

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
RAYMOND LEROY ERWIN, JR.,	:	No. 1672 WDA 2015
	:	
Appellant	:	

Appeal from the Order Entered October 6, 2015,  
in the Court of Common Pleas of Jefferson County  
Criminal Division at No. CP-33-CR-0000581-2011

BEFORE: FORD ELLIOTT, P.J.E., MUNDY AND JENKINS, JJ.

DISSENTING MEMORANDUM STATEMENT BY FORD ELLIOTT, P.J.E.:

FILED: May 27, 2016

I respectfully dissent. I agree with the PCRA court that its consideration of appellant’s premature petition on the merits represents, in the real world, judicial interference with the presentation of appellant’s collateral claims. I would find that appellant’s refiling of his amended petition one week after receiving this court’s decision informing the PCRA court of its procedural misstep is timely filed under § 9545(b)(i)(1) and allow the appeal from the PCRA court’s denial of relief.

What is even more troubling to me is that after this court affirmed the judgment of sentence on November 12, 2013, and effectively the ball was once again in the lower court, on January 30, 2014, counsel filed a motion for leave to file an amended PCRA petition which the lower court granted.

J. S25042/16

On February 11, 2014, Counsel filed the amended petition raising the ineffectiveness claims anew. I would consider this amended petition as timely filed and proper once the direct appeal was resolved. I recognize that this court then, on appeal from the denial of the amended petition, determined that the PCRA court lacked jurisdiction to consider even the amended petition because it was initially filed *pro se* during the pendency of the direct appeal. While I might disagree with this analysis under the facts of this case, what seems clear from the panel's May 6, 2015 Memorandum is that further proceedings in line with what occurred here were anticipated. The panel vacated the PCRA court's order denying relief and remanded the case. I do not believe that our court's prior decision precludes our consideration of this appeal on its merits.