

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
NEGII DONSONTO COFFEE, III,	:	
	:	
Appellant	:	No. 318 MDA 2013

Appeal from the PCRA Order entered on January 18, 2013  
in the Court of Common Pleas of Dauphin County,  
Criminal Division, No. CP-22-CR-0003961-2007

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

MEMORANDUM BY MUSMANNO, J.:

**FILED APRIL 23, 2014**

Negii Donsonto Coffee, III ("Coffee"), *pro se*, appeals from the Order denying his Petition for Relief filed pursuant to the Post Conviction Relief Act ("PCRA").<sup>1</sup> We affirm.

In a prior appeal, this Court summarized the procedural history of this case as follows:

The above[-]captioned matter was initiated by a Criminal Complaint by Detective Donald Heffner (Det. Heffner) of the Harrisburg Police Department for events that transpired on September 4, 2004[, relating to the murder of John Bruno.] ... A trial by jury began on August 10, 2009[,], and on August 19, 2009[,], a mistrial was declared. On May 16, 2011, another trial commenced ... wherein a second jury was empaneled. The following day[,], on May 17, 2011, prior to opening statements, [Coffee] entered into a final plea [negotiation] with the Commonwealth. Discussions regarding the plea agreement were conducted in the judge's chambers. [Coffee] subsequently

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<sup>1</sup> 42 Pa.C.S.A. §§ 9541-9546.

entered a guilty plea to murder of the third degree[, 18 Pa.C.S.A. § 2502(c)]. A guilty plea colloquy was conducted to [the trial court's] satisfaction and [Coffee] waived his right to a pre-sentence investigation. The [trial court] then heard impact testimony from the victim's family and [the trial court sentenced Coffee to 5½ to 20 years in prison]. Upon hearing the sentence imposed on [Coffee], [Coffee's] [plea] counsel met with Judge John F. Cherry (Judge Cherry) at sidebar ... to discuss the sentence.

**Commonwealth v. Coffee**, 50 A.3d 243 (Pa. Super. 2012) (unpublished memorandum at 1-2) (footnotes omitted).

On May 27, 2011, Coffee filed a Motion to Withdraw his guilty plea. Coffee claimed that his plea counsel had indicated that Coffee would receive a sentence of 3-6 years in prison for his guilty plea. The trial court denied Coffee's Motion. Coffee then filed two post sentence Motions. Specifically, Coffee sought to vacate the Order denying his Motion to Withdraw the guilty plea, and the recusal of Judge Cherry. Before the trial court decided those Motions, Coffee filed a direct appeal of his judgment of sentence.

On appeal, Coffee challenged the denial of his Motion to Withdraw his guilty plea. After determining that the trial court conducted a proper guilty plea colloquy, and that Coffee's plea was knowing and voluntary, this Court affirmed Coffee's judgment of sentence. **Id.** (unpublished memorandum at 7-12).

The PCRA court described what next transpired as follows:

Andrea L. Haynes, Esquire[, ] filed a PCRA [P]etition on [Coffee's] behalf on July 17, 2012. However, [Coffee] wanted to file a *pro se* PCRA petition and Attorney Haynes filed a Motion to Withdraw [Coffee's] PCRA [P]etition on July 25, 2012. [The PCRA c]ourt

subsequently granted Attorney Haynes'[s] Motion on August 1, 2012. [Coffee] then filed a *pro se* PCRA [P]etition on August 23, 2012. As this was [Coffee's] first PCRA [P]etition, [the PCRA court] appointed William M. Shreve, Esquire[,], to review his *pro se* [P]etition on August 28, 2012. Attorney Shreve then filed a Motion for Extension of Time to File Supplemental PCRA [Petition] and Transcription of Notes of Proceedings on September 12, 2012. [The PCRA court] granted Attorney Shreve's [M]otion on September 13, 2012. After solving a delay in providing Attorney Shreve with transcripts of the proceedings from [Coffee's] guilty plea, Attorney Shreve filed a Motion to Withdraw under the PCRA on December 6, 2012. On December 21, 2012[, the PCRA court] entered a Memorandum Opinion and Order granting Attorney Shreve's Motion to Withdraw as [Coffee's] PCRA counsel and provided [Coffee] with 20-days' notice of [the PCRA c]ourt's intention to dismiss his PCRA Petition....

PCRA Court Opinion, 4/11/13, at 1-2. Coffee filed a Motion for Extension of time within which to file a *pro se* Reply. The PCRA court granted an extension to January 17, 2013. Because Coffee's Reply was time-stamped January 18, 2013, the PCRA court disregarded the Reply as untimely filed. On January 18, 2013, the PCRA court dismissed Coffee's PCRA Petition, after which Coffee, *pro se*, filed the instant timely appeal.<sup>2</sup>

Coffee now presents the following claims for our review:

1. Did the PCRA court err in not finding [plea] counsel ineffective where he induced [Coffee] to enter an unknowing, involuntary guilty plea, notwithstanding the fact that counsel admitted informing [Coffee] that he would receive three (3) to six (6) years [of] incarceration in exchange for his guilty plea to third degree murder, hence [Coffee] pled guilty[,], receiving five and a half (5½) to twenty (20) years [of] incarceration?

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<sup>2</sup> Coffee additionally filed a timely Pa.R.A.P. 1925(b) Concise Statement of Matters Complained of on Appeal.

2. Did the PCRA Court err in its factual finding where[,] in determining if [Coffee had] suffered prejudice by counsel's actions[,] it used an affidavit submitted by counsel to conclude that [Coffee] was fearful of going to trial and would have [chosen to] plead guilty regardless of counsel's advice, although counsel's affidavit made no mention, or implication[,] of [Coffee] being fearful of trial?

3. Did the PCRA Court err in dismissing [Coffee's] PCRA [P]etition without having first held an evidentiary hearing, where [Coffee] offered specific testimony that would demonstrate prejudice, negate the voluntariness of his guilty plea and establish the record to material facts that[,] if proven[,] would entitle him to relief?

4. Did the PCRA Court err in failing to find PCRA [c]ounsel ineffective, where PCRA [c]ounsel failed to amend [Coffee's] PCRA [P]etition and abandoned it as meritless under the guise that [Coffee] was barred from presenting his claim [due] to an voluntary [*sic*] plea, and that his claim was previously litigated[,] therefore[,] it is now precluded from relief, despite the contrary precedent case law, and the Superior Court ruling that [Coffee's] direct appeal would not preclude him from further litigation?

5. For the above reason (averment 4)[, whether the] PCRA Court erred in allowing PCRA counsel to withdraw on the bases of a no[-]merit[ ]letter and for not appointing new counsel to perfect [Coffee's] PCRA [P]etition?

6. Did the PCRA Court err in dismissing [Coffee's] PCRA [P]etition before receiving [Coffee's] Reply to the Court's Intention to Dismiss PCRA [P]etition, where [Coffee's] Reply was timely submitted to the prison authorities?

Brief for Appellant at 3-4.

Initially, we observe that 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).

Coffee's first three claims are premised upon his underlying claim that his plea counsel rendered ineffective assistance, thereby causing him to tender an unknowing and involuntary plea. First, Coffee argues that his plea counsel induced him to plead guilty based upon an agreement that Coffee would be sentenced to three to six years in prison. Brief for Appellant at 11. Second, Coffee argues that the PCRA court improperly found as fact that Coffee was fearful of going to trial, and therefore, suffered no prejudice by plea counsel's alleged ineffectiveness. **Id.** at 15-16. Third, Coffee argues that the PCRA court improperly failed to conduct an evidentiary hearing on his claim of ineffective assistance of plea counsel. **Id.** at 19.

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). To establish the third prong, *i.e.*, prejudice, the defendant must show that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's action or inaction.

***Commonwealth v. Dennis***, 950 A.2d 945, 954 (Pa. 2008). The failure to satisfy any prong of the ineffectiveness test will require rejection of the claim. ***Commonwealth v. Reaves***, 923 A.2d 1119, 1128 n.10 (Pa. 2007).

Upon review, we agree with the PCRA court that Coffee is not entitled to relief on the underlying claim of plea counsel's ineffectiveness. While we agree with the PCRA court's determination that Coffee failed to prove prejudice, we do so for different reasons.<sup>3</sup>

In his *pro se* PCRA Petition, Coffee claimed that his plea counsel rendered ineffective assistance by representing that Coffee would receive a sentence of three to six years in prison. *Pro Se* PCRA Petition at 4.

However, even if counsel had misinformed Coffee, the Notes of Testimony of the plea hearing confirm that Coffee was informed and aware of the potential sentence that could be imposed:

Q. [The prosecutor:] Murder of the third degree is punishable by up to 40 years['] imprisonment and a fine of up to \$50,000.00, or both. Do you understand that?

A. [Coffee:] Yes.

Q. Ordinarily, the crime carries with it a sentence of at least five years['] imprisonment. Do you understand that?

A. I understand.

...

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<sup>3</sup> “[W]here the result is correct, an appellate court may affirm a lower court’s decision on any ground without regard to the ground relied upon by the lower court itself.” ***Commonwealth v. Derrickson***, 923 A.2d 466, 469 n.2 (Pa. Super. 2007) (citation omitted).

Q. Other than the plea agreement[, ] has anybody made any promises to you to get you to plead guilty?

A. No.

...

Q. Mr. Coffee, the sentence is entirely up to the discretion of the Judge. Do you understand that?

A. Yes.

Q. Obviously within the statutory limits. Do you understand that?

A. Yes.

Q. The judge is obligated to consider the sentencing guidelines, but those aren't binding on the Court. But the Court must consider them. Do you understand that?

A. I understand.

N.T., 5/17/11, at 3. "A person who elects to plead guilty is bound by the statements he makes in open court while under oath and may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy." **Commonwealth v. Yeomans**, 24 A.3d 1044, 1047 (Pa. Super. 2011) (citation omitted).

On direct appeal, this Court concluded that Coffee tendered a knowing and voluntary plea. **Commonwealth v. Coffee**, 50 A.3d 243 (Pa. 2012) (unpublished memorandum at 11). In particular, this Court concluded that the trial court's plea colloquy sufficiently informed Coffee of the consequences and potential prison terms that could be imposed at sentencing. **See id.** (unpublished memorandum at 7 (wherein the trial court

informed Coffee that he could be sentenced to a minimum prison term of seven years), 8 (recognizing that the trial court informed Coffee that it was not bound by the terms of any plea agreement), 9 (wherein this Court stated, "It is readily apparent from the above colloquy that [Coffee's] open plea pertained only to the degree of murder to which he would plea, ... and did not limit the trial court's discretion in sentencing [Coffee]" and "[Coffee] was aware the trial court was not obligated to impose any particular sentence"), 11 (recognizing that plea counsel informed Coffee that the Commonwealth would only agree to a negotiated sentence of 6-12 years, and that Coffee "opted to enter an open plea to third degree murder, leaving sentencing within the discretion of the trial court.").

Thus, even if plea counsel had misrepresented the sentence that could be imposed, the trial court's colloquy corrected any misunderstanding. At the plea colloquy, Coffee confirmed his understanding of the potential sentences that could be imposed. Thus, we agree with the PCRA court's determination that Coffee cannot establish prejudice resulting from plea counsel's alleged ineffectiveness. Consequently, Coffee's claim of ineffective assistance of plea counsel fails. Further, we discern no error by the PCRA court in denying an evidentiary hearing on Coffee's claim.

In his fourth and fifth claims of error, Coffee asserts that his PCRA counsel rendered ineffective assistance by failing to amend his PCRA Petition and abandoning his claim of ineffective assistance of plea counsel. Reply



Brief at 7. Coffee argues that Attorney Haynes improperly sought to withdraw, mistakenly believing that Coffee wished to proceed *pro se*. ***Id.*** at 8. Even though the PCRA court appointed, Attorney Shreve, Coffee claims that Attorney Shreve rendered ineffective assistance by petitioning to withdraw from representation. Brief for Appellant at 27; Reply Brief at 8-9. Coffee directs our attention to this Court's statement, on direct appeal, that our disposition would preclude Coffee from filing a petition under the PCRA. Brief for Appellant at 27; Reply Brief at 9. Coffee additionally claims that the PCRA court erred in not appointing counsel to replace Attorney Shreve. Brief for Appellant at 26, 30.

In its Pa.R.A.P. 1925(a) Opinion, the PCRA court addressed this claim and concluded that it lacks merit. PCRA Court Opinion, 4/11/13, at 4-5. We agree with the reasoning of the PCRA court, as set forth in its Opinion, and affirm on this basis.<sup>4</sup> ***See id.***

Finally, Coffee claims that the PCRA court improperly dismissed his Petition before receiving his Reply to the PCRA court's Notice of Intent to dismiss the PCRA Petition. Brief for Appellant at 30. Coffee asserts that under the prisoner mailbox rule, his Reply was timely filed. ***Id.*** at 32. Coffee claims that because his Reply was time stamped January 18, 2013,

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<sup>4</sup> Further, as set forth above, Coffee failed to establish prejudice resulting from his plea counsel's alleged ineffectiveness. Thus, we cannot conclude that Coffee suffered prejudice resulting from his PCRA counsel's alleged ineffectiveness.

by implication, it was mailed on or before the due date of January 17, 2013. ***Id.*** at 34.

Our review discloses that the PCRA court entered an Order permitting Coffee to file his Reply on or before January 17, 2013. PCRA Court Order, 1/11/13. Coffee's *pro se* Reply was stamped as received on January 18, 2013. Our Pennsylvania Supreme Court has accepted, for purposes of the prisoner mailbox rule,

evidence of internal operating procedures regarding mail delivery in both the prison and the Commonwealth Court, and the delivery route of the mail, to decide the last possible date on which the appellant could have mailed an appeal based on the date that the prothonotary received it.... Proof is not limited to the above examples and we are inclined to accept any reasonably verifiable evidence of the date that the prisoner deposits the appeal with the prison authorities.

***Commonwealth v. Jones***, 700 A.2d 423, 426 (Pa. 1997).

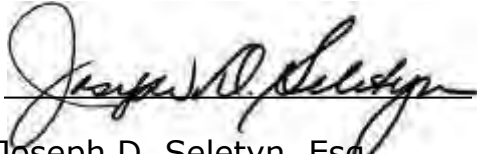
Here, Coffee presented no reasonably verifiable proof of the date upon which he mailed his Reply. As such, we cannot conclude that the PCRA court erred or abused its discretion in refusing to accept Coffee's Reply. ***See, e.g., id.*** at 426 (recognizing that it was the appellant/prisoner's burden to prove that that he or she in fact delivered the appeal within the appropriate time period). Even if the Reply were accepted, Coffee cannot overcome his testimony at the plea hearing, which established that he tendered a knowing and voluntary plea.

For the foregoing reasons, we affirm the Order entered by the PCRA court.

J-S77045-13

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: 4/23/2014

4-11-13  
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COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
: DAUPHIN COUNTY, PENNSYLVANIA  
:  
vs. : 3961 CR 2007  
:  
NEGII COFFEE, II : POST CONVICTION RELIEF ACT

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TRIAL COURT MEMORANDUM OPINION PURSUANT TO  
PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(a)

Presently before the Superior Court of Pennsylvania is Negii Coffee, II's (Appellant) appeal of this Court's January 18, 2013 Order wherein we dismissed Appellant's Petition for Relief Pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 4951, et seq.<sup>1</sup>

Procedural History

On May 17, 2011, Appellant entered into final-plea negotiations with the Commonwealth. Appellant pled guilty to murder of the third degree.<sup>2</sup> This Court then sentenced Appellant as follows:

- Count I - Murder of the third degree: five-and-half-to-twenty (5½-to-20) years in a state correctional institution to run consecutive to docket 1300 CR 2000 and to his federal docket 105 CR 277 and pay the costs of the proceedings and a fine of \$5,000.00.

Subsequently, Appellant filed a Motion to Withdraw his Guilty Plea on May 24, 2011. This Court later denied Appellant's motion on June 27, 2011. On July 8, 2011, Appellant filed a Motion to Recuse and a Motion to Vacate the Court's Order of June 27, 2011 and Hold an Evidentiary Hearing. On July 27, 2011, Appellant filed a Notice of Appeal to this Court's Order

<sup>1</sup> Appellant erroneously cited February 15, 2013 as the date of the order from which he is appealing, but based upon Appellant's Statement of Errors Complained of on Appeal it is apparent to this Court that he is appealing this Court's January 18, 2013 Order wherein we dismissed his PCRA petition. We further note that this Court did not enter an order on February 15, 2013.

<sup>2</sup> 18 Pa.C.S. § 2502(c)

of June 27, 2011. The Superior Court affirmed this Court's June 27, 2011 Order on May 16, 2012.

Thereafter, Andrea L. Haynes, Esquire filed a PCRA petition on Appellant's behalf on July 17, 2012. However, Appellant wanted to file a pro se PCRA petition and Attorney Haynes filed a Motion to Withdraw Appellant's PCRA petition on July 25, 2012. This Court subsequently granted Attorney Haynes' motion on August 1, 2012. Appellant then filed a pro se PCRA petition on August 23, 2012. As this was Appellant's first PCRA petition we appointed William M. Shreve, Esquire to review his pro se PCRA petition on August 28, 2012. Attorney Shreve then filed a Motion for Extension of Time to File Supplemental PCRA and Transcription of Notes of Proceedings on September 12, 2012. This Court granted Attorney Shreve's motion on September 13, 2012. After solving a delay in providing Attorney Shreve with transcripts of the proceedings from Appellant's guilty plea, Attorney Shreve filed a Motion to Withdraw under the PCRA on December 6, 2012. On December 21, 2012 this Court entered a Memorandum Opinion and Order granting Attorney Shreve's Motion to Withdraw as Appellant's PCRA counsel and provided Appellant with 20-days' notice of this Court's intention to dismiss his PCRA petition. On January 4, 2013, Appellant filed a Motion for Extension of Time in which to Respond to the Court's Order to Withdraw Counsel. This Court denied Appellant's Motion for Extension of Time on January 11, 2013 and extended Appellant's due date for filing a response to January 17, 2013 to account for the days that elapsed when Appellant was awaiting this Court's response to his Motion for Extension. On January 18, 2013, this Court dismissed Appellant's PCRA petition. Appellant also filed his response to this Court's Notice of Intent to Dismiss on January 18, 2013 which this Court disregarded because it was filed after the date it was due.

On February 15, 2013, Appellant filed a Notice of Appeal to the Superior Court. This Court then Ordered Appellant to file a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). On March 7, 2013, Appellant filed a Motion for Extension of time to File a Statement of Errors. This Court granted Appellant's Motion on March 11, 2013 and Ordered Appellant to file a Statement of Errors no later than April 2, 2013. Appellant filed his Statement of Errors on April 1, 2013.

#### Factual Background

The facts giving rise to this appeal have been discussed at length in this Court's Trial Court Memorandum Opinion entered on October 5, 2011, which we incorporate by reference.

#### Appellant's Statement of Errors Complained of on Appeal

Appellant alleges the following errors on appeal:

1. The PCRA Court erred in not finding trial counsel ineffective where he induced [A]ppellant to plead guilty based on the understanding that the judge argeed [sic] to sentence him to three (3) to six (6) years['] incarceration in exchange for his guilty plea to third degree murder, hence [A]ppellant pled guilty although he ultimately received five and a half (5 ½) to twenty (20) years['] incarceration[;]
2. PCRA Court erred when it used an affidavit submitted by trial counsel to determine that [A]ppellant was fearful of going to trial, when trial counsel made no mention of [A]ppellant being fearful, or [A]ppellant's state of mind concerning trial within his affidavit[;]
3. PCRA Court erred for not holding an evidentiary hearing in order to establish the record as it concerns material facts (as in averment #2) which entitled him to relief, and to fully consider the totality of the circumstances surrounding [A]ppellant's guilty plea. As counsel had an off-the-record conversation with him, where he communicated to [A]ppellant that an agreement has been made with the judge to sentence him to three (3) to six (6) years, hence [A]ppellant pled guilty and received a five and a half (5½) to twenty (20) year sentence[;]

4. PCRA counsel was ineffective for failing to amend [A]ppellant's PCRA petition, and for abandoning his PCRA as merit less, [sic] where counsel [sic] reasoning was that [A]ppellant's guilty colloquy showed that his plea was voluntary. Although without an evidentiary hearing or communicating with [A]ppellant to examine his understanding of the colloquy as it related to advice given by counsel it is impossible to determine if his plea was in fact voluntary. Secondly, he abandoned [A]ppellant [sic] PCRA under the guise that [A]ppellant [sic] claim was previously litigated, stating PCRA [sic] was not the proper means for its review, however the Superior Courts [sic] Opinion affirming the judgment of sentence states that [A]ppellant is not precluded from filing a PCRA petition[;]
5. For the above reason (Averment #4) PCRA court erred in allowing PCRA counsel to withdraw on the basis of a no merit-letter [sic] and for not appointing new counsel to perfect [A]ppellant's PCRA petition[;]
6. The Judge erred by dismissing Appellant's PCRA petition before receiving Appellant's Reply to the court's Intention to Dismiss PCRA Petition.

#### Discussion

As this Court has previously discussed our rationale for dismissing Appellant's PCRA petition with respect to Appellant's alleged errors one through three, this Court directs the Superior Court to this Court's December 21, 2012 Memorandum Opinion and Notice of Intent to Dismiss which we incorporate by reference. Therefore, we will not submit anything further on these alleged errors unless directed by the Superior Court.

We next address Appellant's contention that his PCRA counsel was ineffective for failing to perfect his PCRA petition. Withdrawal of counsel with respect to representation on a PCRA petition is not subject to the requirements set forth in Anders v. California 87 S.Ct. 1396 (1967) because there is no federally guaranteed right to counsel in such proceedings. Pennsylvania v. Finley, 107 S.Ct. 1990 (1987). In Pennsylvania, in order for a PCRA petitioner's counsel to properly withdraw as counsel, the petitioner's counsel must submit a motion to withdraw

accompanied by a “no merit” letter which details the nature and extent of counsel’s review of the issues. Commonwealth v. Turner, 544 A.2d 927, 928 (Pa. 1988). The letter must list each issue the petitioner wished to pursue and provide an explanation as to why the petitioner’s claims have no merit. Id. We further note that the Superior Court has held that even when it is determined that a “no merit” letter falls below the standard set forth in Turner the court may find this to be harmless error when it does not prejudice the defendant. See Commonwealth v. Gaerttner, 649 A.2d 139, 143 (Pa. Super. 1994).

In the present matter, Appellant’s PCRA counsel, William M. Shreve, Esquire, properly submitted a “no merit” letter on December 6, 2012 with his Motion to Withdraw as Appellant’s PCRA counsel which explained why each issue Appellant attempted to raise during collateral review had no merit. Based upon Attorney Shreve’s “no merit” letter and this Court’s independent review of the record, we determined that Appellant’s PCRA petition had no merit and that Attorney Shreve’s Motion to Withdraw should be granted. For the reasons Appellant asserts that Attorney Shreve was ineffective for failing to request an evidentiary hearing regarding the voluntariness of his guilty plea, we refer the Superior Court to our December 21, 2012 Memorandum Opinion wherein we discuss that the record indicates that Appellant entered into his guilty plea voluntarily and that no evidentiary hearing on this matter was necessary. (See Trial Court Memorandum December 21, 2012 at 7-8).

We finally address Appellant’s alleged error that this Court prematurely dismissed Appellant’s PCRA petition before receiving his reply to this Court’s December 21, 2012 Notice of Intent to Dismiss. The Superior Court has held that “[u]nder the prisoner mailbox rule, we deem a pro se document filed on the date it is placed in the hands of prison authorities for mailing.” Commonwealth v. Crawford, 17 A.3d 1279, 1281 (Pa. Super. 2011). For the prisoner



mailbox rule to apply, a litigant must supply proof regarding the date of mailing the document. Commonwealth v. Little, 716 A.2d 1287, 1288 (Pa. Super. 1998). An example of sufficient proof of mailing would be a postmarked envelope or certified mail receipt. Commonwealth v. Perez, 799 A.2d 848 (Pa. Super. 2002), See also Smith v. Pennsylvania Bd. of Probation and Parole, 683 A.2d 278, 282 (Pa. 1996) (“[B]eing mindful of the unique circumstances facing an incarcerated pro se petitioner, we find that [a] Cash Slip may be sufficient to establish that an appeal was delivered to prison officials or deposited in the prison mailbox within the thirty day filing period.”).

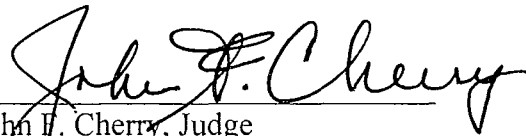
We first note that Appellant filed a Motion for Extension of Time in which to Respond to the Court’s Order to Withdraw Counsel, which this Court denied. However, in equity, this Court counted the remaining number of days Appellant had to file his reply from the date he filed his Motion for Extension in order to account for the time it would take to apprise him of the denial of extension. As a result, we gave Appellant an additional six (6) days from the date we denied his Motion for Extension on January 10, 2013, which extended the due date for Appellant’s Reply to January 17, 2013.<sup>2</sup> However, Appellant’s Reply was not received and docketed until January 18, 2013. The only document which gave any indication of the mailing date was Appellant’s Reply itself which was dated January 15, 2013. Appellant did not include any proof that the document was mailed on January 17, 2013. Without such proof of mailing, there was nothing to indicate to this Court that Appellant submitted his Reply in a timely manner. Therefore, this Court disregarded Appellant’s PCRA petition on January 18, 2013 for the reasons set forth in our December 21, 2012 Memorandum Opinion.

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<sup>2</sup> This Court’s Order denying Appellant’s Motion for Extension to File a Reply was signed on January 10, 2013 but was not entered until January 11, 2013.

Accordingly, we ask the Superior Court to affirm our order of January 18, 2013 and to dismiss the appeal in this matter.

Respectfully submitted:

  
John F. Cherry, Judge  
Dated April 11, 2013

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