

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 147 – 2014
	:	
vs.	:	CRIMINAL DIVISION
	:	
NAFIS FAISON,	:	
Defendant	:	PCRA

**OPINION AND ORDER**

Before the Court is Defendant’s Motion for Post-Conviction Collateral Relief, filed September 8, 2016. A conference on the motion was held November 21, 2016 following which the court directed that counsel file either an amended petition or a *Turner-Finley*<sup>1</sup> letter within thirty days. Counsel filed a *Turner-Finley* letter and a motion to withdraw as counsel on December 20, 2016 and the matter is now ripe for decision.

After a jury trial on February 23, 2015, Defendant was convicted of delivery of heroin (on four separate occasions) and related offenses. He was sentenced on April 22, 2015 to an aggregate term of incarceration of 28 months to eight years, which was reduced by RRRRI eligibility to one year, eleven months and ten days. Post-sentence motions were denied on June 23, 2015 and the Superior Court affirmed the conviction on appeal by Order filed May 9, 2016.

In the instant motion for post-conviction collateral relief Defendant contends generally that trial counsel was ineffective and specifically that appellate counsel was ineffective for failing to raise on appeal three issues: a Rule 600 claim that had been denied in a pre-trial motion, a confrontation claim and an

---

<sup>1</sup> Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988), and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988).

alleged discovery violation.<sup>2</sup> In his *Turner-Finley* letter, appointed counsel asserts these claims have no merit. The court has conducted an independent review of the record and agrees that there is no merit to any of Defendant's claims.

Defendant has alleged no particulars with respect to his claim that trial counsel was ineffective, although his claim regarding the confrontation clause appears to relate to a decision made by trial counsel rather than appellate counsel. While Defendant has not specified what particular action raises a confrontation issue, after reviewing the trial proceedings, the court believes Defendant must be referring to the fact that trial counsel stipulated to the lab report without the necessity for testimony from the lab technician. Defendant's defense to the charges was that he was not the person who sold heroin to the confidential informant, however, not that the substance sold was not heroin.<sup>3</sup> Requiring live testimony from a lab technician, although providing a right to confront that witness, would not have aided the defense<sup>4</sup> and would not have affected the outcome. Counsel was thus not ineffective for having stipulated to entry of the report.

The other two claims of ineffective assistance of counsel, directed at appellate counsel, challenge his failure to raise on appeal the trial court's denial of his Rule 600 motion and the trial court's denial of his motion for mistrial. As

---

<sup>2</sup> Following the trial, trial counsel was permitted to withdraw his representation and substitute counsel entered his appearance.

<sup>3</sup> In his closing argument, defense counsel stated, "Now look, there are a lot of counts. In each one of these four days there is a possession with intent to deliver. There is a delivery. There is possession and there is a phone count. I'm not going to go through these charges because the point is this, if it wasn't him, does it matter? If you believe her, that he sold drugs to her, then he's guilty of delivery. The case boils down to her, plain and simple." N.T. February 23, 2015 at p.192.

<sup>4</sup> In the nineteen years the undersigned has been on the bench, no one has ever defended a delivery charge by contending the substance delivered was not what it was alleged to be, and for good reason.

explained in an Opinion issued February 18, 2015 and in a 1925(A) Opinion issued September 2, 2015,<sup>5</sup> those claims were determined by the trial court to have no merit. Counsel will not be held ineffective for failing to raise meritless claims. *See Commonwealth v. Loner*, 836 A.2d 125 (Pa. Super. 2003) (en banc), appeal denied, 852 A.2d 311 (Pa. 2004).

**ORDER**

AND NOW, this        day of December 2016, upon review of the record, it is the finding of this Court that Defendant's motion raises no genuine issue of material fact and Defendant is not entitled to relief.

As no purpose would be served by conducting any further hearing, none will be scheduled. The parties are hereby notified of this Court's intention to deny the Motion. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the Motion and granting counsel's motion to withdraw.

BY THE COURT,

cc: DA  
Gerald Lynch, Esquire  
Nafis Faison, LZ-1119  
SCI Smithfield, P.O. Box 999  
Huntingdon, PA 16652  
Gary Weber, Esq.  
Hon. Dudley Anderson

Dudley N. Anderson, Judge

---

<sup>5</sup> Appellate counsel actually did raise the discovery violation issue in his statement of issues complained of on appeal, but apparently did not include such in his filings directed to the Superior Court as that Court addressed only the sufficiency of the evidence.