraw. In the letter, Attorney Madden explains to Appellant why she concluded that his appeal is meritless, and informs him of his right to obtain new counsel or proceed *pro se*. Attorney Madden indicates that she is working on a brief that she intends to submit to this Court, and states that she will forward a copy of the brief to Appellant when it is completed.

However, it does not appear that a copy of the petition to withdraw was sent to Appellant. Moreover, it is not clear from the record that Appellant received a copy of the completed **Anders** brief. Attorney Madden indicates in the brief that a copy has been forwarded to Appellant. **Anders** Brief at 13. However, Appellant is not included in the proof of service at the end of the brief, and Appellant has not filed any sort of response. Accordingly, we cannot conclude that counsel has complied substantially with the mandates of **Turner** and **Finley**. We therefore deny counsel's motion to withdraw without prejudice.

Petition for leave to withdraw as counsel denied. Attorney Madden is directed to file, within 30 days of the date of this memorandum, either an advocate's brief, or a no-merit letter and petition to withdraw in compliance with **Turner/Finley**. The Commonwealth will then have an additional 30 days to file a responsive brief. Panel jurisdiction retained.

J-S05038-14

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: 4/15/2014