

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
TRENT ISIAH LINDSEY	:	
	:	
Appellant	:	No. 989 WDA 2025

Appeal from the PCRA Order Entered June 26, 2025
In the Court of Common Pleas of Somerset County Criminal Division at
No(s): CP-56-CR-0000446-2022

BEFORE: STABILE, J., DUBOW, J., and STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.:

FILED: AUGUST 28, 2026

Appellant Trent Isiah Lindsey appeals from the order entered by the Court of Common Pleas of Somerset County denying his petition pursuant to the Post Conviction Relief Act (PCRA).¹ Appellant claims that the PCRA court erred in declining to find his trial counsel was ineffective in failing to perfect a direct appeal. After careful review, we affirm.

In connection with a traffic stop that occurred on July 12, 2022, Appellant was charged with Possession of Firearm Prohibited, Firearm Not to be Carried Without a License, Manufacture, Delivery, or Possession with Intent to Deliver a Controlled Substance, Possession of a Controlled Substance, Possession of Drug Paraphernalia, and other summary offenses. Appellant was represented by David Leake, Esq. ("trial counsel"). After Appellant was

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S.A. §§ 9541-9546.

charged in this case, trial counsel filed a pretrial suppression motion and a motion for writ of habeas corpus, both of which were denied.

On September 7, 2023, Appellant entered a guilty plea to Possession of a Firearm Prohibited. After the plea, trial counsel asked that sentencing be continued to “discuss presentence report and prior record score and to determine whether [Appellant] wants to withdraw guilty plea.” On November 22, 2023, trial counsel filed a Motion to Correct Prior Record Score. On January 25, 2024, trial counsel filed a Motion to Withdraw Plea. After a hearing, the trial court denied Appellant’s request to withdraw his plea.

The parties proceeded to sentencing on March 28, 2024. The trial court allowed the parties to present oral argument regarding the appropriate prior record score and granted Appellant’s motion in part, but Appellant’s prior record score was not changed. The trial court sentenced Appellant to 60 to 120 months of imprisonment with credit for time served.

On April 8, 2024, trial counsel filed a post-sentence motion on Appellant’s behalf. On April 15, 2024, Appellant filed a *pro se* PCRA petition, claiming his guilty plea was unlawfully induced as trial counsel was ineffective in advising him as to his prior record score. On April 15, 2024, the trial court denied Appellant’s post-sentence motion. No direct appeal was filed.

On July 10, 2024, Appellant refiled the same *pro se* PCRA petition. On August 2, 2024, the PCRA court appointed Jaclyn Shaw, Esq., who subsequently filed an amended PCRA petition on Appellant’s behalf on April 2, 2025, arguing that trial counsel was ineffective in failing to perfect a direct

appeal.² Attorney Shaw attached to the amended petition a letter dated August 20, 2024, in which Trial counsel forwarded the record to Attorney Shaw and noted that Appellant had indicated on April 8, 2024 that “he did not wish to appeal in event the Post Sentence Motions were denied because he wished to pursue his PCRA Petition instead.” Amended PCRA Petition, Exhibit A.

On May 29, 2025, the PCRA court held an evidentiary hearing at which both Appellant and trial counsel testified. Appellant indicated that he met with trial counsel after sentencing on April 8, 2024 to discuss whether to file an appeal. Notes of Testimony (N.T.), 5/29/25, at 10. Appellant admitted that he told trial counsel that he wanted to file a PCRA petition. ***Id.*** at 11. However, Appellant claimed that he did not understand the difference between a direct appeal and a PCRA or how a PCRA filing would affect his ability to file

² Since trial counsel filed a timely post-sentence motion, Appellant’s judgment of sentence did not become final until May 15, 2024, which was thirty days after the trial court denied his post-sentence motion and the time to file a direct appeal had expired. **See** 42 Pa.C.S.A. § 9545(b)(3) (“For purposes of [the PCRA], a judgment becomes final at the conclusion of direct review ... or at the expiration of time for seeking the review”). Since Appellant’s initial *pro se* petition submitted on April 15, 2024 was filed before his judgment of sentence become final, it was premature. **See Commonwealth v. Smith**, 244 A.3d 13, 17 (Pa. Super. 2020) (PCRA petition filed before judgment of sentence becomes final is a premature petition). In such cases, a premature PCRA petitions constitute a legal nullity that the PCRA court lacks authority to consider; thus, a premature PCRA petition is dismissed without prejudice for the petitioner to refile once the judgment of sentence becomes final. **See Commonwealth v. Williams**, 215 A.3d 1019, 1023 (Pa. Super. 2019).

Appellant refiled his *pro se* PCRA petition on July 10, 2024, when the time for filing a direct appeal had expired and his judgment of sentence was final. We deem Appellant’s July 10, 2024 petition to be a timely filed petition which the PCRA court had jurisdiction to review.

a direct appeal. ***Id.*** Appellant claimed that he actually wanted to file a direct appeal. ***Id.*** at 13.

On cross-examination, Appellant indicated that trial counsel had represented him for two years and had followed Appellant's directions to file various motions; Appellant agreed that trial counsel would have filed an appeal if Appellant had asked him to do so. ***Id.*** at 15-16. Appellant asserted that he filed a PCRA petition because he thought trial counsel was not his attorney anymore and his "case was over," even though trial counsel never withdrew his representation, never communicated to Appellant that he was no longer Appellant's attorney, but instead filed a post-sentence motion on Appellant's behalf. ***Id.*** at 19.

Appellant acknowledged that at sentencing, he had received a form setting forth an explanation of the available post-sentence procedures upon the entry of his guilty plea. ***Id.*** at 16. Appellant admitted that he signed and initialed this document to acknowledge that he read and understood his post-sentence rights. ***Id.*** at 20-21. When the prosecutor asked Appellant if he was lying when the trial court asked him if he understood everything in the document setting forth his post-sentence rights, Appellant refused to answer and simply repeated that he was "following my lawyer." ***Id.*** at 29-30.

Trial counsel offered extensive testimony as to his representation of Appellant in this case. Trial counsel was able to specifically recall the April 8, 2024 meeting he had with Appellant as trial counsel took detailed notes. ***Id.*** at 37. Trial counsel told Appellant if he wanted to file a direct appeal, he had

to preserve his claims first in a timely-filed post-sentence motion; trial counsel had prepared a post-sentence motion, taken it to the jail with him, and filed it the same day. ***Id.*** at 37-38.

However, trial counsel recalled that Appellant told him at the April 8, 2024 meeting that he wanted to file a PCRA petition to claim trial counsel was ineffective. ***Id.*** at 38-41. Trial counsel then explained in detail the interplay between a direct appeal and the PCRA, informing Appellant that filing a PCRA petition would interfere with his appellate rights and any “appeal would get set aside.” ***Id.*** at 38-39. Trial counsel admitted he felt conflicted as he did not know whether to recommend that Appellant pursue a direct appeal instead of pursuing trial counsel on an ineffectiveness claim through the PCRA. ***Id.*** at 41. Trial counsel asserted that if Appellant would have asked him to file a direct appeal, he would have done so without question. ***Id.*** at 40-41. However, trial counsel testified that based upon his discussion with Appellant, he believed that Appellant wanted to pursue collateral relief through the PCRA. ***Id.*** at 41, 46.

On June 26, 2025, the PCRA court entered an order and opinion denying Appellant’s PCRA petition. This timely appeal followed. Appellant complied with the PCRA court’s direction to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

Appellant raises the following issues for our review on appeal:

1. Whether the Court of Common Pleas erred in denying Appellant’s entitlement to Post Conviction Relief based on the

claim that [trial counsel] failed to timely file and perfect a direct appeal?

2. Whether the Court of Common Pleas erred in failing to reinstate Appellant's direct appeal rights *nunc pro tunc* after trial counsel indicated a conflict arose during the course of representation of Appellant when Appellant filed a *pro se* PCRA Petition, yet [trial counsel] remained counsel of record?

Appellant's Brief, at 4.

We address the propriety of the PCRA court's denial order as follows:

[O]ur standard of review from the denial of a PCRA petition is limited to examining whether the PCRA court's determination is supported by the evidence of record and whether it is free of legal error. The PCRA court's credibility determinations, when supported by the record, are binding on this Court; however, we apply a *de novo* standard of review to the PCRA court's legal conclusions.

Commonwealth v. Miranda, 317 A.3d 1070, 1075 (Pa.Super. 2024) (quoting **Commonwealth v. Sandusky**, 203 A.3d 1033, 1043 (Pa.Super. 2019)).

In reviewing a claim of ineffectiveness of counsel, we are guided by the following principles:

It is well-established that counsel is presumed to have provided effective representation unless the PCRA petitioner pleads and proves all of the following: (1) the underlying legal claim is of arguable merit; (2) counsel's action or inaction lacked any objectively reasonable basis designed to effectuate his client's interest; and (3) prejudice, to the effect that there was a reasonable probability of a different outcome if not for counsel's error. **See Commonwealth v. Pierce**, 515 Pa. 153, 527 A.2d 973, 975-76 (1987); **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The PCRA court may deny an ineffectiveness claim if "the petitioner's evidence fails to meet a single one of these prongs." **Commonwealth v. Basemore**, 560 Pa. 258, 744 A.2d 717, 738 n.23 (2000).... Because courts must presume that counsel was effective, it is the petitioner's

burden to prove otherwise. **See Pierce, supra; Commonwealth v. Holloway**, 559 Pa. 258, 739 A.2d 1039, 1044 (1999).

Commonwealth v. Johnson, 179 A.3d 1105, 1114 (Pa.Super. 2018) (quoting **Commonwealth v. Natividad**, 598 Pa. 188, 207-208, 938 A.2d 310, 321 (2007)).

Appellant specifically argues that the PCRA court erred in finding Appellant was not entitled to collateral relief as trial counsel was ineffective in failing to file and perfect a direct appeal on his behalf. We acknowledge that our Supreme Court has held that where “there is an unjustified failure to file a requested direct appeal, the conduct of counsel falls beneath the range of competence demanded of attorneys in criminal cases.” **Commonwealth v. Lantzy**, 558 Pa. 214, 736 A.2d 564, 572 (Pa. 1999). Counsel’s failure to file a requested direct appeal constitutes *per se* ineffectiveness. **Id.** However, “[b]efore a court will find ineffectiveness of trial counsel for failing to file a direct appeal, Appellant must prove that he requested an appeal and that counsel disregarded this request.” **Commonwealth v. Touw**, 781 A.2d 1250, 1254 (Pa. Super. 2001) (emphasis added).

If the defendant fails to prove that he requested an appeal, our courts determine whether counsel consulted with the defendant about filing an appeal; “consult” has been defined in this context as “advising the defendant about the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant’s wishes.” **Id.** (quoting **Roe v. Flores-Ortega**, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000)).

This Court has followed the rationale of the U.S. Supreme Court in ***Flores-Ortega*** in defining the circumstances in which counsel has an obligation to consult with a defendant about an appeal:

[C]ounsel has a constitutionally-imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known.

Touw, 781 A.2d at 1254 (*quoting Flores-Ortega*, 528 U.S. at 480, 120 S.Ct. 1029).

Appellant limits his appeal to claim that trial counsel was ineffective in failing to file a direct appeal as Appellant reasonably demonstrated to trial counsel that he was interested in filing a direct appeal.³ Appellant suggests that trial counsel did not fulfill his duty to consult with him to understand his wishes or ensure that an appeal could be perfected by alternate counsel.

The PCRA court analyzed this issue as follows:

There is no question that Attorney Leake consulted with [Appellant] after the sentencing hearing as well as on April 8, 2024. Both counsel and [Appellant] acknowledge the meeting about post-sentence motions, the PCRA petition, and direct appeal.

[Trial counsel] provided credible testimony that if [Appellant] had specifically told him he wanted to appeal, he “absolutely” would have done it without question. [Appellant] agreed, answering “yes,” when asked “[s]o if you had asked him to file an appeal do

³ Appellant does not claim trial counsel had a reason to think that a rational defendant would want to appeal non-frivolous grounds for appeal in this case.

you believe he would have?" [Trial counsel's] diligence in representing [Appellant] over the two-year pendency of the case is well docketed and documented. The Court finds that [trial counsel] did not abandon his duty to file an appeal following denial of post-sentence motions based on the insistence and actions of his client who, after consultation with his trial counsel, told counsel that he intended to file a Post-Conviction Relief petition.

The court finds [Appellant's] testimony disingenuous. His statements that he thought the attorney-client relationship ended on the day of sentencing and that he thought he had to file his own appeals are not credible given the post-sentence meeting with his lawyer, the discussion about the PCRA and direct appeal, and [trial counsel's] filing of post-sentence motions. The Court is also unconvinced of [Appellant's] claimed ignorance of the law and the differences between a post-sentence motion, a direct appeal, and a PCRA [petition]. During the PCRA petition, [Appellant] refused to acknowledge that his post-sentence rights form contained information about [filing an] appeal by repeatedly answering the Commonwealth, "I was following my lawyer," but didn't follow his lawyer's advice about the potential consequences of filing a PCRA prior to a direct appeal. [Appellant] wanted to file a PCRA petition, and told [trial counsel] his plan a week before he filed it knowing that post-sentence motions were pending. Accordingly, [Appellant] has not reasonably demonstrated through his testimony that he either wanted, or asked, [trial counsel] to proceed with a direct appeal.

T.C.O., at 7-8 (footnote omitted).

After close review, we find there is record support for the PCRA court's determination that Appellant did not prove that he expressly asked trial counsel to file a direct appeal. The record also demonstrates that trial counsel testified credibly in asserting that he consulted with Appellant to explain the advantages and disadvantages of filing a direct appeal as opposed to a PCRA petition. In doing so, trial counsel sought to discover Appellant's wishes and reasonably concluded that Appellant desired to file a PCRA petition to raise an

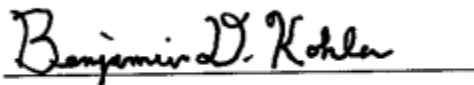
allegation that trial counsel had been ineffective in advising Appellant as to his prior record score.⁴

Appellant is essentially asking this Court to disregard the credibility determinations of the PCRA court and accept his version of the relevant facts. However, as stated above, “the PCRA court's credibility determinations, when supported by the record, are binding on this Court.” ***Miranda, supra.***

Accordingly, we conclude that Appellant failed to establish that he requested that trial counsel file a direct appeal on his behalf or that he demonstrated that he was interested in filing an appeal. Thus, the PCRA court did not err in denying Appellant collateral relief.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 8/28/2026

⁴ Appellant did not raise this specific ineffectiveness claim in his amended PCRA petition.