

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
BENJAMIN HAROLD RANDOLPH	:	
	:	
Appellant	:	No. 1625 WDA 2025

Appeal from the PCRA Order Entered December 3, 2025
In the Court of Common Pleas of Fayette County
Criminal Division at No: CP-26-CR-0001469-2017

BEFORE: STABILE, J., LANE, J., and BENDER, P.J.E.

MEMORANDUM BY STABILE, J.:

FILED: OCTOBER 9, 2026

Appellant, Benjamin Harold Randolph, appeals *pro se* from the December 3, 2025, order dismissing his petition under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46. We vacate and remand.

Appellant's conviction stems from a June 15, 2017, incident in which he discarded a bag of cocaine while fleeing from police. The trial court found him guilty of possession with intent to deliver a controlled substance and related offenses and, on May 9, 2019, sentenced him to six to twelve years of incarceration. This Court affirmed the judgment of sentence on August 24, 2020. Our Supreme Court denied allowance of appeal on June 14, 2021.

Appellant commenced this timely first PCRA proceeding with a June 10, 2022 *pro se* petition. Appointed counsel filed a no merit letter and petition to withdraw pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988),

and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*) on September 13, 2022. The PCRA court entered an order on September 20, 2022, granting counsel's petition to withdraw and dismissing Appellant's petition, but the court did so without filing a Rule 907 notice of intent to dismiss. Appellant filed a timely *pro se* appeal. He challenged, among other things, the PCRA court's failure to comply with Rule 907. Acknowledging its error, the PCRA court filed an order on October 28, 2022, requesting remand on which the PCRA court would permit Appellant to file an amended petition. On November 29, 2022, this Court vacated the PCRA court's September 20, 2022 order and remanded to the PCRA court.

Appellant filed amended *pro se* petitions on December 16, 2022, and again on January 11, 2023. Appointed counsel filed a ***Turner/Finley*** no merit and petition to withdraw on April 13, 2023. Appellant filed a response on May 3, 2023. For reasons that are unclear from the record, the matter lay dormant for nearly two years. On November 10, 2025, the PCRA court filed notice of intent to dismiss the petition pursuant to Rule 907. Appellant responded on November 25, 2025.¹ On December 3, 2025, the PCRA court entered an order dismissing Appellant's petition and granting counsel's motion to withdraw. This timely appeal followed.

¹ A prison mail slip indicates that Appellant left his Rule 907 response with the prison mail authorities on that date.

Our review of this matter reveals two independent bases for remand. The first is the lack of an opinion from the PCRA court. The second is the need for a hearing in this matter, as both the PCRA court and Appellant's former counsel, in the **Turner/Finley** letter, have overlooked a seemingly egregious error on the part of trial counsel. In the interest of judicial efficiency, and because this first PCRA petition remains pending from a now seven-year-old conviction, we choose to remand for further proceedings without awaiting an opinion from the PCRA court.

Regarding the lack of an opinion, Appellant argues that the PCRA court's Rule 907 notice was deficient and that the PCRA court's Pa.R.A.P. 1925(a) opinion, which simply references the Rule 907 notice without analyzing any of Appellant's issues, did not discharge the court's obligation under Rule 1925. We agree that the PCRA court's Rule 907(1) notice and its subsequent Pa.R.A.P. 1925(a) "statement in lieu of opinion" were deficient. Rule 907(1) provides:

[T]he judge shall promptly review the petition, any answer by the attorney for the Commonwealth, and other matters of record relating to the defendant's claim(s). If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition **and shall state in the notice the reasons for the dismissal.**

Pa.R.Crim.P. 907(a) (emphasis added). The PCRA court, in its November 10, 2025 notice of intent to dismiss, simply noted its review of the record and of

counsel's **Turner/Finley** letter and concluded that there was no genuine issue of material fact and that further proceedings would serve no purpose. Rule 907 Notice, 11/10/25. On January 14, 2026, the PCRA court issued a "statement in lieu of opinion" referencing the Rule 907 notice.

In **Commonwealth v. DeJesus**, 868 A.2d 379, 383 (Pa. 2005), our Supreme Court held that a trial court's silence on the issues presented for appeal requires a remand to the trial court for preparation of an opinion.

Indeed, in any case where the trial court fails to prepare an opinion that addresses the issues upon which it passed and which are raised by a party on appeal, the net result is the same: the appellate court is deprived of explication and guidance on those issues from the judicial entity most familiar with the matter. Moreover, the parties may be left without a meaningful context within which to make their arguments on appeal, particularly as to discretionary matters.

Id. at 383. Nowhere in the record has the PCRA court offered any substantive opinion on the issues Appellant seeks to raise. Should there be another appeal in this matter, we direct the PCRA court to issue a substantive opinion in accordance with Rule 1925.

The need for a hearing arises from PCRA counsel's ineffectiveness in connection with counsel's **Turner/Finley** filing, an issue Appellant addresses in his second and third questions presented.² In **Commonwealth v. Kelsey**,

² Appellant challenged PCRA counsel's effectiveness in his response to the PCRA Court's Rule 907 notice. Because this was Appellant's earliest opportunity to raise these challenges, they are preserved for our review. **Commonwealth v. Bradley**, 261 A.3d 381 (Pa. 2021).

206 A.3d 1135 (Pa. Super. 2019), this Court held that where PCRA counsel files a deficient no merit letter, the petitioner is entitled to vacation of the dismissal order and a remand for appointment of new counsel. The proceedings in the instant matter closely track the proceedings in **Kelsey**. There, as here, PCRA counsel filed a **Turner/Finley** letter and motion to withdraw before the PCRA court; the PCRA court issued a Rule 907 notice; the petitioner responded by challenging PCRA counsel's effectiveness and claiming the no merit letter was inadequate. **Id.** at 1138. The **Kelsey** Court concluded that counsel's **Turner/Finley** filing was "seriously deficient" because it addressed only a subset of the issues the petitioner raised in his petition. **Id.** at 1140. We therefore vacated the dismissal order and remanded to the PCRA court for appointment of new counsel.

Among the issues Appellant raised in his petition and on appeal before this Court is his assertion that trial counsel was ineffective for putting Appellant on the witness stand at the pre-trial suppression hearing. At issue in the suppression hearing was whether the investigating officers had reasonable suspicion to subject Appellant to a **Terry** stop and frisk.³ Appellant argues that his testimony was of no importance and did not improve his chances of obtaining a suppression order. Appellant's *Pro Se* Brief at 44-45. Appellant argues that the trial court's assessment of the police officer's

³ **Terry v. Ohio**, 392 U.S. 1 (1968).

testimony would have been determinative. Counsel chose to present Appellant as a defense witness at the end of the hearing after the trial court had heard the testimony of the two investigating police officers.

Prior to Appellant taking the stand, the trial court confirmed with counsel that both he and Appellant understood that anything he said could be used against him at trial. N.T. Suppression, 4/9/18, at 65-66. Counsel proceeded to examine Appellant on the interaction between himself and a police officer:

Q. And what happened once he approached you?

A. He grabbed my arm and immediately put it behind my back. Like, as soon as he approached me he just grabbed – he grabbed my left arm and put it behind my back. I asked him what was he grabbing me for, he said I was under arrest.

Q. Did anything else happen at that point?

A. I yanked away from him.

Q. And took off?

A. Yes, sir.

Q. And ultimately, you were tackled; is that correct?

A. Yes, sir.

Q. Now, on the ground there was a package of what's been identified as cocaine.

A. Yes, sir.

Q. How did that package end up on the ground?

THE COURT: Mr. Connor, are you sure you want him to continue testifying?

MR. CONNOR: Yes, I am.

THE COURT: Do you understand that anything you say will be used against you in a court of law?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you still want to testify and answer that question at a pretrial hearing, or do you need more time to discuss it with your attorney?

THE DEFENDANT: Can I discuss it with my attorney?

THE COURT: Yes

Id. at 70-71.

At this point, Appellant and counsel had an off the record discussion. ***Id.*** at 71. Appellant claims counsel told him, during that discussion, not to worry because the pretrial record would not matter after the evidence was suppressed. Appellant went on to testify that the cocaine baggie rolled out of his pant leg as he was running from the police officer. ***Id.*** at 71-72. This testimony was in apparent contradiction of the police officer's testimony that Appellant threw the baggie. On cross-examination by the prosecutor, Appellant admitted that he ran from police because he knew he had a bag of cocaine in his pants. ***Id.*** at 72. The trial judge again expressed her concern that Appellant was "incriminating himself all over the place." ***Id.*** at 73. The judge asked counsel if Appellant was voluntarily waiving his right against self-incrimination; counsel responded, "That's correct", but Appellant was not examined on the record on this point. ***Id.*** Appellant's admissions from the suppression hearing were read into the record at trial. N.T. Trial, 5/19/19, at 20-24.

In his **Turner/Finley** letter, PCRA counsel acknowledges Appellant's allegation, in his *pro se* amended PCRA petition, that counsel pressured him into testifying at the suppression hearing.⁴ Counsel also acknowledges that there was no obvious benefit to putting Appellant on the stand at the suppression hearing. PCRA counsel argues that it must have been obvious to trial counsel that the evidence against Appellant was overwhelming and that trial counsel's goal for the suppression hearing was to explore "procedural errors which could result in the suppression of evidence, quashing charges, more lenient plea offers from the Commonwealth, or even the outright dismissal of the entire case." Motion to Withdraw and Supporting Brief, 1/28/26, at Heading V, unpaginated. PCRA counsel, if we understand correctly, argues that trial counsel's promise to Appellant—that Appellant's suppression hearing testimony would not hurt him—does not constitute ineffective assistance, given that (1) counsel reasonably believed he had a chance to get the charges dismissed after the suppression hearing, or (2) the case against Appellant was so overwhelming that his pretrial admissions made him no worse off. PCRA counsel fails to articulate how trial counsel had any reasonable basis for believing he could prevail at the suppression hearing by offering Appellant's testimony.

⁴ The **Turner/Finley** letter, filed on January 28, 2026 and titled "Motion to Withdraw With Supporting Brief", is lengthy and unpaginated; our references are to heading "V".

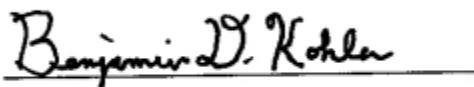
Based on the foregoing, we conclude that a hearing was necessary, at the very least, so that trial counsel could be examined on his strategy for putting Appellant on the witness stand at the suppression hearing. Also, Appellant's allegations that counsel pressured him into incriminating himself, and that counsel gave him faulty advice that induced him to testify before the suppression court, need to be assessed by a fact finding court.

We express no opinion on the ultimate outcome of this collateral proceeding, nor do we express any opinion on any of the issues Appellant presents in this appeal. Because we remand for a hearing, we leave it to the PCRA court to address those issues in the first instance.

Since this is Appellant's first PCRA petition, he is entitled to the effective assistance of counsel. In this matter, as in ***Kelsey***, PCRA counsel has essentially failed to address the issues Appellant asserted in his petition, as is evident from PCRA counsel's preposterous attempt to justify trial counsel's suppression hearing strategy. We therefore follow ***Kelsey*** in directing the appointment of new PCRA counsel.

Order vacated. Case remanded. 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: 10/9/2026