

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
STEPHEN E. JILES,	:	
	:	
Appellant	:	No. 902 MDA 2013

Appeal from the PCRA Order entered on April 24, 2013
in the Court of Common Pleas of York County,
Criminal Division, No(s): CP-67-CR-0002718-2009;
CP-67-CR-0002719-2009; CP-67-CR-0002745-2010;
CP-67-CR-0003039-2009; CP-67-CR-0005684-2009

BEFORE: BENDER, P.J., PANELLA and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED APRIL 15, 2014

Stephen E. Jiles (“Jiles”) appeals from the Order denying, in part, his Petition for Relief filed pursuant to the Post Conviction Relief Act (“PCRA”).¹ Counsel for Jiles has filed an Application to Withdraw from representation, and a no-merit letter pursuant to **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). Jiles has filed a *pro se* appellate brief. We grant counsel’s Application to Withdraw and affirm the Order of the PCRA court.

The Commonwealth of Pennsylvania charged Jiles with various offenses arising from five robberies committed between February and March, 2009. The charges were filed at multiple docket numbers. The trial court

¹ **See** 42 Pa.C.S.A. §§ 9541-9546.

consolidated for trial the cases filed at the following trial court docket numbers: CP-67-CR-2718-2009 ("2718"), CP-67-CR-2719-2009 ("2719"), and CP-67-CR-3039-2009 ("3039"). On May 3, 2011, at those case numbers, a jury convicted Jiles of six counts of robbery and three counts each of theft by unlawful taking and theft by receiving stolen property.² At those case numbers, the trial court sentenced Jiles to an aggregate prison term of 108 to 252 months. The trial court directed that this sentence was to run consecutive to any sentence Jiles was then serving.

The first trial on charges filed at trial court docket number CP-67-CR-2745-2010 (hereinafter "2745") resulted in a mistrial, when the jury deadlocked. On May 10, 2011, after a second trial, a jury found Jiles not guilty of robbery (fear of immediate bodily injury). **See** 18 Pa.C.S.A. § 3702(A)(1)(iv). However, the jury convicted Jiles of robbery (by force however slight), theft by unlawful taking and theft by receiving stolen property. The trial court sentenced Jiles to an aggregate prison term of 18-72 months, plus two years of probation. This Court affirmed Jiles's judgment of sentence.

In a consolidated appeal, this Court affirmed the judgments of sentence imposed at trial court docket numbers 2718, 2719, 3039, and 2745, after which the Pennsylvania Supreme Court denied allowance of

² 18 Pa.C.S.A. §§ 3701(A)(1)(v), 3921, 3925.

appeal. ***Commonwealth v. Jiles***, 48 A.3d 469 (Pa. Super. 2012) (unpublished memorandum), *appeal denied*, 76 A.2d 539 (Pa. 2013).

After a trial on the charges filed at trial court docket number CP-67-CR-5684-2010 ("5684"), a jury found Jiles guilty of robbery (by force however slight). The trial court sentenced Jiles to 36-72 months in prison. Jiles filed a post-sentence Motion, which the trial court denied. This Court affirmed Jiles's judgment of sentence and the Pennsylvania Supreme Court denied allowance of appeal. ***Commonwealth v. Jiles***, 32 A.3d 828 (Pa. Super. 2011) (unpublished memorandum), *appeal denied*, 46 A.3d 716 (Pa. 2012).

Jiles timely petitioned for relief, pursuant to the PCRA, at all of the above case numbers. Jiles's claim for relief was based upon an allegation that Assistant District Attorney Janan Tallo ("Attorney Tallo") and The Honorable Thomas H. Kelley, VI ("Judge Kelley") were engaged in a romantic relationship during the proceedings on his criminal charges.³ After a hearing, the PCRA court denied Jiles's PCRA Petition. Jiles timely filed a Notice of Appeal, followed by a court-ordered Pa.R.A.P. 1925(b) Concise Statement of Matters Complained of on Appeal.

³ Jiles also claimed ineffective assistance of his appellate counsel for not filing petitions for allowance of appeal to the Pennsylvania Supreme Court. The PCRA court granted relief on this claim, permitting Jiles to petition for allowance of appeal, *nunc pro tunc*. As noted above, the Supreme Court denied Jiles's Petitions.

In the **Turner/Finley** Brief, Jiles's counsel presents the following claims for our review:

- I. Whether the PCRA court erred in denying [Jiles's] PCRA Petition when the judge presiding over [Jiles's] criminal matter and the prosecutor were involved in an intimate relationship?
- II. Whether the PCRA court erred in denying [Jiles's] PCRA Petition when trial counsel was ineffective for failing to request special relief after it was discovered that the trial judge and the prosecutor were involved in an intimate relationship?

Turner/Finley Brief at 4. In his *pro se* appellate brief, Jiles presents the following claim for our review:

Whether PCRA counsel rendered ineffective assistance by failing to call clearly identified necessary witnesses to offer testimony that would have proven [Jiles's] underlying claim for relief and has counsel failed to follow the proper procedures in attempting to withdraw from his representation of [Jiles]?

Pro Se Brief at 4.

Before addressing Jiles's claims, we first must determine whether counsel has fulfilled the procedural requirements for withdrawing as counsel.

As this Court has explained,

[c]ounsel petitioning to withdraw from PCRA representation must proceed ... under [**Turner**, and **Finley**, and] ... 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 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.

* * *

[W]here counsel submits a petition and no-merit letter that ... satisfy the technical demands of **Turner/Finley**, the 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.

Commonwealth v. Wrecks, 931 A.2d 717, 721 (Pa. Super. 2012) (internal citations omitted).

Our review discloses that counsel has satisfied all of the above procedural requirements. Accordingly, we now undertake our own review of the case to consider whether the PCRA court improperly dismissed Jiles's Petition.

An appellate court's standard of review regarding an order denying a PCRA petition is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. **Commonwealth v. Kretchmar**, 971 A.2d 1249, 1251 (Pa. Super. 2009). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Treadwell**, 911 A.2d 987, 989 (Pa. Super. 2006).

To be eligible for relief under the PCRA, a petitioner must plead and prove that his conviction resulted from

[a] violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

42 Pa.C.S.A. § 9543(a)(2)(i).

In the **Turner/Finley** Brief, Jiles first claims that the PCRA Court improperly denied relief where the PCRA judge and the prosecutor were involved in an intimate relationship during his criminal proceedings. **Turner/Finley** Brief at 8. At the PCRA hearing, Jiles testified that he had heard that Judge Kelley and Attorney Tallo were “involved” in February 2011. N.T., 4/24/13, at 11. However, our review discloses that Jiles failed to present any evidence of a relationship between Attorney Tallo and Judge Kelley, the dates on which the alleged relationship took place, or evidence that the two were engaged in relationship as they participated in his criminal proceedings. Without this evidence, we cannot conclude that the PCRA court improperly denied Jiles’s Petition.

In the **Turner/Finley** brief, Jiles next claims that his trial counsel rendered ineffective assistance by failing to request special relief after discovering that the trial judge and the prosecutor were involved in a relationship. **Turner/Finley** Brief at 12. To be eligible for relief based on a claim of ineffective assistance of counsel, a PCRA petitioner must demonstrate, by a preponderance of the evidence, that (1) the underlying claim is of arguable merit; (2) no reasonable basis existed for counsel’s action or omission; and (3) there is a reasonable probability that the result of the proceeding would have been different absent such error. **Commonwealth v. Steele**, 961 A.2d 786, 796 (Pa. 2008). A reasonable

probability “is a probability that is sufficient to undermine confidence in the outcome of the proceeding.” **Commonwealth v. Ali**, 10 A.3d 282, 291 (Pa. 2010) (citation omitted).

As set forth above, the evidence produced at the PCRA hearing did not establish any arguable merit to Jiles’s claim. Accordingly, we cannot grant Jiles relief on this claim. **See Commonwealth v. Reaves**, 923 A.2d 1119, 1128 n.10 (Pa. 2007) (providing that the failure to satisfy any prong of the ineffectiveness test will require rejection of the claim).

Finally, in his *pro se* brief, Jiles claims that his PCRA counsel rendered ineffective assistance by not subpoenaing, as witnesses, Attorney Tallo and Judge Kelley. *Pro Se Brief* at 7, 10. Jiles argues that counsel’s conduct became more egregious when counsel filed an Application to Withdraw from representation, citing the lack of evidence as the basis for the Application. **Id.** at 10. Jiles claims that he is entitled to a new evidentiary hearing to allow him to call as witnesses Judge Kelley and Attorney Tallo. **Id.** at 12.

Upon review, we conclude that Jiles is not entitled to relief on this claim, as he cannot establish prejudice. Even if Jiles could produce evidence of a relationship between Attorney Tallo and Judge Kelley, Jiles cannot establish a reasonable probability that the outcome of the PCRA proceedings would have been different. **See Steele**, 961 A.2d at 796.

Our review of the record discloses that Attorney Tallo appeared on behalf of the Commonwealth, before Judge Kelley, three times during the

protracted proceedings.⁴ Attorney Tallo appeared before Judge Kelley at a March 23, 2010 pre-trial conference at all case numbers. That conference addressed scheduling matters, and Jiles claims no prejudice resulting from Tallo's participation at that conference.

Tallo also participated at the May 24, 2010 hearing, on a suppression Motion filed by Jiles. At that hearing, Jiles challenged the legality of the arrest warrant. N.T., 5/24/10, at 4. Jiles also claimed that the police officers entering his home did not physically possess a signed arrest warrant and, therefore, were not lawfully inside his home when they gathered evidence. *Id.* at 6-7.

At the suppression hearing, Spring Garden Township Police Detective James Hott ("Detective Hott") testified that he, personally, went to the district magistrate's office to obtain the arrest warrant, and personally witnessed the district magistrate sign that warrant. *Id.* at 8, 9. Further, Detective Hott testified that he possessed a copy of the warrant when he entered Jiles's residence. *Id.* at 10. Jiles offered no evidence to contradict this testimony. At the close of the hearing, Judge Kelley denied the Motion. *Id.* at 21. On appeal, this Court affirmed Judge Kelley's ruling as legally

⁴ Jiles conceded that Attorney Tallo did not handle most of his pre-trial motions, and did not try any of his cases. N.T., 4/24/13, at 22.

correct.⁵ **Commonwealth v. Jiles**, 48 A.3d 469 (Pa. Super. 2012), (unpublished memorandum at 6). Because this Court reviewed and affirmed Judge Kelley's legal ruling, we cannot conclude that Jiles suffered prejudice resulting from an alleged relationship between Attorney Tallo and Judge Kelley.

Finally, Attorney Tallo appeared on behalf of the Commonwealth at the jury trial in case number 5684 on June 9-10, 2010. Immediately prior to trial, the trial court heard Jiles's Motion to Suppress the evidence seized from his home. N.T., 6/9/10, at 2. At that time, Jiles challenged the validity of the arrest warrant relied upon by the police officers to enter Jiles's home. **Id.** at 4-5. Judge Kelley denied the Motion, and this Court affirmed Judge Kelley's legal ruling. **Commonwealth v. Jiles**, 48 A.3d 469 (Pa. Super. 2012) (unpublished memorandum at 5-6). Ultimately, a jury convicted Jiles, and this Court affirmed Jiles's judgment of sentence. **See id.**

Regardless of whether Judge Kelley or Attorney Tallo had testified about a relationship at the PCRA hearing, Jiles has not established that, but for PCRA counsel's inaction, the result of the PCRA hearing would have been different. Jiles has not directed our attention to any questionable and prejudicial rulings or actions undertaken by Judge Kelley that resulted from the alleged relationship. Because Jiles cannot establish prejudice caused by

⁵ "As with all questions of law, the appellate standard of review is *de novo*...." **Commonwealth v. Anderson**, 38 A.3d 828, 834 (Pa. Super. 2011) (citation omitted).

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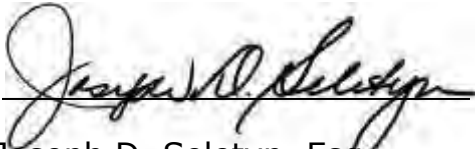
PCRA counsel's alleged inaction, we cannot grant Jiles relief on this claim.

See *Steele*, 961 A.2d at 796.

For the foregoing reasons, we grant counsel's Application to Withdraw and affirm the Order of the PCRA court.

Application to Withdraw 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: 4/15/2014