NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. RAHSAUN BUSH	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 111 MDA 2026

Appeal from the PCRA Order Entered December 12, 2025
In the Court of Common Pleas of York County Criminal Division at No(s): CP-67-CR-0003273-2021

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

MEMORANDUM BY SULLIVAN, J.: **FILED: NOVEMBER 16, 2026**

The Commonwealth appeals from an order under the Post Conviction Relief Act ("PCRA")[1] reinstating *nunc pro tunc* the direct appeal rights of Rahsaun Bush ("Bush"). Because the PCRA court erred by permitting PCRA counsel to litigate his own ineffectiveness, we vacate the order granting relief and remand for the PCRA court to permit Bush to obtain new counsel, or to appoint new PCRA counsel, after which he may file a new, counseled PCRA petition.

The underlying facts of this case are not germane to our disposition. We note that, following a jury trial, the jury convicted Bush of, *inter alia*, third-degree murder, and the trial court sentenced him to, *inter alia*, a mandatory life sentence of imprisonment without the possibility of parole. ***See*** Sentence,

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[1] ***See*** 42 Pa.C.S.A. §§ 9541–9546.

11/16/23, at 18. Bush filed a post-sentence motion, which the trial court denied. Bush timely appealed. ***See*** Notice of Appeal, 4/25/24. Bush filed a counseled Pa.R.A.P. 1925(b) statement of errors complained of on appeal, but his attorney failed to file an appellate brief, resulting in the dismissal of Bush's appeal. ***See*** Order, No. 601 MDA 2024, 12/11/24.

The same attorney whose inaction resulted in the dismissal of his appeal, then filed a PCRA petition seeking reinstatement of Bush's direct appeal rights *nunc pro tunc*. ***See*** PCRA Petion, 12/11/25. The PCRA court granted the petition the next day without an evidentiary hearing. The Commonwealth moved for reconsideration, arguing that the court was required to appoint new counsel to "objectively litigate [Bush's] claims and to ensure the proceedings adhere to the ethical and procedural mandates established by the Pennsylvania Supreme Court," rather than permit PCRA counsel to assert his own ineffectiveness. ***See*** Commonwealth's Motion for Reconsideration, 12/16/25, at ¶ 17.[2] The PCRA court denied the motion. The

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[2] As the PCRA court held no evidentiary hearing, the reason counsel failed to file an appellate brief is not apparent from the record. If counsel failed to file a brief without an "effective waiver" by Bush, counsel was ineffective. ***See Commonwealth v. Mosteller***, 633 A.2d 615, 618 (Pa. Super. 1993). However, where counsel has perfected an appeal, but then discontinues the appeal ***at the defendant's request***, counsel is not ineffective. ***See Commonwealth v. Collins***, 441 A.2d 1283, 1284 (Pa. Super. 1982). Since the Commonwealth has not conceded Bush is due relief, the PCRA court must determine the reasons for counsel's inaction to assess whether counsel was ineffective. ***See Commonwealth v. Bucci***, 384 A.2d 591, 592 (Pa. 1978). ***Cf***. ***Commonwealth v. Green***, 709 A.2d 382, 384 (Pa. Super. 1998)
(Footnote Continued Next Page)

Commonwealth timely appealed, and both the Commonwealth and PCRA court complied with Pa.R.A.P. 1925(b).

On appeal, the Commonwealth asserts the same error it raised below. ***See*** Commonwealth's Brief at 4.[3] The PCRA court concluded the Commonwealth's assertion of error was meritless because PCRA counsel's ineffectiveness on direct review was manifest. ***See*** PCRA Court Opinion, 3/20/26.[4]

Following our review, we conclude the PCRA court erred. It is well established that PCRA counsel cannot assert his own ineffectiveness. ***See Commonwealth v. Bradley***, 261 A.3d 381, 398 (Pa. 2021) (stating that counsel cannot argue his own ineffectiveness); ***Commonwealth v. Snyder***, 250 A.3d 1253, 1256 n.1 (Pa. Super. 2021) (stating "[w]e expressly disapprove the appointment of an attorney who previously represented a petitioner when the petitioner alleges ineffectiveness of that attorney in his PCRA petition"); ***Commonwealth v. Laird***, 331 A.3d 579, 590 n.20 (Pa. 2025) ("Counsel is not permitted to raise their own ineffectiveness because it creates a conflict of interest"). Rather, the PCRA court must appoint new

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(permitting counsel to assert his own ineffectiveness where it was clear from the record counsel was ineffective).

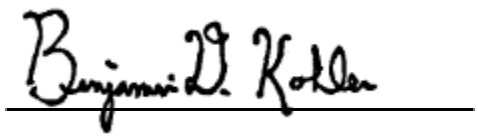
[3] We note with disapproval that Bush's attorney, whose conduct is the subject of Bush's ineffective assistance claim, failed to file an appellate brief in this matter.

[4] Our review is limited to whether the PCRA court's findings are supported by the record and its conclusion of law free of legal error. ***See Commonwealth v. Staton***, 184 A.3d 949, 954 (Pa. 2018).

counsel to litigate this claim, where the Commonwealth has not conceded relief, and fact-finding is required to determine whether counsel's inaction was unjustified or at Bush's direction. ***See Mosteller***, 633 A.2d at 618; ***Bucci***, 384 A.2d at 592; ***Collins***, 441 A.2d at 1284. Accordingly, we vacate the order granting relief and remand for the PCRA court to permit Bush to obtain another attorney or for the court to appoint new counsel to represent Bush in connection with these PCRA proceedings.

Order vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/16/2026