

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
JAMES LESLIE FLOWERS, JR.,	:	No. 97 MDA 2017
	:	
Appellant	:	

Appeal from the Judgment of Sentence, October 12, 2016,
in the Court of Common Pleas of Schuylkill County
Criminal Division at No. CP-54-CR-0001181-2015

BEFORE: OLSON, J., MOULTON, J., AND FORD ELLIOTT, P.J.E.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED AUGUST 18, 2017**

James Leslie Flowers appeals *pro se* from the October 12, 2016 judgment of sentence entered in the Court of Common Pleas of Schuylkill County¹ following his conviction in a jury trial of delivery of a controlled substance, possession with intent to deliver a controlled substance, and

¹ Appellant filed his appeal from the December 7, 2016 order denying his post-sentence motion. In the criminal context, an appeal properly lies from the judgment of sentence, not an order denying post-sentence motions. ***Commonwealth v. Dreves***, 839 A.2d 1122, 1125 n.1 (Pa.Super. 2003) (*en banc*). The caption, therefore, has been amended to reflect that this appeal is from the October 12, 2016 judgment of sentence.

possession of a controlled substance.² The trial court imposed a sentence of 27 to 54 months of imprisonment.³ We remand for further proceedings.

The record reflects that on June 15, 2015, Attorney Andrea Thompson of the Office of the Public Defender entered her appearance on appellant's behalf and represented appellant through trial. Following trial, but before sentencing, and while still being represented by Attorney Thompson, appellant commenced **pro se** filings with the trial court, which included a "notice of appeal," a "motion for stay of sentencing pending appeal," and a Post-Conviction Relief Act⁴ petition alleging, among other things, ineffective assistance of Attorney Thompson. (**Pro se** notice of appeal, 9/13/16; **pro se** motion for stay of sentencing pending appeal, 9/13/16; **pro se** PCRA petition, 9/13/16; Docket ##30, 32 & 33, respectively). On September 16, 2016, Attorney Thompson filed a motion to withdraw as counsel, alleging her inability to represent appellant because of the "outrageous and spurious allegations" appellant made against her. (Motion to withdraw as counsel, 9/16/16.) On September 26, 2016, the trial court entered an order granting Attorney Thompson's motion to withdraw as counsel and appointing Claude A.L. Shields, Esq., to represent appellant. (Order of court, 9/26/16.)

² Counts I and II in violation of 35 P.S. § 780-113(a)(30) and Count III in violation of 35 P.S. § 780-113(a)(16).

³ For sentencing purposes, Counts II and III merged with Count I.

⁴ 42 Pa.C.S.A. §§ 9541-9546.

Despite being represented by Attorney Shields, appellant filed a **pro se** motion challenging the trial court's jurisdiction over appellant. (**Pro se** motion to challenge jurisdiction, 10/11/16; Docket #40.)

The trial court held a sentencing hearing on October 12, 2016, at which Attorney Shields represented appellant. Because appellant disrupted those proceedings, the trial court held appellant in direct criminal contempt of court, sentenced him to 30 days in prison, and had him removed from the sentencing hearing and taken into custody. (Notes of testimony, 10/12/16 at 3.) The sentencing hearing then proceeded without appellant. Prior to imposition of sentence, Attorney Shields informed the trial court that appellant had indicated to counsel that appellant did not want counsel's representation. (**Id.** at 6-7.) Attorney Shields further informed the trial court that communication between counsel and appellant is "totally broke [sic] down." (**Id.** at 7.) Attorney Shields stated that although he would be representing appellant at the sentencing hearing, he would be filing a motion to withdraw. (**Id.**) Thereafter, the trial court imposed sentence. (**Id.** at 11; **see also** order of court, 10/12/16; Docket #41.)

On October 13, 2016, Attorney Shields filed a post-sentence motion on appellant's behalf and simultaneously filed a motion to withdraw as counsel. In that motion to withdraw, Attorney Shields alleged that because counsel informed appellant that appellant had no basis to challenge the trial court's jurisdiction over him, appellant refused to communicate with counsel.

(Motion to withdraw as counsel, 10/13/16; Docket #44.) On November 10, 2016, the trial court granted Attorney Shields's motion to withdraw as counsel and further "ordered that [appellant] may represent himself **pro se** and that [Attorney] Shields is appointed to serve as standby counsel." (Order of court, 11/10/16; Docket #53.) On December 7, 2016, the trial court denied appellant's post-sentence motion.

The record further reveals that appellant filed a "motion for extraordinary relief to the [trial] court," which was docketed on November 29, 2016, and states:

And now, [appellant]/**pro se**, James Leslie Flowers, hereby motions the court as follows:

1. The order of court on the 10th day of November, granted the motion of defense counsel to withdraw his appearance in the matter, and his appearance is withdrawn.
2. It is further ordered that [appellant] may represent himself **pro se**, and that Claude A. Lord Shields, Esquire is appointed to serve as standby counsel.

WHEREFORE, [appellant]/**pro se**, James Leslie Flowers request that this Honorable Court to grant, extraordinary relief, so that **pro se** [appellant] may seek proper legal advice from attorney's at law, who specialize in the nature of these charges brought forth, and further be appointed appeal bail to reinstate the bail that [appellant]/**pro se**, James Flowers is therefore capable, and knowledgeable to properly litigate these proceedings.

Pro se motion for extraordinary relief to the court, 11/29/16; Docket #56 (numerous grammatical errors occur in original).

On December 2, 2016, the trial court entered an order denying appellant's motion for extraordinary relief. (Order of court, 12/2/16; Docket #58.) Appellant then filed a **pro se** notice of appeal to this court.⁵ (**Pro se** notice of appeal, docketed 1/13/17; Docket #65.) The trial court then ordered appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and appellant timely complied **pro se**. The trial court then filed its Rule 1925(a) opinion.

Appellant has now filed a **pro se** brief with this court raising six issues. Based on the record before us, however, we cannot consider the issues that appellant requests that we review because we find that the trial court violated appellant's right to counsel on direct appeal. **See Commonwealth v. Wrecks**, 931 A.2d 717, 722 (Pa.Super. 2007) (reiterating that a criminal appellant has a constitutional right to counsel on direct appeal). Here, nothing in the record supports the conclusion that appellant requested Attorney Shields to withdraw, waived his right to counsel on appeal, or desired to proceed **pro se** on appeal. We are, therefore, constrained to

⁵ The notice of appeal is dated January 6, 2017, but time-stamped as being docketed on January 13, 2017. In an abundance of caution, based upon the prisoner mailbox rule, we deem the notice of appeal timely filed. **See Commonwealth v. Chambers**, 35 A.3d 34, 38 (Pa.Super. 2011) (holding "a **pro se** prisoner's document is deemed filed on the date he delivers it to prison authorities for mailing") (citation omitted)).

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remand for a **Grazier**⁶ hearing. If appellant wishes to represent himself, we will proceed to the merits on appeal considering his **pro se** brief.

Case remanded with instructions. Panel jurisdiction retained.

⁶ **Commonwealth v. Grazier**, 713 A.2d 81 (Pa. 1998).