

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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|------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
|                              | : | PENNSYLVANIA             |
|                              | : |                          |
| v.                           | : |                          |
|                              | : |                          |
|                              | : |                          |
| DARYL DURAND SWEATMAN        | : |                          |
|                              | : |                          |
| Appellant                    | : | No. 534 MDA 2026         |

Appeal from the PCRA Order Entered February 25, 2026  
In the Court of Common Pleas of York County Criminal Division at No(s):  
CP-67-CR-0004727-2022

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY DUBOW, J.:

**FILED OCTOBER 15, 2026**

Appellant Daryl Durand Sweatman appeals from the February 25, 2026 order entered by the York County Court of Common Pleas denying his Post-Conviction Relief Act<sup>1</sup> (PCRA) petition challenging the constitutionality of the search and seizure of his vehicle under ***Commonwealth v. Barr***, 266 A.3d 25 (Pa. 2021), and a related claim of ineffectiveness of trial counsel. Appellant's PCRA counsel, Brandy G. Hoke, Esq., filed a petition to withdraw as counsel and an accompanying ***Turner/Finley***<sup>2</sup> letter brief, to which Appellant has not responded. After careful consideration, we grant counsel's application to withdraw and affirm the PCRA court's order.

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<sup>1</sup> 42 Pa.C.S. §§ 9541-46.

<sup>2</sup> ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

We glean the relevant factual and procedural history from the certified record. On August 31, 2022, Officer Kathleen Nice and Officer Adam Nothstein initiated a traffic stop after observing a vehicle pass with heavily tinted windows and an expired registration. Officer Adam Nothstein approached the vehicle and conversed with Appellant, who was the only occupant. While doing so, the officer smelled the odor of fresh marijuana coming from the vehicle. Upon inquiry, Appellant posited that the smell was coming from his clothes, as he admitted to smoking marijuana before driving. Appellant denied possessing a medical marijuana card.

The officers asked Appellant to step out of the vehicle. Officer Nothstein noted that he no longer smelled marijuana on Appellant, and, thus, he believed marijuana was located inside the vehicle. When the officer requested Appellant's consent to search the vehicle, Appellant refused and walked away from the scene after the officers informed him of their intent to apply for a search warrant. After obtaining the search warrant, police discovered in the center console a purple Ruger semi-automatic pistol and marijuana and charged Appellant with related crimes.

On January 27, 2023, Appellant's trial counsel, William Graff, Esq., filed a pre-trial motion to suppress, which the court denied after a hearing in a May 15, 2023 order without analysis.<sup>3</sup>

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<sup>3</sup> The certified record does not include a transcript of the pre-trial hearing.

On May 2, 2024, the jury convicted Appellant of Firearms not to be Carried Without a License, and the court convicted him of Marijuana Small Amount for Personal Use, Obstructed Window, and Driving an Unregistered Vehicle.<sup>4</sup>

On July 19, 2024, the court sentenced Appellant to 3½ to 7 years of incarceration for his conviction of Firearms not to be Carried Without a License, in addition to imposing fines for the Obstructed Window and Driving an Unregistered Vehicle convictions, as well as court costs at all counts.

On July 31, 2024, less than two weeks after sentencing, Appellant filed *pro se* a PCRA petition. Notably, the record contains no indication that trial counsel had withdrawn his representation.<sup>5</sup> Thus, the *pro se* PCRA petition was a legal nullity for two reasons. First, Appellant filed it while represented by counsel. ***See Commonwealth v. Williams***, 151 A.3d 621, 623 (Pa. Super. 2016) (recognizing that documents filed *pro se* by represented defendants are legal nullities).<sup>6</sup> Second, Appellant filed it prematurely, prior

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<sup>4</sup> 18 Pa.C.S. § 6106(a)(1); 25 P.S. § 780-113(a)(31)(i); 75 Pa.C.S. §§ 4524(b), 1301(a), respectively. The jury found him not guilty of Persons Not to Possess a Firearm.

<sup>5</sup> Indeed, the docket indicates that Attorney Graff received “eService” of the *pro se* petition on August 6, 2024. Appellant later averred that trial counsel did not seek to withdraw “at any time.” PCRA Petition, filed 5/4/25, at ¶5.

<sup>6</sup> Long-standing policy in Pennsylvania “precludes hybrid representation.” ***Commonwealth v. Jette***, 23 A.3d 1032, 1036 (Pa. 2011). “When a counseled defendant files a *pro se* document, it is noted on the docket and (Footnote Continued Next Page)

to his sentence becoming final.<sup>7</sup> **Commonwealth v. Ramsey**, \_\_\_ A.3d \_\_\_, 2026 WL 2209742, at \*3 (Pa. Super. filed July 31, 2026) (*en banc*) (recognizing that “[a] premature filing is a legal nullity, and a PCRA court lacks authority to consider the filing”). In **Ramsey**, we reiterated that a premature PCRA “must be dismissed.” **Id.**

Rather than dismissing the petition, the court appointed Attorney Hoke as counsel on August 9, 2024, and instructed counsel to file an amended PCRA petition or a “**Finley** letter” within 45 days. Order, 8/9/24. The certified record does not contain an order removing Attorney Graff as counsel.

On September 23, 2024, after the expiration of the period for filing a direct appeal, Attorney Hoke filed a “Motion to Deem PCRA Petition Not Ripe and Reinstate Post-Sentence/Appeal Rights.”<sup>8</sup> The motion seeks reinstatement of his appellate rights as trial counsel filed neither post-sentence motions nor a direct appeal. In the alternative, the motion requested that the court reappoint Attorney Hoke as PCRA counsel. Given that the initial *pro se* PCRA petition was a legal nullity, we deem this motion to be a first

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forwarded to counsel pursuant to Pa.R.Crim.P. 576(A)(4), but no further action is to be taken.” **Williams**, 151 A.3d at 623.

<sup>7</sup> For purposes of the PCRA, a judgment of sentence “becomes final at the conclusion of direct review . . . or at the expiration of time for seeking the review.” 42 Pa.C.S. § 9545(b)(3). Appellant had until August 19, 2024, the Monday after the expiration of thirty days from sentencing, to file his direct appeal. **See** Pa.R.Crim.P. 720(A)(3).

<sup>8</sup> While dated June 28, 2024, we rely on the docket and timestamp indicating filing of the motion on September 23, 2024.

PCRA, seeking reinstatement of post-sentence and appellate rights *nunc pro tunc*.

On September 25, 2024, the court granted Appellant's request to find his *pro se* PCRA petition unripe and dismissed it as premature. The court, however, denied reinstatement of Appellant's post-sentence and appellate rights, without analysis. Notably, Appellant did not appeal this order denying reinstatement of his direct appeal rights.

On May 4, 2025, Attorney Hoke filed an "amended" PCRA petition. We deem this filing a second PCRA petition as there was no viable petition to amend at the time of filing ("2025 PCRA Petition"). The 2025 PCRA Petition was timely as Appellant filed it within one year of the date his sentence became final as required by 42 Pa.C.S. § 9545(b)(1).

In his 2025 PCRA Petition, Appellant first asserted that he "is eligible for relief based on ineffective assistance of counsel for Attorney Leslie's [sic] failure to timely file an appeal to the order denying his post sentence motion and abandoned [Appellant] at a critical stage of proceedings." 2025 PCRA Petition at ¶ 8.<sup>9</sup> Appellant also asserted that his trial counsel was ineffective for failing to challenge the search and seizure under ***Commonwealth v. Barr***, 266 A.3d 25 (Pa. 2021), which held that probable cause for a warrantless search cannot be based solely on the odor of marijuana smoke, and Appellant

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<sup>9</sup> In addition to using the incorrect name of trial counsel, the motion misstates that Appellant filed a post-sentence motion, among other errors.

raised the related claim that the search and seizure was unconstitutional under **Barr**.

On January 5, 2026, the court issued its Pa.R.Crim.P. 907 notice of intent to dismiss Appellant's PCRA without a hearing. The court opined that Appellant's issues were meritless as it found **Barr** distinguishable based upon Appellant's lack of a medical marijuana card. On February 25, 2026, the PCRA court denied Appellant's petition.

On March 27, 2026, Appellant filed a notice of appeal. Appellant and the PCRA court complied with Pa.R.A.P. 1925, with the court relying upon its Rule 907 opinion.

Appellant raises the following questions on appeal:

1. Whether the [t]rial [c]ourt erred and/or abused its discretion in denying [Appellant's 2025 PCRA Petition], specifically denying [Appellant's] claim that [t]rial [c]ounsel was ineffective for failing to argue that the search of the vehicle was unconstitutional pursuant to **Commonwealth v. Barr**?
2. Whether the [t]rial [c]ourt erred and/or abused its discretion in denying [Appellant's 2025 PCRA Petition], specifically denying [Appellant's] claim that his constitutional rights against illegal search and seizure [were] violated pursuant to **Commonwealth v. Barr**?

**Turner/Finley** Br.at 7.

In addressing cases involving a **Turner/Finley** brief, we first determine whether counsel satisfied the procedural requirements. **Commonwealth v. Knecht**, 219 A.3d 689, 691 (Pa. 2019). To comply with **Turner/Finley**, counsel must submit a brief (1) detailing the nature and extent of her review; (2) listing each issue the petitioner wishes to have raised on review; and (3)

explaining why the petitioner's issues are meritless. **Id.** Counsel must also provide the petitioner: "(1) a copy of the 'no merit'[ ] 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." **Commonwealth v. Wrecks**, 931 A.2d 717, 721 (Pa. Super. 2007). If counsel satisfies these requirements, we then engage in a merits review of the case. **Id.**

Attorney Hoke's **Turner/Finley** brief satisfies the requirements as it details her review of the case and the relevant law and explains why she believes the issues are meritless. Counsel additionally informed Appellant that she had filed a petition to withdraw as counsel and that he had the right to file a response either *pro se* or by hiring new counsel. Counsel also included a certificate of service with her petition to withdraw, indicating service on Appellant.

Accordingly, we turn to the merits of Appellant's issues. We review the denial of a PCRA petition to determine whether the record supports the PCRA court's findings and whether its order is otherwise free of legal error. **See Commonwealth v. Fears**, 86 A.3d 795, 803 (Pa. 2014). This Court grants great deference to the findings of the PCRA court if they are supported by the record. **Commonwealth v. Boyd**, 923 A.2d 513, 515 (Pa. Super. 2007). In contrast, "[w]e review the court's legal conclusions *de novo*." **Commonwealth v. Sanders**, 357 A.3d 480, 486 (Pa. Super. 2026) (citation omitted).

To obtain relief pursuant to the PCRA based upon a claim of ineffective assistance of counsel, a petitioner “must show, by a preponderance of the evidence” that the ineffectiveness of counsel “so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” **Commonwealth v. Nealy**, 333 A.3d 393, 399, *appeal denied*, 345 A.3d 1196 (Pa. 2025) (citation omitted). Specifically, the petition must prove each of the following three prongs: “(1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.” **Id.** (citation omitted).

Appellant claims that the search of the vehicle was unconstitutional under the Supreme Court’s decision in **Barr** and that his trial counsel was ineffective for not asserting that claim. **Turner/Finley** Br. at 7-11.

In **Barr**, the Supreme Court recognized that the 2016 enactment of the Medical Marijuana Act (“MMA”) undermined the previously accepted “plain smell” doctrine because marijuana was no longer “*per se* illegal in this Commonwealth” but instead could be legally possessed and consumed by those with a medical marijuana identification card. **Barr**, 266 A.3d at 41. As patients under the MMA could “legally possess and consume” marijuana, the Court held “that the odor of marijuana alone does not amount to probable cause to conduct a warrantless search of a vehicle but, rather, may be considered as a factor in examining the totality of the circumstances.” **Id.** at

44. Applying the holding to the facts in **Barr**, the Court affirmed the trial court's suppression of the items found, concluding that "lawful possession of an item pursuant to legislative authorization is alone insufficient to satisfy the . . . requirement of probable cause of criminal activity required to conduct a warrantless search of a vehicle." **Id.** at 43.

We agree with the PCRA court and counsel that the search in the instant case does not conflict with **Barr**. The PCRA court found **Barr** distinguishable because probable cause in the instant case did not result solely from the smell of fresh marijuana emanating from the vehicle. **See** Rule 907 Notice, 1/5/26, at 2 (unpaginated). Rather, unlike **Barr**, Appellant informed the police that he did not have a medical marijuana card, such that his possession of marijuana was illegal. **See id.** Moreover, unlike in **Barr**, the officers in the instant case secured a search warrant prior to searching the vehicle. Thus, we agree that **Barr** is distinguishable and that there is no arguable merit to Appellant's claim of counsel ineffectiveness based upon his failure to raise **Barr**. Accordingly, we affirm the order dismissing Appellant's PCRA petition and grant Attorney Hoke's petition to withdraw.

Order affirmed. Petition to withdraw as counsel granted.

Judgment Entered.

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

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 10/15/2026