

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

HENRY F. WHITMAN, III,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 132 MDA 2014

Appeal from the Order January 8, 2014
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0000125-1989

BEFORE: BENDER, P.J.E., BOWES, and PANELLA, JJ.

MEMORANDUM BY BOWES, J.:

FILED JULY 23, 2014

Henry F. Whitman, III appeals from the January 8, 2014 order denying him PCRA relief. Counsel has filed a request to withdraw. We grant counsel's request and affirm.

On October 27, 1989, Appellant, with the assistance of two attorneys, entered a plea of guilty but mentally ill to first-degree murder, rape, and involuntary deviate sexual intercourse. Appellant admitted that on January 30, 1989, he sodomized and murdered nine-year-old Clinton Phillipy. Appellant was sixteen years old when he committed the crime in question. Following entry of the plea, Appellant was sentenced to a term of life imprisonment followed by ten to twenty years imprisonment. Appellant's post-sentence motion was denied on December 7, 1989, but no direct appeal was filed. On April 6, 1992, Appellant filed a petition for post-

conviction relief seeking to withdraw his guilty plea on the basis that it was unlawfully induced by ineffective assistance of counsel and that the colloquy was defective. After a hearing, that petition was denied. We affirmed on appeal. ***Commonwealth v. Whitman***, 668 A.2d 1199 (Pa.Super. 1995) (unpublished memorandum), *appeal denied*, 672 A.2d 307 (Pa. 1995). Appellant filed a second post-conviction petition in 1997, but did not appeal its denial.

On August 7, 2012, Appellant filed his third petition for post-conviction relief. He sought relief from his sentence of life imprisonment without parole based upon the United States Supreme Court's decision in ***Miller v. Alabama***, 132 S.Ct. 2455 (2012). Therein, the Court held that it was unconstitutional to sentence a juvenile to a mandatory term of life imprisonment without parole. Counsel was appointed, and the PCRA court deferred disposition of the petition until it was determined whether ***Miller*** was to be applied retroactively to defendants seeking post-conviction relief.

On December 5, 2013, after our Supreme Court held that ***Miller*** did not apply in the PCRA context, ***Commonwealth v. Cunningham***, 81 A.3d 1 (Pa. 2013), Appellant's August 7, 2012 petition was dismissed. This appeal followed. As noted, counsel has filed a petition to withdraw, which we must first address. ***Commonwealth v. Daniels***, 947 A.2d 795 (Pa.Super. 2008). While counsel herein purports to withdraw under ***Anders v. California***, 386 U.S. 738 (1967), since he seeks to withdraw during a PCRA proceeding, withdrawal is governed by the provisions of ***Commonwealth v. Turner***,

544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa.Super. 1988) (*en banc*). **Daniels, supra**. Our review indicates that counsel's brief and petition to withdraw satisfies the mandates of **Turner/Finley**. Thus, we will address whether he will be permitted to withdraw. **Id.**

The procedure for withdrawal under **Turner/Finley** entails the following. First, counsel must present a "no-merit" letter 1) outlining the nature and extent of his review; 2) listing the issues that the defendant wanted to have reviewed; and 3) explaining why the issues are meritless. **Commonwealth v. Pitts**, 981 A.2d 875, 876 n. 1 (Pa. 2009). Then, we must conduct an independent review of the record and agree that the PCRA petition is meritless. **Id.**

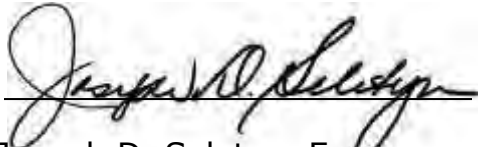
Our review of the brief and petition to withdraw filed herein establishes that counsel satisfied the requirements applicable to him. He reviewed all the materials and concluded that the issue presented in the PCRA petition is meritless in that our Supreme Court has ruled that the holding in **Miller** does not apply retroactively so as to provide relief to PCRA petitioners. **Cunningham, supra**. Counsel also notified Appellant of his request to withdraw and the filing of the no-merit brief. Additionally, counsel advised Appellant that he could proceed *pro se* or hire a lawyer to write a brief. Our independent review of the record confirms that Appellant is not entitled to PCRA relief. Hence, we affirm the order and permit counsel to withdraw.

J-S40017-14

Petition of Harry W. Fenton, Esquire to withdraw as counsel is granted.

Order affirmed.

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: 7/23/2014