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COMMONWEALTH OF PENNSYLVANIA V.
LUIS ROLANDO MARRERO BELTRAN

1. On July 30, 2020, criminal charges were filed against Appellant after he assaulted his seventeen-year-old stepson, L.B., and his wife, S.M.
2. On April 25, 2022, Appellant appeared with counsel and a certified court interpreter and entered open pleas to count one, aggravated assault, in violation of § 2702(a)(1) of the Crimes Code as a felony of the first degree and count three, aggravated assault with a deadly weapon, in violation of § 2702(a)(4) of the Crimes Code as a felony of the second degree.
3. As part of the plea, Appellant reviewed, initialed and signed a written guilty plea colloquy in Spanish with an interpreter and counsel.
4. The Court sentenced Appellant to no less than 78 months nor more than 180 months on count one and no less than 18 months nor more than 36 months on count three, to run concurrently. Both sentences were well-within the standard guideline range and were within the confines of the limited plea agreement.
5. On November 29, 2023, Appellant filed a pro se Motion for Post Conviction Collateral Relief. Appellant alleged ineffective assistance of trial counsel, Attorney Rice. On December 6, 2023, the Court appointed Brandy G. Hoke (hereinafter “Attorney Hoke”) as counsel for Appellant.
6. In Attorney Hoke’s Petition to Withdraw as PCRA Counsel and her **Turner/Finley** letter, Attorney Hoke outlined her thorough review of the case, listed the issues that Appellant wanted her to review, and thoroughly explained why those issues lacked merit.
7. A review of the written plea colloquy and the oral plea colloquy conducted by the Court with Appellant before the Court accepted Appellant’s plea clearly establishes that Appellant’s plea was knowingly, voluntarily, and intelligently entered. Appellant has not produced any evidence to show his underlying claim has arguable merit, trial counsel had no reasonable strategic basis for her advice

concerning the negotiated plea and there is a reasonable probability that the outcome of the proceedings would have been different. Therefore, there is no merit whatsoever to Appellant's claim of ineffective assistance of counsel.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CP-01-CR-1407-2021, COMMONWEALTH
OF PENNSYLVANIA V. LUIS ROLANDO MARRERO
BELTRAN

Brian R. Sinnett, Esquire, Attorney for the Commonwealth
Luis R. Marrero-Beltran, pro se Appellant
Wagner, J., August 15, 2024

OPINION PURSUANT TO Pa. R.A.P. 1925(a)

Luis Rolando Marrero Beltran (hereinafter "Appellant") appeals from the Court's Order dated May 28, 2024, denying Appellant's pro se PCRA Petition. For the reasons set forth herein, it is respectfully requested that the Court's Order denying Appellant's pro se PCRA Petition be affirmed.

BACKGROUND

To aid in disposition of this pro se PCRA matter, it is necessary to provide a procedural history and brief recitation of the facts presented at the guilty plea.

On July 30, 2020, criminal charges were filed against Appellant after he assaulted his seventeen-year-old stepson, L.B., and his wife, S.M. Appellant struck L.B. multiple times on his head with a ball peen hammer. Appellant also assaulted S.M. in the right jaw area with the ball peen hammer when she entered L.B.'s room and observed Appellant striking L.B. on the head. Appellant fled the residence prior to arrival of the Pennsylvania State Police. When the Troopers arrived at the residence, they observed the bloody ball peen hammer and L.B. bleeding profusely from his head, with his face, arms, and clothes covered in his own blood. Troopers also observed fresh blood in numerous areas of the residence. L.B. was

subsequently transported to Holy Spirit Trauma Center for treatment. Troopers also observed injuries to S.M.’s right jaw area, including swelling and bruising.

The Pennsylvania State Police filed charges against Appellant, including aggravated assault as a felony of the first degree¹ and aggravated assault as a felony of the second degree². Appellant fled the scene before Troopers arrived, and subsequently travelled to Puerto Rico. Appellant was arrested in Puerto Rico on or about December 21, 2020, and was extradited to Adams County, Pennsylvania for prosecution.

Appellant was represented by Adams County Chief Public Defender Kristin Rice (hereinafter “Attorney Rice”). On April 25, 2022, Appellant appeared with counsel and a certified court interpreter and entered open pleas to count one, aggravated assault, in violation of § 2702(a)(1) of the Crimes Code as a felony of the first degree and count three, aggravated assault with a deadly weapon, in violation of § 2702(a)(4) of the Crimes Code as a felony of the second degree. The plea was pursuant to an agreement that count one would have a capped sentence of a term of no less than 78 months nor more than 240 months in a state correctional institution, and count three would have a capped sentence of a term of no less than 18 months nor more than 36 months in a state correctional institution, to run concurrent to count one. Count one included the deadly weapon enhancement. The minimum sentences of 78 months on count one and 18 months on count three were in the standard sentencing guideline range. Appellant and counsel reserved the right to argue for a lesser sentence than the agreed upon capped sentence.

As part of the plea, Appellant reviewed, initialed and signed a written guilty plea colloquy in Spanish with an interpreter and counsel. The Court conducted a thorough oral colloquy with Appellant, outlining the maximum sentences and explained the limited plea agreement. The Commonwealth provided a thorough recitation of the facts to support the plea and Appellant admitted the facts were true. Following a review of the written guilty plea

¹ 18 Pa. C.S.A. § 2702(a)(1).

² 18 Pa. C.S.A. § 2702(a)(4).

colloquy and the oral plea colloquy with Appellant, the Court determined Appellant's plea was knowingly, intelligently, and voluntarily entered and accepted Appellant's plea.

Appellant appeared with counsel and a certified court interpreter for sentence on June 20, 2022. The Court reviewed a presentence investigation, listened to the comments of counsel and Appellant, and either read or heard the certified court interpreter read into the record a total of 8 letters on behalf of Appellant. The Court considered the Appellant's prior criminal history, including a prior conviction for physical child abuse. The Court sentenced Appellant to no less than 78 months nor more than 180 months on count one and no less than 18 months nor more than 36 months on count three, to run concurrently. Both sentences were well-within the standard guideline range and were within the confines of the limited plea agreement.

Following sentence, the Court reviewed Appellant's post-sentence and appellate rights with Appellant as they were set forth in the written plea colloquy. Appellant advised he understood his post-sentence and appellate rights.

On July 14, 2022, Appellant, through counsel, filed a Post-Sentence Motion for Reduction of Sentence Nunc Pro Tunc. The Court considered and denied Defendant's post-sentence motion.

On November 29, 2023, Appellant filed a pro se Motion for Post Conviction Collateral Relief. Appellant alleged ineffective assistance of trial counsel, Attorney Rice. On December 6, 2023, the Court appointed Brandy G. Hoke (hereinafter "Attorney Hoke") as counsel for Appellant.

On April 15, 2024, Attorney Hoke filed a Petition to Withdraw as PCRA Counsel and attached to the petition a **Turner/Finley** letter dated April 14, 2024, and addressed to Appellant. In Attorney Hoke's Petition to Withdraw as PCRA Counsel and her **Turner/Finley** letter, Attorney Hoke outlined her thorough review of the case, listed the issues that Appellant wanted her to review, and thoroughly explained why those issues lacked merit. Attorney Hoke sent Appellant the **Turner/Finley** no merit letter/brief, a copy of Attorney Hoke's Petition to Withdraw and a statement advising Appellant of the right to proceed pro se or with new counsel.

On April 15, 2024, the Court granted Attorney Hoke's Motion to Withdraw as Counsel. On April 22, 2024, the Court filed Notice of Intent to Dismiss Defendant's PCRA Petition in accordance with Pa. R.Crim.P. 907(1) and granted Appellant twenty days to respond to the proposed dismissal. On May 16, 2024, Appellant provided a response pursuant to Pa. R.Crim.P. 907(1). On May 28, 2024, for the reasons set forth in the Court's Notice of Intent to Dismiss Defendant's PCRA Petition, the Court dismissed Appellant's pro se PCRA Petition.

Appellant incorrectly filed his Notice of Appeal with the Superior Court of Pennsylvania. The Superior Court forwarded the Notice of Appeal to the Adams County Clerk of Court's Office, which was untimely filed on July 8, 2024. On July 16, 2024, the Court directed Appellant to file a Concise Statement of Errors Complained of on Appeal. On August 8, 2024, Appellant filed his pro se Concise Statement of Errors Complained of on Appeal. Appellant contends that trial counsel was ineffective and forced Appellant into entering a plea of guilty.

LEGAL STANDARD

The Honorable Thomas R. Campbell of the Adams County Court of Common Pleas set forth the relevant case law and procedure for an untimely filed PCRA Petition in **Commonwealth v. Keith E. Heiser**, CP-01-CR-101-2020, as follows:

Pennsylvania Rule of Criminal Procedure 907 requires a judge to promptly review Post Conviction Relief Act ("PCRA") petitions. **Pa. R. Crim. P. 907**. Under the PCRA, a petitioner does not have an absolute right to a hearing, **Commonwealth v. Gaskins**, 692 A.2d 224, 226 (Pa. Super. 1997), and a judge may dismiss a petition without a hearing if, after thorough review, the judge determines that "there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief." **Pa. R. Crim. P. 907(1); Gaskins**, 692 A.2d at 226. A court is not required to entertain an evidentiary hearing before

dismissing claims that are “clearly without merit.” **Commonwealth v. Harris**, 852 A.2d 1168, 1180 (Pa. 2004). Prior to dismissing the petition, the judge must notify the parties of the intention to dismiss, state the reasons for the dismissal, and provide the defendant 20 days to respond to the notice of intent to dismiss. **Pa. R. Crim. P. 907(1)**. At the expiration of 20 days, the judge must “order the petition dismissed, grant leave to file an amended petition, or direct that the proceedings continue.” **Id.**

To be eligible for relief under the Post-Conviction Relief Act (PCRA), 42 Pa. C.S. § 9541, et seq., a petitioner must plead and prove by a preponderance of the evidence, *inter alia*, that his or her conviction or sentence resulted from one or more of the circumstances enumerated in 42 Pa. C.S.A. § 9543(a)(2) and that his or her claims have not been previously litigated or waived. **Commonwealth v. Keaton**, 45 A.3d 1050, 1060 (Pa. 2012); **Commonwealth v. Paddy**, 15 A.3d 431, 442 (Pa. 2011).

Petitions for Post-Conviction Relief must be filed within one year of the date the judgment of sentence becomes final, unless the petitioner can show that one of the statutory exceptions is applicable. **42 Pa. C.S. § 9545(b)(1)**. The PCRA specifies that “a judgment 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)**. The limitation on the time that a PCRA petition may be filed implicates the court’s jurisdiction; thus, a court may not amend or ignore the statutory limitation, which is to be strictly construed, in order to address the merits of an untimely petition. **Commonwealth v. Abu-Jamal**, 941 A.2d 1263, 1267–68 (Pa. 2008); **Commonwealth v. Pew**, 189 A.3d 486, 488 (Pa. Super. 2018).

Before we can reach the merits of Defendant's claim for relief, we must first determine whether his petition is timely. **Commonwealth v. Vega**, 754 A.2d 714, 718 (Pa. Super. 2000). If the petition is untimely, we cannot reach the merits of the claim unless an exception under Section 9545 applies and excuses the untimeliness. **42 Pa.C.S. § 9545(b)(3)**.

Id. at 1–3.

In **Commonwealth v. Rathfon**, 899 A.2d 365, (Pa. Super. 2006) the Superior Court set forth the proper standard concerning ineffective assistance of counsel claims involving a guilty plea:

We conduct our review of such a claim in accordance with the three-pronged ineffectiveness test under section 9543(a)(2)(ii) of the PCRA, 42 Pa. C.S.A. § 9543(a)(2)(ii). See **Commonwealth v. Lynch**, 820 A.2d 728, 732 (Pa. Super. 2003). “The voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” **Id.** at 733 (quoting **Commonwealth v. Hickman**, 799 A.2d 136, 141 (Pa. Super. 2002)).

In order for Appellant to prevail on a claim of ineffective assistance of counsel, he must show, by a preponderance of the evidence, ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. **Commonwealth v. Kimball**, 724 A.2d 326, 333 (Pa. 1999). Appellant must demonstrate: (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.** The petitioner bears the burden of proving all three prongs of the test. **Commonwealth v. Meadows**, 787 A.2d 312, 319–20 (Pa. 2001).

Id. at 369.

DISCUSSION

Under the PCRA, any petition for post-conviction relief must be filed within one year of the date the judgment of sentence becomes final, unless one of the following exceptions set forth in 42 Pa. C.S. § 9545(b)(1)(i)–(iii) applies:

(b) Time for filing petition. –

- (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges, and the petitioner proves that:
 - (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
 - (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
 - (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa. C.S. § 9545(b)(1)(i)–(iii). Additionally, any petition attempting to invoke one of these exceptions must “be filed within one year of the date the claim could have been presented.” 42 Pa. C.S. § 9545(b)(2).

Here, Appellant's judgment of sentence became final on July 14, 2022, when the Court denied Appellant's Post-Sentence Motion for Reduction of Sentence Nunc Pro Tunc. Appellant did not file any direct appeal concerning his sentence. On November 29, 2023, Appellant filed a pro se Motion for Post Conviction Collateral Relief, which was filed sixteen months and fifteen days after Appellant's judgment of sentence became final. Appellant's pro se PCRA Petition is clearly untimely. Appellant has not presented any argument or facts concerning the exceptions to the timeliness requirements set forth in 42 Pa. C.S. § 9545(b). Therefore, Appellant's pro se PCRA Petition was properly dismissed as untimely filed.

Concerning the underlying merits of Appellant's pro se PCRA Petition, Appellant alleges that Attorney Rice was ineffective because Attorney Rice forced Appellant to enter a plea of guilty. "Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea." **Commonwealth v. Anderson**, 995 A.2d 1184, 1192 (Pa. Super. 2002) (citation omitted). "Where the defendant enters his plea on counsel's advice, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." **Id.** at 1192.

Appellant has presented no facts or evidence to establish that Attorney Rice provided Appellant with deficient or erroneous advice concerning the plea agreement and Appellant's entry of plea. Attorney Rice negotiated a guilty plea on behalf of Appellant which called for concurrent standard range sentences. The plea agreement allowed Appellant to argue for a sentence less than the capped sentence. Given the nature of the assaults and the overwhelming evidence against Appellant, Attorney Rice's negotiated plea agreement was clearly in his best interest and her advice to Appellant to plead guilty was competently and prudently given.

A review of the written plea colloquy and the oral plea colloquy conducted by the Court with Appellant before the Court accepted Appellant's plea clearly establishes that Appellant's plea was knowingly, voluntarily, and intelligently entered. Appellant has not

produced any evidence to show his underlying claim has arguable merit, trial counsel had no reasonable strategic basis for her advice concerning the negotiated plea and there is a reasonable probability that the outcome of the proceedings would have been different. Therefore, there is no merit whatsoever to Appellant's claim of ineffective assistance of counsel.

Attorney Hoke followed proper procedures in accordance with **Commonwealth v. Turner**, 518 Pa. 491, 544 A.2d 927 (Pa. 1988) and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) prior to her petitioning the Court to withdraw from PCRA representation. Attorney Hoke reviewed the case zealously, submitted a "no-merit" letter to the trial court and Appellant detailing the nature and extent of her diligent review of the case, properly listed the issues which Appellant wanted her to review, and explained to Appellant how those issues lacked merit. Attorney Hoke sent Appellant the **Turner-Finley** "no-merit" letter, a copy of Attorney Hoke's Petition to Withdraw, and a statement advising Appellant of the right to proceed pro se or with new counsel. Attorney Hoke satisfied all technical prerequisites of **Turner-Finley** and the Court properly granted Attorney Hoke's Motion to Withdraw. The Court properly filed and served upon Appellant Notice of Intent to Dismiss Defendant's PCRA Petition in accordance with PA. R.Crim.P. 907(1). Following a review of Appellant's response, the Court properly dismissed Appellant's pro se PCRA Petition.

The Court respectfully requests Appellant's appeal be denied.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF JAMES T CROWL, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executrix: Jodi J. Crowl a/k/a Jodi Jean Brenner, c/o The Hamme Law Firm, LLC, 1946 Carlisle Road, York, PA 17408
Attorney: Tessa Marie Myers, Esq., The Hamme Law Firm, LLC, 1946 Carlisle Road, York, PA 17408

ESTATE OF JAMES C. KRIEL a/k/a JAMES COLEMAN KRIEL, DEC'D
Late of Biglerville Borough, Adams County, Pennsylvania
Co-Administrators: Ronald J. Kriel, 84 Hillcrest Drive, Biglerville, PA 17307; Daniel B. Kriel, 27 Laura Lane, Gettysburg, PA 17325
Attorney: David K. James III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGARET E. LAMBERT, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executrix: Mindy R. Lambert, 310 South Main Highway, Clifton, ID 83228
Attorney: David K. James III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOSEPHINE M. LUCKENBAUGH a/k/a JOSEPHINE MARYANN LUCKENBAUGH, DEC'D
Late of McSherrystown Borough, Adams County, Pennsylvania
Executor: Randal Luckenbaugh, c/o Salzmann Hughes, P.C., 1147 Eichelberger Street, Suite F, Hanover, PA 17331
Attorney: Ann C. Shultz, Esq., Salzmann Hughes, P.C., 1147 Eichelberger Street, Suite F, Hanover, PA 17331

ESTATE OF JEAN E. PALMER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executors: Brian J. Palmer & Patricia A. Palmer, c/o Gates & Gates, P.C., 250 York Street, Hanover, PA 17331
Attorney: Rachel L. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF DIANA L. PETERS a/k/a DIANA LORRAINE PETERS, DEC'D
Late of Menallen Township, Adams County, Pennsylvania
Co-Administrators: Lindsay M. Methlie & Justin D. Peters, c/o Murphy & Childers, P.C., 237 East Queen Street, Chambersburg, PA 17201
Attorney: Jared S. Childers, Esq., Murphy & Childers, P.C., 237 East Queen Street, Chambersburg, PA 17201

ESTATE OF DONALD L. PLANK SR., DEC'D
Late of Bonneauville Borough, Adams County, Pennsylvania
Executrix: Ella Mae Plank, 6 Jonathan Lane, Gettysburg, PA 17325
Attorney: Bernard A. Yannetti, Esq., Hartman & Yannetti, Inc., Law Office, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CLARENCE D. PRITT, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executor: Todd M. Pritt, 924 Church Road, Orttanna, PA 17353
Attorney: Harold A. Eastman, Jr., Esq., Barley Snyder, LLP, 123 Baltimore Street, Suite 101, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF NEIL C. COSTELLA, SR., DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Administrator: Neil C. Costella, Jr., 8605 Stottlemyer Road, Waynesboro, PA 17268
Attorney: Arthur J. Becker, Jr., Esq., Becker Law Group, P.C., 529 Carlisle Street, Hanover, PA 17331

ESTATE OF PHILIP A. HARTLAUB, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Administratrix: Diane H. Miller, 269 Coventry Court, New Oxford, PA 17350
Attorney: Matthew L. Guthrie, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF GLORIANNE HUTCHISON a/k/a GLORIANNE F. HUTCHISON, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Personal Representative: Richard W. Hutchison, 1370 Hanover Road, Gettysburg, PA 17307
Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF RICHARD L. COOL, DEC'D
Late of Hamiltonban Township, Fairfield, Adams County, Pennsylvania
Executor: Matthew R. Battersby, P.O. Box 215, Fairfield, PA 17320
Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF JUENE M. GROFT, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Richard A. Groft, 212 Center Street, McSherrystown, PA 17344
Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

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(THIRD PUBLICATION CONTINUED)

ESTATE OF NANCY M. LEATHERMAN,
DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania
Co-Executors: Todd L. Leatherman, P.O.
Box 2300, Palm Beach, FL 33480; Kim
M. Leatherman and Kelly L.
Leatherman, 90 Knight Road, #33,
Gettysburg, PA 17325
Attorney: John J. Murphy III, Esq.,
Patrono & Murphy, LLC, 28 West
Middle Street, Gettysburg, PA 17325

ESTATE OF PIUS R. MARTIN, DEC'D

Late of Oxford Township, Adams County,
Pennsylvania
Executrix: Debra N. Weaver, 20 Red Hill
Road, New Oxford, PA
17350
Attorney: Matthew L. Guthrie, Esq.,
Barley Snyder, LLP, 14 Center Square,
Hanover, PA 17331

ESTATE OF MARTIN L. MYERS a/k/a
MARTIN LUTHER MYERS, DEC'D

Late of Straban Township, Adams
County, Pennsylvania
Executor: Martin R. Myers, c/o Murphy &
Childers, P.C., 237 East Queen Street,
Chambersburg, PA 17201
Attorney: R. Thomas Murphy, Esq.,
Murphy & Childers, P.C., 237 East
Queen Street, Chambersburg, PA
17201