

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

MICHAEL A. KUHN,

Appellant

No. 228 MDA 2013

Appeal from the Order August 28, 2012
In the Court of Common Pleas of Centre County
Criminal Division at No(s): CP-14-CR-0001713-2007

BEFORE: PANELLA, OLSON, and MUSMANN, JJ.

MEMORANDUM BY PANELLA, J.:

FILED APRIL 23, 2014

Appellant, Michael A. Kuhn, appeals from the order entered on August 28, 2012, in the Court of Common Pleas of Centre County which denied his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 PA.CON.S.TAT.ANN. §§ 9541-9546. Also before this Court is appointed counsel's *Turner/Finley*¹ "no-merit" brief and an accompanying petition to withdraw as counsel. After an independent review of the record, we grant Kuhn's counsel's request to withdraw and affirm the PCRA court's order.

Following a jury trial, Kuhn was found guilty of loitering and prowling at night. Subsequent thereto, on April 29, 2009, the trial court sentenced Kuhn to a period of 5 to 12 months' imprisonment with credit for 150 days

¹ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1998); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988).

previously served.² On August 18, 2010, this Court affirmed Kuhn's judgment of sentence. **See Commonwealth v. Kuhn**, 11 A.3d 1031 (Pa. Super. 2010) (unpublished memorandum), **appeal denied**, 610 Pa. 584, 19 A.3d 1050 (2011). Kuhn's sentence expired on April 29, 2010. Kuhn did not file the instant PCRA petition until July 20, 2011—almost 15 months after he had completed his sentence. An amended PCRA petition was filed on June 27, 2012. Following a hearing, Kuhn's PCRA petition was dismissed on August 28, 2012. This appeal followed.

Preliminarily, we consider counsel's request to withdraw from PCRA representation pursuant to **Turner/Finley**. Our Pennsylvania Supreme Court stated that

[i]ndependent review of the record by competent counsel is required before withdrawal is permitted. Such independent review requires proof of:

- 1) A "no-merit" letter by PC[R]A counsel detailing the nature and extent of his review;
- 2) The "no-merit" letter by PC[R]A counsel listing each issue the petitioner wished to have reviewed;
- 3) The PC[R]A counsel's "explanation", in the "no-merit" letter, of why the petitioner's issues were meritless;

² On the date of sentencing, Kuhn had 611 days served toward the loitering and prowling case. As noted, Kuhn was given a credit for 150 days served. Pursuant to the request of Kuhn's defense counsel, the balance of 461 days Kuhn previously served was credited to a parole revocation stemming from a separate criminal information.

4) The PC[R]A court conducting its own independent review of the record; and

5) The PC[R]A court agreeing with counsel that the petition was meritless.

Commonwealth v. Pitts, 981 A.2d 875, 876 n.1 (Pa. 2009) (brackets in original; citations omitted). Additionally, this Court has added a requirement:

that PCRA counsel who seeks to withdraw must contemporaneously serve a copy on the petitioner of counsel's application to withdraw as counsel, and must supply to the petitioner both a copy of the "no-merit" letter and a statement advising the petitioner that, in the event that the court grants the application of counsel to withdraw, he or she has the right to proceed pro se or with the assistance of privately retained counsel.

Commonwealth v. Widgins, 29 A.3d 816, 818 (Pa. Super. 2011) (emphasis omitted; citation omitted).

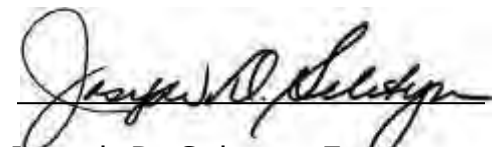
PCRA counsel has complied with all of the above requirements. Counsel filed a **Turner/Finley** "no-merit" brief with this Court, detailing the nature and extent of his review providing a thorough discussion of why counsel believes none of them have merit. Additionally, in his "no-merit" brief, counsel addresses why Kuhn is ineligible for PCRA relief. **See** "No-Merit" Brief, at 8-14. This Court previously issued a rule to show cause order on June 4, 2013, directing counsel to notify Kuhn of his rights to proceed pro se. Counsel complied and subsequently forwarded the Court a copy of the notification letter as required. Accordingly, we are satisfied that counsel has

satisfied the prerequisites of **Turner/Finley** and, as such, we briefly explain why Kuhn is not entitled to post-conviction relief.

“Eligibility for relief under the PCRA is dependent upon the petitioner currently serving a sentence of imprisonment, probation, or parole for the crime.” **Commonwealth v. Turner**, 80 A.3d 754, 761-762 (Pa. 2013) (citing 42 PA.CON.S.STAT.ANN. § 9543(a)(1)(i) and **Commonwealth v. Ahlborn**, 699 A.2d 718, 720 (Pa. 1997)). Here, Kuhn’s 5-12 month sentence for loitering and prowling at night expired on April 29, 2010. Kuhn did not file his PCRA petition until July 20, 2011—more than one year *after* his sentence had expired. Pursuant to § 9543, Kuhn is no longer eligible for relief.

Order affirmed. Petition to Withdraw as Counsel granted. 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: 4/23/2014