

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
TERRENCE VERNELL BROWN	:	
	:	
Appellant	:	No. 144 EDA 2025

Appeal from the PCRA Order Entered November 4, 2024
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0001238-2011

BEFORE: STABILE, J., NICHOLS, J., and SULLIVAN, J.

MEMORANDUM BY SULLIVAN, J.:

FILED OCTOBER 27, 2026

Terrence Vernell Brown ("Brown") appeals from the order dismissing, after an evidentiary hearing, his sixth petition filed pursuant to the Post Conviction Relief Act ("PCRA"),¹ and seeking the reinstatement of his appellate rights from the dismissal of his fifth PCRA petition. This appeal returns to this panel after we directed Brown's appointed counsel, Douglas Smith, Esquire ("Attorney Smith"), to file either a compliant **Turner/Finley** brief and a petition to withdraw or an advocate's brief.² Attorney Smith has since met procedural requirements to withdraw from representation; however, Brown has also subsequently retained new counsel, Geoffrey Seay, Esquire ("Attorney Seay"), who initially indicated he would file an advocate's brief, but

¹ **See** 42 Pa.C.S.A. §§ 9541-9546.

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

then filed his own petition to withdraw and a **Turner/Finley** letter. After close review of the record in this procedurally confusing sixth PCRA, we grant Attorney Smith's and Attorney Seay's petitions to withdraw and affirm the order denying relief.³

The parties and the PCRA court are familiar with the facts and unusual procedures giving rise to this appeal. **See** PCRA Court Opinion, 3/19/25, at 2-24. We summarize the following facts and procedures from a review of the record. In 2012, the trial court sentenced Brown to a term of ten to twenty years of imprisonment, followed by five years of probation, ("the 2012 sentence"), after Brown entered negotiated guilty pleas to robbery, conspiracy, and possession of an instrument of crime. Brown committed these offenses while on parole in a separate matter. Brown previously took a direct appeal and later filed three PCRA petitions asserting, without success, that his pleas should be vacated, or the 2012 sentence modified, because he was unaware he had to serve the backtime for his parole violation before the 2012 sentence would begin to run. **See generally** 61 Pa.C.S.A. § 6138(a)(5)(i).⁴

³ This Court did not previously grant Attorney Smith's new petition to withdraw when Attorney Seay moved to enter his appearance.

⁴ **See Commonwealth v. Brown**, 93 A.3d 498, 2013 WL 11248746, at *2 (Pa. Super. 2013) (unpublished memorandum) (affirming the judgment of sentence); **Commonwealth v. Brown**, 141 A.3d 596, 2016 WL 634826, at *1-2 & n.4 (Pa. Super. 2016) (unpublished memorandum) (affirming the dismissal of Brown's first PCRA petition); **Commonwealth v. Brown**, 277 A.3d 1159, 2022 WL 1183801, at *4 (Pa. Super. 2022) (non-precedential memorandum decision) (affirming the dismissal of Brown's third PCRA petition) (*Footnote Continued Next Page*)

Brown also filed an action in the Commonwealth Court challenging the Department of Correction's calculation of the effective date of the 2012 sentence, and the Commonwealth Court dismissed that action in January 2023. **See** Brown's Fifth PCRA Petition, 4/11/23, Exhibit A (Order, **Brown v. Commonwealth**, 85 M.D. 2021, 1/9/23).

Brown filed his fifth PCRA petition on the heels of the Commonwealth Court's January 2023 decision and alleged, in relevant part, the Commonwealth Court's January 2023 decision constituted a newly discovered fact. **See id.** at 2.⁵ The PCRA court dismissed Brown's fifth PCRA petition,

as untimely). Additionally, Brown filed a motion to enforce a plea agreement, which the PCRA court treated as a fourth PCRA petition and dismissed. Brown did not appeal that order.

⁵ **See** 42 Pa.C.S.A. § 9545(b)(1)(ii). **But see Commonwealth v. Watts**, 23 A.3d 980, 986 (Pa. 2011) (noting that "judicial determinations are not facts" for the purpose of the newly discovered facts exception to the PCRA time bar); **Commonwealth v. Marshall**, 947 A.2d 714, 720 (Pa. 2008) (noting that the focus of the newly discovered facts exception is on "newly discovered facts, not on a newly discovered or newly willing source for previously known facts") (internal citation and quotation marks omitted).

Brown also claimed that neither his plea counsel nor the trial court mentioned 61 Pa.C.S.A. § 6138 during his plea or before the imposition of the 2012 sentence. **See** Brown's Fifth Petition, 4/11/23, at 5. Aside from improperly claiming the Commonwealth Court's January 2023 ruling was a new fact and citing 61 Pa.C.S.A. § 6138, Brown's fifth petition stated essentially the same claim raised in his third petition, the dismissal of which this Court affirmed. **See Brown**, 2022 WL 1183801, at *3 (concluding that the record showed "Brown was fully aware when he entered his guilty plea that he was also in violation of his parole in his earlier case, and that he could receive periods of incarceration for both the current offense and his previous unrelated conviction[,]" and further noting that the record did not support Brown's claim of "an agreed-upon start date of January 3, 2011, for his [2012] sentence").

and Brown timely appealed *pro se*. This Court docketed Brown's appeal at 2378 EDA 2023 (the "2378 EDA 2023 appeal"). On December 21, 2023, this Court dismissed the 2378 EDA 2023 appeal due to Brown's failure to file a docketing statement. **See generally** Pa.R.A.P. 3517. Brown, however, averred he was unaware of the dismissal of the 2378 EDA 2023, and he thereafter received a briefing schedule order dated January 9, 2024. **See** Brown's Request for the Reinstatement of PCRA Appellate Rights *Nunc Pro Tunc*, 3/18/24, at 1-2 & Attachments. When he filed a brief by the February 20, 2024 deadline set in that order, this Court sent him a letter advising him that his brief could not be filed because this Court had already dismissed the appeal and remitted the record to the PCRA court. **See id.** That letter, dated February 20, 2024, stated, "You may wish to contact the court of common pleas." **See id.** at Attachment B (Letter from this Court to Brown, dated 2/20/24, at 1).

In March 2024, Brown filed his sixth PCRA petition, *pro se*, which gives rise to this appeal. Brown asserted he was entitled to a *nunc pro tunc* appeal from the dismissal of his fifth PCRA petition because he had retained private counsel, William Davis, Esquire ("Attorney Davis"), and "was under the impression that [Attorney Davis] would file the docket statement" in the 2378 EDA 2023 appeal. **Id.** at 1-2. Brown alleged a breakdown in this Court during the 2378 EDA 2023 appeal, *i.e.*, receiving the briefing schedule order, which led him to believe Attorney Davis had filed a docketing statement. **See id.** at 2.

Following proceedings not directly relevant to this appeal,⁶ the PCRA court determined there were issues of fact and appointed Katayoun Copeland, Esquire (“Attorney Copeland”) to represent Brown. The court held hearings in October and November 2024 on the question of whether Brown retained Attorney Davis as counsel for the appeal at 2378 EDA 2023. **See** N.T., 10/25/24, at 3.

Brown testified that he retained Attorney Davis in October or November 2023 to address his claims concerning the running of the 2012 sentence after his backtime and to pursue any option that would get him out of prison the fastest. **See id.** at 10-15. Brown asserted he called Attorney Davis several times and told him to file a docketing statement in the 2378 EDA 2023 appeal. **See id.** 13-18. Attorney Copeland questioned Brown regarding the January 9, 2024 briefing schedule order he received from this Court, and Brown testified that he received that briefing schedule order, timely filed a brief, and only later, in February 2024, learned this Court had previously dismissed the 2378 EDA 2023 appeal on December 21, 2023 for the failure to file a docketing statement. **See id.** at 21.

⁶ The court initially appointed PCRA counsel, Dominick Sprigarelli, II, Esquire (“Attorney Sprigarelli”), who, in turn, filed a **Turner/Finley** no-merit letter and a petition to withdraw. In his no-merit letter, Attorney Sprigarelli asserted Brown admitted to him that Attorney Davis did not represent him in the 2378 EDA 2023 appeal. **See** Attorney Sprigarelli’s No-Merit Letter, 7/1/24, at 4-5. The court granted Attorney Sprigarelli’s petition to withdraw and issued a Pa.R.Crim.P. 907 notice of intent to dismiss the sixth petition. However, after Brown filed a *pro se* response denying Attorney Sprigarelli’s assertions, the court appointed new PCRA counsel in this sixth PCRA petition.

Attorney Davis testified that Brown hired him in October 2023 because Brown believed he should have been paroled and there was an issue on his sentencing sheet with respect to credit for time served. **See** N.T., 11/1/24, at 4-5. Attorney Davis noted that his written fee agreement limited the scope of his representation to “correcting sentencing sheets/state parole issues” and “did not contemplate representation in the Court of Common Pleas for trial, appeal or a PCRA petition . . .” **Id.** at 7-8.⁷ Attorney Davis acknowledged that Brown repeatedly called him and brought up “other issues” when they spoke. **Id.** at 8. Attorney Davis maintained that he told Brown he was not representing him on those “things.” **Id.** In short, Attorney Davis insisted that his representation of Brown was limited, that he did not represent Brown in an appeal or a PCRA proceeding, and that he told Brown multiple times that he was not involved in an appeal or a PCRA proceeding. **See id.** at 21-22, 26.

On November 4, 2024, the PCRA court dismissed Brown’s sixth petition, finding, in relevant part, Brown’s “contention he retained Attorney Davis for the purposes of the [2378 EDA 2023] appeal to be lacking.” **See** Order, Seq.

⁷ The PCRA court entered the fee agreement into evidence as an exhibit. Although the record does not contain the exhibits admitted at the hearings, the relevant language of the fee agreement was not in dispute and referred to during the testimony of Brown and Attorney Davis. Therefore, the absence of a copy of the fee agreement, as an exhibit, does not impede meaningful review.

No. 145, 11/4/24, at 2 n.5, 14.⁸ Brown filed a *pro se* motion for reconsideration. **See** Brown's *Pro Se* Request for Reconsideration, 11/25/24, at 4. The court dismissed that motion as an improper hybrid filing because Attorney Copeland remained as Brown's appointed PCRA counsel. **See** Order, 12/3/24, at 1 n.4. Brown timely filed a *pro se* notice of appeal.⁹

Attorney Copeland averred Brown no longer wanted to proceed with her as counsel, and she moved to withdraw after Brown filed his *pro se* notice of appeal. The PCRA court granted Attorney Copeland's motion to withdraw and appointed Attorney Smith to represent Brown in this appeal. The PCRA court issued an order for a Pa.R.A.P. 1925(b) statement, and Attorney Smith filed a Rule 1925(c)(4) statement asserting there were no issues of arguable merit and he intended to file a no-merit brief.

Brown then filed a *pro se* motion for appointment of new counsel. Therein, Brown asserted that Attorney Smith refused to raise and pursue claims of ineffective assistance of prior PCRA counsel, including Attorney Copeland. **See** Brown's *Pro Se* Motion for Appointment of New Counsel, 4/7/25, at 1 & Attachments. The PCRA court held an additional hearing on April 11, 2025, at which Brown did not attempt to present evidence and only

⁸ The PCRA court entered two orders on November 4, 2024. The order at sequence number 145 denied relief on the relevant sixth PCRA petition following the hearings. A separate order at sequence number 146 refers to the dismissal of a separate filing by Brown not at issue in this appeal.

⁹ **See *Commonwealth v. Williams***, 151 A.3d 621, 624 (Pa. Super. 2016) (providing that "this Court is required to docket a *pro se* notice of appeal despite [the a]ppellant being represented by counsel").

baldly asserted Attorney Smith was not familiar with the right to raise, and need to preserve, claims of ineffective assistance of PCRA counsel under ***Commonwealth v. Bradley***, 261 A.3d 381 (Pa. 2021). **See** N.T., 4/11/25, at 8-9. Attorney Smith stated that he considered Brown's additional claims but believed he could not raise them in good faith based on the directives of the order appointing him as Brown's counsel. **See id.** at 10-11. The court denied the motion for appointment of new counsel. **See** Order, 4/14/25, at 1.

As noted above, Attorney Smith initially filed a petition to withdraw and a non-compliant no-merit brief in this Court, and this panel denied his petition to withdraw. Attorney Smith filed a new petition to withdraw and new no-merit brief. Brown then hired private counsel, Attorney Seay, who ultimately filed a petition to withdraw and a no-merit letter.¹⁰

It is well settled that this Court must first review whether an appellant's counsel has fulfilled the procedural requirements for withdrawing as counsel before reviewing the merits of the appeal. **See *Commonwealth v. Freeland***, 106 A.3d 768, 774 (Pa. Super. 2014). In light of the unusual procedural history of this appeal, this Court will review both Attorney Smith's

¹⁰ Additionally, the Commonwealth sought an extension of time to file a brief in response to Attorney Seay's no-merit letter, which this Court granted. The Commonwealth has submitted a new brief.

(appointed counsel) and Attorney Seay's (private counsel) respective filings to determine whether their withdrawals are appropriate.¹¹

Pursuant to **Turner/Finley**, an "[i]ndependent review of the record by competent counsel is required before withdrawal [on collateral review] is permitted." **Commonwealth v. Pitts**, 981 A.2d 875, 876 n.1 (Pa. 2009). In **Pitts**, our Supreme Court explained that independent review requires proof of:

1. A "no-merit" letter by [] counsel detailing the nature and extent of his review;
2. The "no merit" letter by [] counsel listing each issue the petitioner wished to have reviewed;
3. [C]ounsel's "explanation", in the "no merit" letter, of why the petitioner's issues were meritless;
4. The [] court conducting its own independent review of the record; and

¹¹ It appears that Brown is entitled to at least some review of counsel's assessment that this appeal lacks merit. However, any right to appellate counsel in this appeal arguably derives from the PCRA court's appointment of Attorney Smith, and we have found no cases holding that the right to counsel, which the **Turner/Finley** procedures protect, extends to **private counsel retained** for a serial PCRA petition and **after** the filing of a no-merit brief in this Court. Nevertheless, once Attorney Seay, Brown's counsel of choice, entered an appearance in this appeal and then essentially provided his second opinion that this appeal lacked merit, it would be anomalous for this Court, for example, to require further proceedings based on Attorney Smith's request to withdraw. For the reasons discussed herein, the questions of whether **Turner/Finley** compels a comprehensive assessment of Attorney Smith's and/or Attorney Seay's requests to withdraw in this appeal, are questions we need not resolve at this juncture because both attorneys minimally complied with the technical requirements to seek withdrawal. We also note Brown has not filed a response to Attorney Seay's petition to withdraw and no-merit letter.

5. The [] court agreeing with counsel that the petition was meritless.

Id. (citation and some brackets omitted).

Additionally:

Counsel must also send to the petitioner: (1) a copy of the “no-merit” letter/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.

If counsel fails to satisfy the foregoing technical prerequisites of **Turner/Finley**, the court will not reach the merits of the underlying claims but, rather, will merely deny counsel’s request to withdraw. Upon doing so, the court will then take appropriate steps, such as directing counsel to file a proper **Turner/Finley** request or an advocate's brief.

However, where counsel submits a petition and no-merit letter that do satisfy the technical demands of **Turner/Finley**, the [court] must then conduct its own review of the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief.

Commonwealth v. Wrecks, 931 A.2d 717, 721 (Pa. Super. 2007) (citations omitted).

In the present case, Attorneys Smith and Seay have filed petitions to withdraw and a respective no-merit brief and no-merit letter asserting they reviewed the record and found no meritorious claims for appellate review. **See** Attorney Smith’s Petition to Withdraw, 3/12/26, at 1; Attorney Seay’s Petition to Withdraw, 6/30/26, at 1. Both attorneys have discussed the issues Brown intended to raise in this appeal in their respective brief and letter and explained why they believe those issues lack merit. **See** Attorney Smith’s No-Merit Brief, 3/12/26, at 5-12; Seay’s No-Merit Letter, 6/30/26, at 1-2. Attorneys Smith and Seay each have included a letter to Brown advising

Brown of his right to proceed *pro se* or with the assistance of new private counsel. **See** Exhibit A to Attorney Smith's Petition to Withdraw, 3/12/26, at 1; Appendix to Attorney Seay's No-Merit Letter, 6/30/26, at 2. Lastly, Attorney Smith averred he attached a copy of his no-merit brief to his letter to Brown, and Attorney Seay's letter to Brown is itself substantially similar to the no-merit letter he submitted to this Court. **See** Exhibit A to Attorney Smith's Petition to Withdraw, 3/12/26, at 1; Appendix to Attorney Seay's No-Merit Letter, 6/30/26, at 1-2. Attorneys Smith and Seay have complied with spirit of the procedural requirements to withdraw under the circumstances of this appeal, and we will independently review the record to determine whether we agree with their assessments that no meritorious issues exist for review.

Attorneys Smith and Seay identify the issues Brown intends to raise in this appeal, which may be summarized as follows:

- (1) Whether the PCRA court erred in denying Brown's sixth PCRA petition.
- (2) Whether Attorney Copeland was ineffective for failing to call witnesses and present evidence.

See Attorney Smith's No-Merit Brief, 3/12/26, at 2; Attorney Seay's No-Merit Letter, 6/30/26, at 1-2.

Our standard of review of the PCRA court's denial of relief

is limited to the examination of whether the PCRA court's determination is supported by the record and free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. This Court grants great deference to the findings of the PCRA court, and we will not disturb those findings merely because the record could support a

contrary holding. In contrast, we review the PCRA court's legal conclusions *de novo*.

Commonwealth v. Maxwell, 232 A.3d 739, 744 (Pa. Super. 2020) (*en banc*) (internal citations and quotation marks omitted).

Attorneys Smith and Seay discuss Brown's first allegation that the PCRA court erred in rejecting his claim he retained Attorney Davis to litigate the 2378 EDA 2023 appeal. **See** Attorney Smith's No-Merit Brief, 3/12/26, at 2; Attorney Seay's No-Merit Letter, 6/30/26, at 1-2. They explain this issue is meritless because the PCRA court made findings, based on credibility determinations, that Brown did not retain Attorney Davis for any appeal. **See** Attorney Smith's No-Merit Brief, 3/12/26, at 5-7; Attorney Seay's No-Merit Letter, 6/30/26, at 1-2.

An independent review of the record confirms Attorneys Smith's and Seay's assessment. In the present case, the PCRA court determined Brown's *pro se* sixth petition and response to a Rule 907 notice raised a factual question as to whether Attorney Davis represented him in the 2378 EDA 2023 appeal, and the PCRA court held evidentiary hearings to resolve that question, with Attorney Copeland appointed to represent Brown. **See** PCRA Court Opinion, 3/19/25, at 21. At those hearings, the PCRA court heard conflicting evidence about the scope of Attorney Davis's representation of Brown: Brown insisted that he retained, or believed he retained, Attorney Davis to represent him in all matters related to the running of his backtime sentence and the 2012 sentence, which should have included the 2378 EDA 2023 appeal from the dismissal of Brown's fifth PCRA petition. **See** N.T., 10/25/24, at 10-18.

Attorney Davis testified that his fee agreement with Brown limited his representation to issues concerning the correction of “sentencing sheets/state parole issues” and expressly excluded representing Brown for the purpose of a PCRA petition or an appeal, and that he (Attorney Davis) repeatedly informed Brown he was not representing Brown on other issues Brown attempted to discuss with him. **See** N.T., 11/1/24, at 7-8, 21-22, 26. The PCRA court expressly credited the evidence that the scope of Attorney Davis’s representation excluded PCRA petitions and appeals such as Brown’s *pro se* 2378 EDA 2023 appeal. **See** Order, Seq. No. 145, 11/4/24, at 2 n.12 & 12-14.

Because the court’s determinations of fact and credibility have support in the record, they are binding on this Court with respect to the present appeal from the denial of Brown’s sixth PCRA petition. **See *Commonwealth v. Mojica***, 242 A.3d 949, 956 (Pa. Super. 2020) (noting that an appellate court is bound by the credibility determinations of the PCRA court, “particularly where, as here, those findings are supported by the record”) (citation omitted). Moreover, the PCRA court committed no legal error in its conclusion that, because Attorney Davis did not represent Brown in the 2378 EDA 2023 appeal, Brown failed to prove Attorney Davis’s abandonment as a basis to reinstate his appellate rights in the 2378 EDA 2023 appeal.

Next, Attorneys Smith and Seay address Brown’s second intended issue, which relate to the claims Brown raised in his *pro se* motion for appointment of new counsel, filed in the PCRA court, and seeking the replacement of

Attorney Smith as appellate counsel in this appeal. Those claims included assertions that Attorney Copeland was ineffective for failing to (1) present additional witnesses to support Brown's belief that Attorney Davis represented him in the 2378 EDA 2023 appeal; (2) argue breakdowns in the operations of this Court occurred in the 2378 EDA 2023 appeal that led him to believe Attorney Davis had filed a docketing statement in that appeal and misled him into believing filing a sixth PCRA petition was the appropriate avenue for seeking a reinstatement of his appellate rights from the dismissal of his fifth PCRA petition; and (3) assert the PCRA court lacked jurisdiction to grant a reinstatement of appeal rights and argue the appropriate avenue for relief was to seek a reinstatement in this Court. **See** Brown's *Pro Se* Motion for Appointment of New Counsel, 4/7/25, at 1 & Attachments; **see also** N.T., 4/11/25, at 8-9.¹²

¹² More specifically, Brown stated several desired claims of ineffectiveness as to Attorney Copeland (and all prior counsel) in a letter to Attorney Smith, which Brown attached to his *pro se* motion for the appointment of new counsel: (1) there were witnesses who would testify that Attorney Davis stated he would file "legal papers" on Brown's behalf; (2) he received a January 9, 2024 briefing schedule order in the 2378 EDA 2023, which led him to believe a docketing statement had been filed; (3) on February 20, 2023, he learned that the 2378 EDA 2023 appeal had been dismissed when this Court rejected his *pro se* brief for filing; (4) this Court informed him to file a claim with the PCRA court; (5) the failure to file a docketing statement should not have resulted in the dismissal of the 2378 EDA 2023 appeal; and, (6) pursuant to ***Commonwealth v. Yisrael***, 289 A.3d 75, 2022 WL 16956539 (Pa. Super. 2022) (non-precedential memorandum), the only proper procedure to reinstate the 2378 EDA 2023 appeal was to seek *nunc pro tunc* relief in this Court, and the PCRA court lacked jurisdiction to reinstate his appeal. **See generally** Brown's *Pro Se* Motion for Appointment of New
(Footnote Continued Next Page)

Attorney Smith concludes his review of the record established no basis to pursue Brown's allegations that Attorney Copeland was ineffective when litigating the merits of Brown's sixth PCRA petition. **See** Attorney Smith's No-Merit Brief, 3/12/26, at 8, 12.¹³ Attorney Seay, in turn, suggests Brown could not raise ineffectiveness claims against prior counsel because "this was not [Brown's] first PCRA claim for ineffectiveness." Attorney Seay's No-Merit Letter, 6/30/26, at 1. Attorney Seay adds that Brown "was unable to show how [additional] testimony" would contradict the prior testimony provided. **Id.** at 2. Lastly, Attorney Seay asserts Brown's claim that PCRA court lacked jurisdiction to reinstate his appeal relied on inapt case law.

An independent review of the record confirms Attorney Smith's and Seay's beliefs that no meritorious issue or claims exist for appeal but for different reasons than stated in their respective no-merit brief and letter.

Initially, it bears summarizing that in **Bradley**, our Supreme Court addressed the procedures for considering claims of ineffective assistance of PCRA counsel on appeal in the same PCRA proceeding. **See Bradley**, 261 A.3d at 401-04. **Bradley** holds that a petitioner may raise claims of PCRA counsel's ineffectiveness at the first opportunity to do so, even if that first

Counsel, Attachment (Letter from Brown to Attorney Smith, dated 3/10/25, at 1-8). Attorney Seay referred to the letter to Attorney Smith in his no-merit letter.

¹³ Although it was initially unclear whether Attorney Smith believed the scope of his representation precluded him from raising ineffectiveness claims against Attorney Copeland, or whether he believed such claims were meritless, his present **Turner/Finley** letter suggests the latter.

opportunity arose on appeal. **See Bradley**, 261 A.3d at 401. **Bradley** applies only in the same PCRA proceeding and does not authorize the untimely filing of a subsequent PCRA petition raising ineffectiveness claims against prior PCRA counsel. **See Commonwealth v. Laird**, 331 A.3d 579, 599 (Pa. 2025).

To the extent **Bradley** applies to the same proceeding on a subsequent PCRA petition, *i.e.*, here, Brown's sixth PCRA petition seeking reinstatement of appeal rights from the dismissal of his fifth PCRA petition,¹⁴ the grant of Attorney Copeland's motion to withdraw as appointed counsel in this sixth PCRA proceeding and the appointment of Attorney Smith as appellate counsel would represent the first opportunity to raise claims that Attorney Copeland was ineffective. Moreover, Brown's retention of Attorney Seay in this appeal would arguably represent the first opportunity to raise claims that Attorney Smith was ineffective.

The **Bradley** Court noted:

In some instances, the record before the appellate court will be sufficient to allow for disposition of any newly-raised ineffectiveness claims. However, in other cases, the appellate court may need to remand to the PCRA court for further development of the record and for the PCRA court to consider such claims as an initial matter. Consistent with our prior case law, to advance a request for remand, a petition would be required to provide more than mere boilerplate assertions of PCRA counsel's ineffectiveness; however, where there are material facts at issue concerning [claims challenging counsel's stewardship] and relief is not plainly unavailable as a matter of law, the remand should be afforded . . .

¹⁴ We acknowledge **Bradley** also involved consideration of a petition for remand in an appeal during a **first** PCRA proceeding.

Bradley, 261 A.3d at 402 (citations and quotation marks omitted). Also, as this Court has explained:

[I]n addressing a petitioner's layered claim of ineffectiveness, we presume counsel is effective and determine whether the petitioner rebutted that presumption by establishing: (1) the underlying claim of ineffectiveness has arguable merit; (2) counsel's act or omission was not reasonably designed to advance the interest of the petitioner; and (3) the petitioner was prejudiced—that is, but for counsel's errors, the outcome of the proceeding would have been different.

Additionally, in determining a layered claim of ineffectiveness, the critical inquiry is whether the **first attorney** that the petitioner asserts was ineffective did, in fact, render ineffective assistance of counsel.

Commonwealth v. McCready, 295 A.3d 292, 298-99 (Pa. Super. 2023) (citation, quotation marks, and brackets omitted; emphasis in original).

Having independently reviewed the record, and assuming that **Bradley** applies in a same serial PCRA petition, this Court cannot conclude Brown raised a colorable claim that Attorney Copeland was ineffective such that he would have been entitled to a reinstatement of his appeal rights from the denial of his fifth PCRA petition. With respect to Brown's intended claim that Attorney Copeland should have called additional witnesses to confirm Brown's belief that Attorney Davis represented him in the 2378 EDA 2023 appeal, Brown cannot demonstrate the outcome would be different where the PCRA court clearly relied on the scope of the written agreement and testimony that specifically excluded Attorney Davis's representation of Brown in a PCRA proceeding or appeal. **See** Order, Seq. No. 145, 11/4/24, at 2 n.12 & 12-

14.¹⁵ Similarly, although Brown's claims based on possible confusion or a breakdown by this Court during the 2378 EDA 2023 appeal could support a reasonable, but mistaken, belief that a docketing statement had been filed, the purported breakdown does not support a finding that Attorney Davis had actually represented and then abandoned Brown in that appeal.¹⁶ Lastly, with respect to Brown's claims suggesting the PCRA court lacked jurisdiction to reinstate his appeal rights from the dismissal of his fifth PCRA petition, we discern no basis to conclude Attorney Copeland was ineffective for arguing that the PCRA court lacked jurisdiction to grant the relief Brown sought in his *pro se* sixth PCRA petition. Doing so would not only rely on Brown's misreading of case law but would also effectively argue against the very

¹⁵ Indeed, it appears Brown's additional witnesses would have testified that Attorney Davis "informed them he would file the legal papers (presumably a docketing statement [in the appeal at 2378 EDA 2023])." **See** Brown's *Pro Se* Motion for Appointment of New Counsel, Attachment (Letter from Brown to Attorney Smith, dated 3/10/25, at 4). Such vague and speculative proposed testimony provides no basis to conclude the outcome of the hearings on Brown's sixth PCRA petition would have been different had Attorney Copeland presented it.

¹⁶ To the extent Brown suggests this Court misinformed him regarding the procedures to follow to seek reinstatement of his appellate rights after refusing to accept his brief in the 2378 EDA 2023 appeal, we disagree. The February 20, 2024 letter, merely stated, "You **may** wish to contact the court of common pleas," when this Court no longer had jurisdiction over the 2378 EDA 2023 appeal. **See** Brown's Request for the Reinstatement of PCRA Appellate Rights *Nunc Pro Tunc*, 3/18/24, Attachment B (Letter from this Court to Brown, dated 2/20/24, at 1) (emphasis added).

position upon which Brown filed his sixth PCRA petition, and for which Attorney Copeland was appointed to represent him.¹⁷

For these reasons, because Brown has not raised any colorable claims that Attorney Copeland was ineffective, he cannot now claim that Attorney Smith was ineffective for failing to raise such a claim following his appointment as PCRA appellate counsel. **See *McCready***, 295 A.3d at 298-99, 302. Moreover, Brown cannot establish error or an abuse of discretion in the PCRA court's decision to deny his *pro se* motion to appoint new counsel to replace Attorney Smith. **See** Order, 4/14/25, at 1. This Court, therefore, agrees with Attorneys Smith's and Seay's ultimate conclusion that the intended issues, concerning PCRA counsel's ineffectiveness, a breakdown in the operation of this Court, and the PCRA court's jurisdiction, all lack merit.

In sum, having conducted an independent review of the record, we agree with Attorney Smith's and Attorney Seay's assessments that this appeal lacks merit, affirm the order denying Brown's sixth PCRA petition, and grant counsel leave to withdraw.

Order affirmed. Petitions to withdraw granted.

¹⁷ As noted by Attorney Seay, Brown's reliance of ***Yisrael*** is misplaced. **See** Attorney Seay's No-Merit Letter, 6/30/26, at 2. In ***Yisrael***, the PCRA court suggested it lacked jurisdiction to reinstate rights for a first PCRA appeal when this Court dismissed the appeal for lack of a docketing statement. **See *Yisrael***, 2022 WL 16956539, at *2. This Court disagreed noting that it was incumbent on the court to consider the motion to reinstate as a subsequent PCRA petition and remanded for further consideration. **See *id.*** at *3.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/27/2026