

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

JOSEPH BRIAN KOHNOW

Appellant

: No. 2802 EDA 2025

Appeal from the PCRA Order Entered October 8, 2025
In the Court of Common Pleas of Monroe County Criminal Division at
No(s): CP-45-CR-0002182-2021

BEFORE: SULLIVAN, J., BECK, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.:

FILED SEPTEMBER 29, 2026

Appellant, Joseph Brian Kohnow, appeals *pro se* from the order denying his first, timely petition for relief under the Post-Conviction Relief Act (“PCRA”).¹ We conclude that Appellant was denied the effective assistance of counsel, vacate the PCRA court’s order, and remand this case for appointment of new PCRA counsel with instructions.

Briefly stated, the Commonwealth charged Appellant with various crimes against Joseph Biro stemming from a fight between the two men. Biro testified that he was drinking alcohol at Eric Goelz's home when Appellant, who was staying next door at a "party house," joined Biro and Goelz. The three continued to drink; later, Appellant drove Biro to Biro's residence to retrieve more alcohol. The two then proceeded to the "party house," and after

¹ 42 Pa.C.S. §§ 9541 – 9546.

Biro exited the vehicle Appellant unexpectedly punched him in the face. The two “started wrestling on the ground.” N.T., 3/22/22, at 42. During the struggle, Appellant slashed Biro’s face with a knife and “continuously tr[ied] to slash” at Biro. **Id.** at 43. Appellant eventually put the knife to Biro’s throat and said, “I can kill you.” **Id.** Appellant did not testify but claimed self-defense, arguing that the evidence suggested Biro, who admitted to using methamphetamine in the past, had attempted to rob Appellant. The trial court instructed the jury on self-defense. The jury acquitted Appellant of attempted homicide and convicted him of, *inter alia*, aggravated assault with a deadly weapon.

The trial court sentenced Appellant on May 10, 2022, to an aggregate period of 112 to 228 months of incarceration. Appellant did not file an appeal, and his judgment of sentence became final thirty days later. On May 30, 2023, Appellant timely filed a *pro se* PCRA petition raising two claims of ineffective assistance of counsel. The first was that Appellant spoke with trial counsel, Eric Closs, Esq., after the verdict “and expressed to Mr. Closs that [Appellant] was upset about the convictions and that he wanted to appeal them immediately.” *Pro se* PCRA Petition, 5/30/23, at 5. According to Appellant, Attorney Closs “informed [Appellant] that he didn’t think the case was worth appealing and refused to file any further paperwork on his behalf.” **Id.** The second issue challenged Attorney Closs’s strategic decisions with respect to Appellant’s defense. Appellant alleged that he and Attorney Closs “agreed that they would present a self-defense case to the jury.” **Id.**

Appellant averred that trial counsel “did little to advance” that defense and raised several specific complaints in that regard. Appellant requested both a new trial and/or reinstatement of his appellate rights. ***Id.*** at 6. Additionally, Appellant attached a short brief on the legal issues, and cited ***Roe v. Flores-Ortega***, 528 U.S. 470, 477 (2000), for the proposition that he was entitled to relief because he “told his counsel to perfect an appeal on his behalf. It was reasonable for [Appellant] to expect Mr. Closs to complete the relatively simple job of filing the notice of appeal.” ***Id.*** at 10.

The PCRA court appointed Adam Weaver, Esq., who filed a motion to withdraw and accompanying ***Turner/Finley***² “no merit” letter on September 9, 2025, which addressed Appellant’s two issues. The PCRA court issued a notice of intent to dismiss the petition without a hearing on September 12, 2025, agreeing with Attorney Weaver’s analysis. The PCRA court also prematurely granted Attorney Weaver’s motion to withdraw and provided Appellant thirty days to file an amended petition or objection to the notice of intent to dismiss.

Appellant filed a *pro se* response to the “no merit” letter, which was docketed on September 24, 2025. Appellant averred that Attorney Weaver failed to “evaluate [Appellant’s] claim that Attorney Eric Closs was ineffective for failing to a file a requested direct appeal.” *Pro se Response*, 9/24/25, at

² ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988).

¶ 3. Appellant repeated his claim that he told Attorney Closs he wanted an appeal. **Id.** ¶ 4. Moreover, Appellant claimed that he identified two “primary issues” that he wished to pursue on appeal, which Attorney Weaver’s letter “did not address.” **Id.** ¶ 5.³ Appellant also alleged that he had “sent [Attorney Weaver] a letter informing him that [Appellant] possesses a letter from Mr. Closs indicating that Mr. Closs knew that [Appellant] desired to take a direct appeal but did not file it.” **Id.** ¶ 6. Appellant asked that Attorney Weaver “not be dismissed from the case unless and until he complies with **Turner/Finley**.” **Id.** ¶ 20.

The PCRA court dismissed Appellant’s petition on October 8, 2025. Regarding Appellant’s *pro se* response, the order stated that Appellant “assert[ed] that Attorney Weaver’s **Turner/Finley** No Merit letter [failed] to list, review and evaluate his claims.” Order, 10/8/25, at ¶ 9. The PCRA court, “[a]fter thoroughly reviewing both Attorney Weaver’s **Turner/Finley** No Merit letter and [Appellant’s] Response,” concluded that “Attorney Weaver addressed all the issues raised by [Appellant] in his PCRA [p]etition.” **Id.** at ¶ 10.

Appellant filed a timely notice of appeal on October 27, 2025. On November 10, 2025, the PCRA court ordered Appellant to file a Rule 1925(b) statement within twenty-one days, but the order was mistakenly served on

³ Those issues were not raised in the *pro se* PCRA petition. Motions for extension of time filed by Attorney Weaver indicated that Appellant and Attorney Weaver discussed various issues throughout his appointment.

the Monroe County Public Defender's Office and not Appellant. The PCRA court then issued a Rule 1925(a) statement on November 25, 2025, stating that the October 8, 2025 order "sets forth the reasons for our decision and addresses the issues [Appellant] raises on appeal." Statement, 11/25/25, at 1.

Appellant raises the following issues for our review:

1. Did the PCRA Court err in granting Attorney Adam Weaver's Motion to Withdraw as Counsel where his motion did not comport with the dictates of ***Commonwealth v. Turner***, 544 A2d 927 (Pa. 1988) and ***Commonwealth v. Finley***, 550 A2d 213 (Pa. Super. 1988) and where he failed to evaluate the case with the required level of zealousness prior to seeking withdrawal?
2. Did the PCRA Court err in dismissing Appellant's PCRA without affording Appellant a sufficient opportunity to contest the pending dismissal in accordance with Pennsylvania Rules of Criminal Procedure Rule 907?
3. Did the PCRA Court err in dismissing without a hearing Appellant's claim that his trial counsel was ineffective for failing to file a requested direct appeal?
4. Did the PCRA Court err in dismissing without an evidentiary hearing Appellant's claim that trial counsel failed to present a clear, coherent, and complete defense?
5. Was PCRA Counsel ineffective for failing to raise the claim that trial counsel was ineffective for offering flawed legal advice that led to Appellant turning down a plea offer that he otherwise would have accepted?
6. Was PCRA Counsel ineffective for failing to raise the claim that trial counsel was ineffective for failing to object to the Commonwealth's copious use of the word "victim" to describe the complaining witness?

Appellant's Brief at 7 (verbatim).

“We review the denial of a PCRA petition to determine whether the record supports the PCRA court’s findings and whether its order is free of legal error.” ***Commonwealth v. Kelsey***, 206 A.3d 1135, 1139 (Pa. Super. 2019) (citations omitted). We review pure questions of law *de novo*. ***Commonwealth v. Dozier***, 208 A.3d 1101, 1103 (Pa. Super. 2019).

Initially, we address procedural irregularities and the preservation of the claims concerning PCRA counsel’s ineffectiveness presented in Appellant’s first issue. Here, Appellant sent his *pro se* response to Attorney Weaver’s “no merit” letter before the PCRA court issued the notice of intent to dismiss. Upon receipt of that notice, in which the PCRA court prematurely granted Attorney Weaver permission to withdraw, Appellant filed a motion for extension of time to respond, noting that he had already mailed his *pro se* response to the “no merit” letter. Motion for Extension, 9/29/25, at 1. The PCRA court’s order dismissing the petition addressed the premature *pro se* response and therefore denied the motion for extension as moot. ***See*** Order, 10/8/25, at ¶ 15. Furthermore, the PCRA court failed to serve Appellant with the concise statement order and filed a Rule 1925(a) statement before the expiration of the twenty-one days afforded Appellant in said order.

We conclude that Appellant preserved his claims of PCRA counsel ineffectiveness regarding the “no merit” letter and withdrawal process. We addressed a similar issue in ***Commonwealth v. Hunter***, 1411 WDA 2023, 2024 WL 4182693 (Pa. Super. filed September 13, 2024) (unpublished

memorandum).⁴ In that case, appointed PCRA counsel filed a “no merit” letter and, before the PCRA court could act, Hunter “lodged a *pro se* response, essentially maintaining that [PCRA counsel] was ineffective because she did not agree with his legal arguments.” ***Id.*** at *3. The PCRA court issued a notice of intent to dismiss, and granted Hunter twenty days to reply. Hunter failed to do so. We concluded that the premature *pro se* response preserved Hunter’s claims of ineffectiveness. Specifically, the Court explained:

We conclude that [Hunter] preserved claims challenging PCRA counsel’s ineffectiveness, as he raised those issues in his response to the no-merit letter. While the PCRA court had yet to [issue] the Rule 907 notice at that point, and therefore could have rejected the petition to withdraw based on its independent review, we find that [Hunter] should not be penalized for raising these issues after his attorney sought to withdraw but before the PCRA court issued the notice of intent to dismiss.

Id. at *4 n.3. We find this analysis persuasive and apply it here.

Having concluded that Appellant preserved issues of PCRA counsel ineffectiveness, we begin with the first issue, which concerns the adequacy of Attorney Weaver’s “no merit” letter. In ***Kelsey***, we concluded that “PCRA counsel’s no-merit letter was seriously deficient” because it “discussed only a subset of the issues that [Kelsey] stated in his PCRA petition.” ***Kelsey***, 206 A.3d at 1140. The fact that “the PCRA court conducted an independent review of the claims that it believed were asserted in the PCRA petition and that its review went beyond PCRA counsel’s inadequate no-merit letter” was of no

⁴ We may cite non-precedential decisions issued after May 1, 2019 for their persuasive value. Pa.R.A.P. 126(b)(1).

moment, as the “error here . . . is the denial of the assistance of counsel, not the sufficiency of the PCRA court’s opinion or whether [Kelsey’s] claims in his PCRA petition are meritorious.” ***Id.*** at 1140. We therefore vacated the order, remanded for appointment of new PCRA counsel, and ordered new counsel to either “file an amended PCRA petition or, if counsel concludes . . . that the issues raised in the PCRA proceeding are without merit, counsel may file an adequate no-merit letter that addresses all of the issues raised in [the] PCRA petition and move to withdraw.” ***Id.***

We find that Appellant was denied the assistance of counsel, at minimum, with respect to the examination of Appellant’s direct appeal claim. Attorney Weaver’s “no merit” letter addressed the direct appeal claim as follows:

In the [Appellant’s] *pro se* PCRA, [he] raises the sole claim of ineffective assistance of counsel, and asserts the following basis for PCRA review in Paragraph 6:

(a) Issue (1) requested an immediate appeal of his Sentence based upon inconsistent jury verdict being found not guilty of attempted murder but found guilty of aggravated assault, and Defense Counsel Eric Closs declined to file an Appeal on that basis;

Turner/Finley Letter, 9/9/25, at 2. Attorney Weaver concluded that counsel’s alleged failure “to file a direct appeal to challenge the inconsistent jury verdict that he was not guilty of attempted homicide but guilty of aggravated assault lacks merit.” ***Id.*** at 2. Attorney Weaver explained that “inconsistent verdicts are allowed to stand so long as the evidence is sufficient

to support the conviction.” **Id.** at 3. Here, “there was evidence presented at trial that Mr. Biros was stabbed by [Appellant].” **Id.** Thus, counsel deemed the inconsistent verdict issue meritless.

Appellant’s *pro se* objection to the “no merit” letter averred that Attorney Weaver failed to “evaluate [Appellant’s] claim that Attorney Eric Closs was ineffective for failing to a file a requested direct appeal.” *Pro se* response, 9/24/25, at ¶ 3. Moreover, Appellant set forth two “primary issues” that he wished to pursue on appeal, which Attorney Weaver “did not address.” **Id.** ¶ 5. Furthermore, Appellant alleged that he had “sent [Attorney Weaver] a letter informing him that [Appellant] possesses a letter from Mr. Closs indicating that Mr. Closs knew that [Appellant] desired to take a direct appeal but did not file it.” **Id.** ¶ 6.

Because the PCRA court permitted counsel to withdraw, we cannot say whether Attorney Weaver would have filed a response or supplemental “no merit” letter. However, in the interest of judicial economy, and since the PCRA court concluded that these allegations did not warrant an evidentiary hearing, we briefly address the substantive aspects of Appellant’s direct appeal claim as we conclude new counsel must, at minimum, file an amended petition with respect to this claim.

In ***Roe v. Flores-Ortega***, the High Court stated that “a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel’s failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the

failure to file reflects inattention to the defendant's wishes." **Roe v. Flores-Ortega**, 528 U.S. at 477. Our Supreme Court of Pennsylvania recognized prior to **Flores-Ortega** that the "failure to perfect a requested appeal is the functional equivalent of having no representation at all" and "results in a denial so fundamental as to constitute prejudice *per se*." **Commonwealth v. Lantzy**, 736 A.2d 564, 571 (Pa. 1999). Accordingly, a petitioner who proves that counsel failed to file a requested notice of appeal "is not required to . . . demonstrate the merits of the issue or issues which would have been raised on appeal." **Id.** at 572.

Attorney Weaver's "no merit" letter did not cite or discuss **Flores-Ortega**. Instead, Attorney Weaver addressed one discrete legal issue, which presumably came up during his communications with Appellant. However, because Appellant alleged that he requested Attorney Closs to file a direct appeal, examining the merits of any claim that would be pursued on appeal is improper. **Lantzy, supra**. If Appellant's factual averments are true, then Attorney Closs was *per se* ineffective for failing to file the notice of appeal.

We therefore agree with Appellant that Attorney Weaver "failed to investigate, raise, and address all of the issues Appellant had asked him to raise." Appellant's Brief at 25. Furthermore, we observe that nothing in the "no merit" letter indicates that Attorney Weaver ever spoke to Attorney Closs to determine whether or not Appellant asked him to file a direct appeal. Simultaneously, even if Attorney Closs denied the allegation, credibility disputes must be settled by the PCRA court at an evidentiary hearing. In

short, Appellant's allegation that he told Attorney Closs to file a direct appeal by itself requires an amended petition and evidentiary hearing.⁵

Second, while Appellant insisted he asked Attorney Closs to file a notice of appeal, his *pro se* responses also cited the "duty to consult" theory of ineffective assistance. In ***Flores-Ortega*** the high Court addressed a scenario "where the defendant neither instructs counsel to file an appeal nor asks that an appeal not be taken" and established the parameters of the "duty to consult." Thus, Appellant could still prevail if counsel ineffectively failed to consult Appellant. ***See generally Commonwealth v. Green***, 168 A.3d 173, 179 (Pa. Super. 2017) (discussing application of the ineffective assistance of counsel test concerning the duty to consult). Attorney Weaver's letter, which was limited to one appellate issue identified by the *pro se* appellant, failed to address Appellant's invocation of this distinct theory.

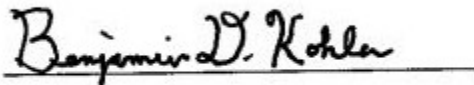
We stress that our conclusions address only whether Appellant was denied his right to counsel with respect to the ***Turner/Finley*** withdrawal process. Accordingly, we do not, and cannot, say that Appellant is entitled to reinstatement of his appellate rights as a matter of law. Furthermore, because we direct counsel to file an amended petition that would result in restoration of Appellant's direct appeal rights, any further analysis of collateral claims

⁵ The certified record includes a letter, docketed May 10, 2022, sent by Appellant to the clerk of courts. Within, Appellant states he spoke to Attorney Closs and the "Deputy Chief" (presumably of the Public Defender's Office) and "was told by them that [Appellant] needed to file a motion to appeal in [his] case." *Pro se Correspondence*, 5/16/22, at 1. Appellant also wrote that "Mr. Closs tells/told me it's best not to file . . . an appeal." ***Id.*** at 2.

addressed in the “no merit” letter would be inappropriate at this juncture since restoration of Appellant’s direct appeal will reset the finality clock. ***Commonwealth v. Cruz***, 355 A.3d 1, 5 (Pa. Super. 2026) (explaining that “restoration of a defendant’s direct appeal rights ‘resets’ the one-year time limit for filing a PCRA petition”). New counsel should, of course, consider whether to include those or any other collateral claims in an amended petition if the Commonwealth contests Appellant’s entitlement to restoration of his appellate rights.⁶ ***See Kelsey, supra.***

Order vacated. Case remanded for further proceedings consistent with this decision. Jurisdiction relinquished.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/29/2026

⁶ We recognize that there may be a potential credibility dispute regarding Appellant’s assertions that he requested counsel to file a direct appeal, which cannot be resolved by this Court due to the “PCRA court’s exclusive prerogative to make credibility determinations.” ***Commonwealth v. Mitchell***, 141 A.3d 1277, 1282 (Pa. 2016).