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Post Conviction Relief Act— Recent Developments

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TABLE OF CONTENTS	Page
INTRODUCTION	109
AMENDMENTS AND PROPOSED AMENDMENTS TO RULE GOVERNING CAPITAL CASES	109
RECENT CASES INTERPRETING THE PCRA	110
Ineffective Assistance of Counsel	110
Time for Filing PCRA Petition	113
Waiver of Claims	114
Discovery in Capital Case	114
Standing to File PCRA—Next Friend Status	114
Petition to Withdraw from PCRA Proceeding	115
Failure to Inform Defendant Regarding Consecutive Sentences	115
Waiver of Trial Counsel	115
Constitutionality of 1995 Amendments to PCRA	115

INTRODUCTION

The Post Conviction Relief Act¹ provides a remedy for defendants in custody² whose conviction or sentence resulted from one or more of the Act's specifically enumerated errors³ and the claimed error has not been waived⁴ or previously litigated.⁵ The 1995 amendments to the PCRA limited the availability of relief by requiring that, subject to several narrow exceptions, a post conviction petition be filed within one-year of the date the defendant's judgment becomes final.⁶ This article reports on recent

amendments and proposed amendments to the Rules of Criminal Procedure governing post conviction relief⁷ and summarizes recent significant decisions of the Pennsylvania Supreme and Superior Courts construing provisions of the Act, including a number of decisions interpreting the Act's one-year filing period.

AMENDMENTS AND PROPOSED AMENDMENTS TO RULE GOVERNING CAPITAL CASES

A significant amendment to Pa.R.Crim.P. 1504 dealing with the appointment of counsel in capital cases will become effective July 1, 2000.⁸ The amendment adds new paragraph (F) to the Rule. As amended, the Rule requires that at the conclusion of direct review, including discretionary review in the United States Supreme Court or the time for taking such review, the record in the case shall be remanded to the trial court and the trial court shall appoint new counsel for the purpose of post conviction collateral review. Under the Rule, new counsel will not be appointed if the defendant waives PCRA review, or elects to proceed *pro se* and the court finds in both cases, after an on the record colloquy, that the defendant is competent and the election is knowing, intelligent and voluntary. Further, counsel will not be appointed if the defendant requests continued representation by original trial or direct appeal counsel, and the court finds, again following an on the record colloquy, that the defendant's election constitutes a knowing, intelligent and voluntary waiver of claims that trial or appellate counsel rendered ineffective assistance of counsel. Finally,

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¹ 42 Pa.C.S. §§9541 *et seq.*

² 42 Pa.C.S. §9543(a)(1).

³ 42 Pa.C.S. §9543(a)(2).

⁴ 42 Pa.C.S. §9543(a)(3); 42 Pa.C.S. §9544(b).

⁵ 42 Pa.C.S. §9543(a)(3); 42 Pa.C.S. §9544(a).

⁶ 42 Pa.C.S. §9545(b).

⁷ Pa.R.Crim.P. 1501-1510.

⁸ In Re: Order Adopting Amendments to Rule of Criminal Procedure 1504 and approving revision of Comments to Rules of Criminal Procedure 1502, 1503 & 1506, No. 259 Jan. 21, 2000.

counsel will not be appointed if the court finds that the defendant has engaged counsel who will enter his or her appearance for the purposes of PCRA review. Under the Rule, the appointment of counsel will be effective throughout the post conviction proceeding and including an appeal from the disposition of the petition.

While prompt appointment of counsel in death penalty cases will likely result in the filing of a petition well in advance of the one-year deadline⁹ for seeking PCRA relief thereby eliminating some delay in the resolution of capital cases, the amended Rule appears to conflict with Section 9545(a) of the Act.¹⁰ Section 9545(a) provides that no court shall have authority to entertain a request for any form of relief in anticipation of the filing of the petition. The amended Rule requires the trial court to act even though, in the usual case, there will be no petition pending at the time of the proceeding required by the Rule.

An additional question concerns the defendant's decision to continue to be represented by prior trial or direct appeal counsel. Assuming a defendant can make a knowing and intelligent waiver of possible claims of ineffectiveness of prior counsel, the required colloquy under the Rule would, at a minimum, need to inform the defendant that because of the waiver provision of the Act,¹¹ waiving claims of ineffectiveness of counsel would mean that with the exception of the claims of newly discovered exculpatory evidence,¹² a lack of jurisdiction,¹³ imposition of an illegal sentence¹⁴ and obstruction by government officials of the right to appeal,¹⁵ the defendant would be precluded from obtaining post conviction relief because all other claims would be considered waived.

The other change effective July 1, 2000 concerns stays of execution.¹⁶ Rule 1509 as

amended provides that the request for a stay should be included in the PCRA petition, although failure to include the request in the petition does not constitute a waiver of the right to seek a stay. The amended Rule provides that when a stay is granted, it will remain in effect through the conclusion of the PCRA proceeding, including review in the Pennsylvania Supreme Court.

The Criminal Procedure Rules Committee is planning to recommend that the Supreme Court amend Rule 1509 governing capital cases.¹⁷ The Rule presently requires that the judge, no later than 90 days from the notice to dismiss¹⁸ or from oral argument, to (1) dismiss the petition, (2) grant the defendant leave to file an amended petition, or (3) order an evidentiary hearing.¹⁹ In addition, the Rule as presently written requires the judge, subject to the imposition of sanctions, to reach a decision on the petition no more than 90 days after the evidentiary hearing.²⁰ Under the proposed change, the 90 day periods are subject to a single 30 day extension. In addition, the proposed amendment removes the threat of sanctions for failure to comply with required 90 day periods and replaces sanctions with a mechanism by which the clerk of courts notifies the judge that the time limits have expired. If the judge fails to act within 30 days of the clerk's notice, the clerk would be required to send a notice of non-compliance to the Supreme Court.

RECENT CASES INTERPRETING THE PCRA

Ineffective Assistance of Counsel

As noted, claims otherwise cognizable under the Act²¹ are deemed waived if the claim could have been raised before, or at trial, or on appeal.²² To avoid waiver, a petitioner must allege that the claim or claims would have been presented in a prior proceeding but

⁹ 42 Pa.C.S. §9545(b).

¹⁰ 42 Pa.C.S. §9545(a).

¹¹ 42 Pa.C.S. §9544(b). Properly layered claims of ineffective assistance of counsel permit a PCRA court to consider claims that would otherwise be considered waived. *Commonwealth v. Allen*, 732 A.2d 582, 587 (Pa. 1999); *Commonwealth v. Pursell*, 724 A.2d 293, 302 (Pa. 1999).

¹² 42 Pa.C.S. §9543(a)(2)(iv).

¹³ 42 Pa.C.S. §9543(a)(2)(viii). See *Commonwealth v. Quinlan*, 639 A.2d 1235, 1238 (Pa. Super. 1994).

¹⁴ 42 Pa.C.S. §9543(a)(2)(vii). See *Commonwealth v. Williams*, 660 A.2d 614, 618 (Pa. Super. 1995).

¹⁵ 42 Pa.C.S. §9543(a)(2)(iv).

¹⁶ 42 Pa.C.S. §9545(c).

¹⁷ 29 Pa. Bulletin 6462 (Dec. 25, 1999); 30 Pa. Bulletin ___ (May 27, 2000).

¹⁸ In a recent case, *Commonwealth v. Pursell*, 749 A.2d 911 (Pa. 2000), the Supreme Court refused to provide the defendant with relief where the PCRA court dismissed the defendant's petition without the notice required by Pa.R.Crim.P. 1509 (C)(1) because the court concluded that the defendant had failed to invoke the jurisdiction of the PCRA court by failing to plead and prove one or more of the exceptions to the one year filing period contained in 42 Pa.C.S. §9545(b)(1)(i)-(iii).

¹⁹ Pa.R.Crim.P. 1509(c).

²⁰ Pa.R.Crim.P. 1509(c)(3).

²¹ 724 A.2d 326 (Pa. 1999).

²² 658 A.2d 771 (Pa. 1995).

for counsel's ineffectiveness.²³ In a number of recent decisions, the Supreme and Superior Courts have addressed the standard for determining ineffectiveness presented in a post conviction petition and whether a defendant has a remedy under the Act when counsel's error occurs after the trial in the matter.

Standard Governing Ineffectiveness Claims

In *Commonwealth v. Kimball*,²⁴ the Supreme Court returned to an issue that had sharply divided the Court in *Commonwealth v. Buehl*.²⁵ The question presented in both cases was whether the provision of the Act governing ineffectiveness of counsel requires the defendant to meet a more stringent standard for ineffectiveness than the standard that governs when the issue is presented on direct appeal. At issue was the meaning of the language in §9543(a)(2)(ii) of the Act that requires a defendant claiming ineffectiveness to prove that counsel's act or omission "so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place."²⁶ *Buehl* involved counsel's failure to request a cautionary instruction. The plurality in *Buehl* concluded that, although the outcome of *Buehl*'s case may have been different had counsel requested the cautionary instruction, *Buehl* was not entitled to PCRA relief because of the overwhelming evidence of his guilt.²⁷ According to the plurality in *Buehl*, it was not sufficient for a defendant seeking PCRA relief to show that there was a reasonable probability that, but for counsel's error, the outcome of the proceeding would have been different. Rather, a more stringent standard of ineffectiveness governed when ineffectiveness was presented in a PCRA petition.²⁸

In *Kimball*, the Supreme Court held that there is a unitary standard in Pennsylvania for evaluating claims of ineffectiveness of counsel.²⁹ The court concluded that the language in the PCRA closely tracks the language the United States Supreme Court used in

Strickland v. Washington,³⁰ the case defining ineffectiveness under the federal constitution. Ineffectiveness of counsel under *Strickland*, *Kimball* held, requires what a defendant alleging ineffectiveness under the PCRA must establish: acts or omissions by counsel that undermine the reliability of the adjudication of guilt.³¹ The court held that reliability of the adjudication of guilt and the probability that counsel's ineffectiveness caused a different outcome were concepts so closely intertwined and commonly rooted in *Strickland* that it refused to separate them. *Kimball* holds that the standard for determining ineffectiveness set in *Commonwealth v. Pierce*³² governs whether ineffectiveness is raised on direct appeal or presented in a post conviction petition.

Penalty Phase Claims Cognizable in PCRA Proceeding

In *Commonwealth v. Chester*,³³ the Supreme Court held that because the penalty phase hearing of a capital case involves the presentation of evidence and a determination of facts pursuant to the beyond a reasonable doubt standard, it is a "truth determining process" within the meaning of Sections 9543(a)(2)(i) and (a)(2)(ii) Post Conviction Relief Act. Capital cases, the court concluded, simply present "another facet of the common understanding of 'guilt or innocence.'"³⁴ The court held that its holding that penalty phase issues are within the scope of the PCRA is consistent with the court's practice since the repeal of the PCHA and the enactment of the PCRA in 1988³⁵ of reviewing ineffectiveness of counsel and constitutional claims arising during the penalty phase. The court noted the fact that the legislature did not amend the PCRA in 1995 to exclude penalty phase issues evidenced a presumption that the court's interpretation of the statutory language in the Act "is in accordance with legislative intent."³⁶

Ineffectiveness and a Defendant's Right to Direct Appeal

In *Commonwealth v. Lantzy*,³⁷ the Supreme Court considered the issue of whether lawyer

²³ 42 Pa.C.S. §9543(a)(2)(ii). See e.g., *Commonwealth v. Allen*, 732 A.2d 582, 587 (Pa. 1999). ([W]aiver of previously unlitigated issue is excused . . . where the petitioner can demonstrate that his trial or appellate counsel was ineffective.")

²⁴ 724 A.2d 326 (Pa. 1999).

²⁵ 658 A.2d 771 (Pa. 1995).

²⁶ 42 Pa.C.S. §9543(a)(2)(ii).

²⁷ *Commonwealth v. Buehl*, 658 A.2d at 782.

²⁸ *Id.* at 777.

²⁹ *Commonwealth v. Kimball*, 724 A.2d at 333.

³⁰ 466 U.S. 668 (1984).

³¹ *Commonwealth v. Kimball*, 724 A.2d at 332.

³² 527 A.2d 973 (Pa. 1987).

³³ 733 A.2d 1242 (Pa. 1999).

³⁴ 733 A.2d at 1249.

³⁵ Act of April 13, 1988 (P.L. 336, No. 47).

³⁶ 733 A.2d at 1250.

³⁷ 736 A.2d 564 (Pa. 1999).

error in failing to perfect a direct appeal implicates the "truth determining process" thereby entitling a defendant to PCRA relief. Lawyer error during the appeal process was initially considered by the Superior Court in *Commonwealth v. Tanner*.³⁸ *Tanner* concerned appellate counsel's failure to inform the defendant of his right to seek discretionary review in the Pennsylvania Supreme Court. The Superior Court denied PCRA relief on the grounds that counsel's claimed ineffectiveness did not bear on the defendant's ultimate guilt or innocence and, therefore, did not implicate "the truth determining process"³⁹ under the Act.

When the Superior Court considered lawyer error in the context of direct appeal in *Lantzy*,⁴⁰ the court affirmed the denial of PCRA relief basing its decision on its earlier holding in *Commonwealth v. Petroski*.⁴¹ In *Petroski*, the court relying upon its decision in *Tanner*, had held that lawyer error in failing to protect a defendant's right to direct appeal did not entitle a defendant to post conviction relief because the "truth-determining process" occurs during trial and not on appeal. Seeking to clarify *Petroski*, the Superior Court in *Lantzy* held that a defendant was entitled to PCRA relief where counsel failed to file an appeal if he could establish that he was innocent or that his sentence was illegal. Otherwise, a defendant could seek relief outside the PCRA by requesting an appeal *nunc pro tunc*.

In reversing the Superior Court, the Supreme Court in *Lantzy* held that the PCRA provides the "exclusive remedy where a defendant seeks the restoration of appeal rights due to counsel's failure to perfect a direct appeal."⁴² The court stated that a narrow interpretation of the PCRA to apply only to lawyer error at trial would lead to a bifurcated system of review where some claims, considered outside the PCRA, would be subject to habeas corpus review. The court concluded that the legislature intended the PCRA to be "the sole means"⁴³ for obtaining collateral relief. The court held that prejudice is presumed when there is an actual or constructive denial of counsel. Consequently, where counsel disregards a defendant's request to file a direct appeal, the defendant is entitled to

PCRA relief without establishing either innocence or demonstrating the merits of the issues that would have been raised had the appeal been filed on time.⁴⁴

In *Commonwealth v. Knighten*,⁴⁵ a post-*Lantzy* case, the Superior Court held the trial court's determination that trial counsel was not ineffective for failing to file a direct appeal did not preclude the defendant from pursuing a claim of ineffective assistance of trial counsel in a PCRA. A claim of ineffective assistance of counsel is properly preserved if it is raised at the first opportunity that the defendant is represented by new counsel. If there is no intervening substitution of counsel, the court held that there is no waiver of a claim of ineffective assistance of trial counsel by virtue of the failure to raise the claim on direct appeal. Where the court determines that counsel was not ineffective for failing to file a direct appeal, all issues *other* than the allegation of ineffectiveness of trial counsel are waived.

In a second post-*Lantzy* case, the Superior Court in *Commonwealth v. Prisk*⁴⁶ held that although the trial court informed the defendant of his appeal rights at the time of sentence, this fact did not excuse counsel's failure to pursue an appeal where requested to do so by the defendant. While subsequent reinstatement of defendant's appeal right may be made where there has been an unjustified failure of counsel to perfect a direct appeal, where the trial court has held an evidentiary hearing on all issues raised in the PCRA petition, the Superior Court will grant the defendant a new trial if the defendant establishes on appeal from the denial of PCRA relief that counsel was ineffective with respect to claims in addition to counsel's failure to pursue a direct appeal.

Right to Effective Post Conviction Counsel

In *Commonwealth v. Albrecht*,⁴⁷ the Supreme Court considered whether a defendant has a cognizable claim for acts or omissions by post conviction counsel. The court held that, notwithstanding the fact that the defendant in a PCRA case does not have a right to counsel based on either the federal or state constitution, the appointment of counsel pursuant to Pa.R.Crim.P. 1504 carries with it an enforceable right to effective assistance of

³⁸ 600 A.2d 201 (Pa. Super. 1991).

³⁹ 42 Pa.C.S. §9543(a)(2)(ii).

⁴⁰ 712 A.2d 288 (Pa. Super. 1998).

⁴¹ 695 A.2d 844 (Pa. Super. 1997).

⁴² *Commonwealth v. Lantzy*, 736 A.2d at 570.

⁴³ *Id.* fn. 4. 42 Pa.C.S. §9542.

⁴⁴ *Id.* at 572.

⁴⁵ 742 A.2d 679 (Pa. Super. 1999).

⁴⁶ 744 A.2d 294 (Pa. Super. 1999).

⁴⁷ 720 A.2d 693 (Pa. 1998).

counsel. The standard, the court held, that governs ineffectiveness claims at trial and on direct appeal applies to claims of ineffectiveness of post conviction counsel. The court noted where a defendant is represented by new counsel on appeal from the denial of post conviction relief and claims that post conviction counsel failed to raise particular claims in the PCRA court, an appellate court will grant relief without remanding the case where the defendant establishes that post conviction counsel rendered ineffective assistance of counsel.

Although not noted by the court in *Albrecht*, where the defendant is not represented on appeal from the denial of PCRA relief by new counsel but instead by counsel who represented the defendant before the PCRA court, the appellate court will generally not have before it a claim of ineffectiveness of post conviction counsel because counsel cannot be expected to raise his own ineffectiveness as part of the appeal from the denial of PCRA relief.⁴⁸ As a result, the issue of PCRA's counsel's ineffectiveness will need be presented in a second petition.⁴⁹

Time for Filing PCRA Petition

The 1995 amendments to the PCRA require that a petition, subject to a number of exceptions, be filed within one year of the date a judgment becomes final.⁵⁰ The exceptions themselves are subject to a 60-day period.⁵¹ In *Commonwealth v. Fahy*,⁵² the Supreme Court held that the time limits mandated by the 1995 amendments are jurisdictional and, therefore, the period for filing is not subject to the doctrine of equitable tolling, except to the extent that the doctrine is reflected in the statutory exceptions to the filing period. The court stated that a claim of ineffectiveness of counsel does not save an otherwise untimely PCRA petition, nor can a court consider a challenge to the legality of a sentence if the petition is not timely filed or falls under one of the exceptions to the time period.⁵³ Habeas corpus, the

court stated, exists as an independent basis for relief only in cases where a claim is not cognizable under the PCRA.

Where a petition is untimely, petitioner has the burden to plead in the petition and prove that one of the exceptions to one-year filing period apply.⁵⁴ In *Commonwealth v. Yarris*,⁵⁵ the Supreme Court held that since the issue of timeliness implicates the jurisdiction of the court, a court may consider the matter *sua sponte*.

The Superior Court has held that appointment of counsel is required even though the petition does not appear to have been timely filed. In *Commonwealth v. Ferguson*,⁵⁶ the court stated that before a PCRA court dismisses an initial petition as untimely, it must determine if the defendant is indigent and, if so, appoint counsel pursuant to Pa.R.Crim.P. 1504 for purposes of counsel determining whether the petition is timely, and if not, whether any of the exceptions to the one-year filing period apply in the case.

While the Act permits a PCRA court to consider an untimely petition if the defendant establishes that the failure to raise the claim within the one-year period was the "result of interference by government officials,"⁵⁷ the Supreme Court in *Commonwealth v. Yarris*,⁵⁸ has held that a claim that ineffectiveness of prior counsel prevented the defendant from raising the present claim in a timely manner does not meet the exception due to the specific provision in the Act⁵⁹ that the term "government officials" does not include defense counsel.⁶⁰ The court has also held that the exception does not apply to a claim involving the withdrawal of counsel and the PCRA's court's refusal to appoint defendant new counsel on his appeal from the denial of PCRA relief.⁶¹ In *Commonwealth v. Pursell*,⁶² the court rejected a claim concerning PCRA's counsel's compliance with the procedures governing with-

⁴⁸ Counsel is not precluded from raising his or her own ineffectiveness on appeal. See generally *Commonwealth v. Green*, 709 A.2d 382, 384 (Pa. 1998).

⁴⁹ See *Commonwealth v. Lark*, 746 A.2d 585 (Pa. 2000) for a discussion of second petitions and the time-for-filing provisions under the Act.

⁵⁰ 42 Pa.C.S. §9545(b).

⁵¹ 42 Pa.C.S. §9545(b)(1)(i)-(iii).

⁵² 737 A.2d 214 (Pa. 1999).

⁵³ 737 A.2d at 223.

⁵⁴ *Commonwealth v. Beasley*, 741 A.2d 1258 (Pa. 1999).

⁵⁵ 731 A.2d 581, 587 (Pa. 1999).

⁵⁶ 722 A.2d 177 (Pa. Super. 1998). See also *Commonwealth v. Guthrie*, 749 A.2d 502 (Pa. Super. 2000).

⁵⁷ 42 Pa.C.S. §9545(b)(1)(i).

⁵⁸ 731 A.2d 581 (Pa. 1999).

⁵⁹ 42 Pa.C.S. §9545(b)(4).

⁶⁰ See also *Commonwealth v. Pursell*, 749 A.2d 911 (Pa. 2000).

⁶¹ *Commonwealth v. Pursell*, 749 A.2d 911 (Pa. 2000).

⁶² *Id.*

drawal by counsel set out in *Commonwealth v. Turner*.⁶³ The court held the PCRA court's decision not to appoint new counsel did not constitute governmental interference with the presentation of defendant's claim as both issues could have been presented on appeal from the denial of PCRA relief.

The Supreme Court has described the second exception to the one-year filing period in Section 9545(b)(1)(ii) which permits an untimely claim when 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," as an exception for after discovered evidence.⁶⁴ The exception, the court has held, does not apply where the defendant merely claims that "more competent counsel would have presented other claims based upon a better evaluation of the facts available to . . . at the time of trial. . . ."⁶⁵

In *Commonwealth v. Lark*,⁶⁶ the Supreme Court held when a defendant's PCRA appeal is pending before a court, a second or subsequent PCRA petition cannot be filed until review has been completed by the highest state court in which review is sought or upon expiration of the time for seeking such review. If the second or subsequent petition is not filed within the required one-year period of the date the judgment became final, the defendant must plead and prove that the one of the three exceptions to one-year filing apply.⁶⁷ Such a petition must be filed within 60 days of the date of the order which resolves the previous PCRA petition.

Waiver of Claims

As noted, the Act precludes post conviction review for claims that could have been raised at trial, on appeal or in a prior PCRA petition.⁶⁸ In *Commonwealth v. Albrecht*,⁶⁹ the Supreme Court held that its practice of relaxing waiver on direct appeal in capital cases would no longer apply in appeals from the denial of PCRA relief in capital cases. The court stated that while relaxation of the waiver principle on direct appeal was justified on grounds of judicial economy because it reduces the need

for defendants to pursue issues in a post conviction proceeding, its application to post conviction appeals was not consistent with the principle of finality and the efficient use of the court's time. The court was satisfied that there were adequate safeguards in capital cases in light of the fact that a defendant can obtain review of meritorious claims not raised by trial counsel if raised by appellate counsel and claims overlooked by appellate counsel can be reviewed in a post conviction proceeding if the defendant asserts the ineffectiveness of all prior counsel. Consequently, the court held that waiver will be excused in a PCRA appeal only upon a demonstration of ineffectiveness of counsel in not raising the issue in a prior proceeding.

Discovery in Capital Case

In *Commonwealth v. Williams*,⁷⁰ the court held that in a capital PCRA case where the defendant seeks discovery pursuant to Pa.R.Crim.P. 1502(e)(2), the defendant must establish specific grounds that warrant the request for discovery. The court upheld the lower court's denial of the request for discovery where the defendant provided no explanation as to why the documents that were provided to former counsel by the Commonwealth were not available to post conviction counsel, nor did the defendant attempt to identify specific documents that were not produced during pretrial or at trial.⁷¹

Standing to File PCRA — Next Friend Status

In two recent cases, the Supreme Court has addressed the issue of a next of friend seeking post conviction relief on behalf of a defendant who has waived PCRA review. In *Commonwealth v. Bronshtein*,⁷² the court held that a person seeking PCRA relief on behalf of a defendant as his next friend must first provide the court an explanation as to why the defendant is unable to appear in his behalf and litigate his own cause. In addition, the putative next friend must establish that he or she has a significant relationship to and is truly dedicated to the best interests of the defendant. Where the PCRA court determines that the defendant has made a knowing and intelligent decision not to pursue PCRA relief, the next of

⁶³ 544 A.2d 927 (Pa. 1988).

⁶⁴ *Commonwealth v. Yarris*, 731 A.2d 581 (Pa. 1999).

⁶⁵ *Commonwealth v. Pursell*, 749 A.2d 911 Pa. 2000).

⁶⁶ 746 A.2d 585 (Pa. 2000).

⁶⁷ 42 Pa.C.S. §9545(b)(1)(i)-(iii).

⁶⁸ 42 Pa.C.S. §9544(b).

⁶⁹ 720 A.2d 693 (Pa. 1998).

⁷⁰ 732 A.2d 1167 (Pa. 1999).

⁷¹ See also *Commonwealth v. Abu-Jamal*, 720 A.2d 798 (Pa. 1998).

⁷² 729 A.2d 1102 (Pa. 1999).

friend does not have standing to pursue relief waived by the defendant. In *Commonwealth v. White*,⁷³ the court held that where a putative next friend raises the issue of the competency of the defendant to be executed, the next friend must set forth specific reasons he or she believes the defendant does not comprehend the penalty. Where the defendant has waived direct or collateral review and the court determines he or she was competent to do so, the court may require a more significant showing in the nature of changed circumstances before scheduling a hearing on the claim of incompetency.

Petition to Withdraw from PCRA Proceeding

In *Commonwealth v. Porter*,⁷⁴ the Supreme Court considered counsel's obligation under *Commonwealth v. Turner*⁷⁵ in seeking to withdraw as appointed counsel in a PCRA proceeding. The Court held that counsel is not required to conduct an extra record investigation of each claim defendant wishes to have reviewed. Where there is nothing in the record to support the claim, and there is no indication that an investigation would be fruitful, counsel's decision not to investigate is reasonable.

Failure to Inform Defendant Regarding Consecutive Sentences

When the issue is raised in a second or subsequent petition, the Supreme Court in *Commonwealth v. Allen*⁷⁶ held that a trial court's failure under *Commonwealth v. Persinger*⁷⁷ to inform a defendant of the possibility of consecutive sentences during a guilty plea colloquy and counsel's failure to object to

the plea does not automatically amount to a "miscarriage of justice" entitling a defendant to PCRA relief. Rather, a court should look at the totality of the circumstances surrounding the plea to determine whether relief is warranted under the PCRA.

Waiver of Trial Counsel

The Superior Court in *Commonwealth v. Owens*⁷⁸ held that the defendant was entitled to PCRA relief where the trial court failed to inform the defendant in a waiver of trial counsel colloquy of the permissible range of sentences for the crimes charged. As a result, the court concluded that the defendant's waiver of trial counsel not knowing and voluntary under Pa.R.Crim.P. 318.

Constitutionality of 1995 Amendments to PCRA

In *Commonwealth v. Sanders*,⁷⁹ the Superior Court rejected a claim that the 1995 amendments to the PCRA are null and void because they allegedly comprise legislation which exceeded the scope of the Governor's proclamation of designated subjects to be addressed during the 1995 Special Session of the Legislature. The court concluded that the Legislature's consideration of the PCRA statute was proper under the parameters of the Governor's proclamation seeking revisions of the criminal statutes of the Commonwealth. The PCRA amendments, the court concluded, fell squarely within the subject matter designated by the Governor for consideration by the Legislature. The lack of a specific request by the Governor for particular legislation did not render unconstitutional a subsequent enactment of specific legislation where the legislation falls within the ambit of the general subject matter of the Special Session.

⁷³ 734 A.2d 374 (Pa. 1999).

⁷⁴ 728 A.2d 890 (Pa. 1999).

⁷⁵ 544 A.2d 927 (Pa. 1988).

⁷⁶ 732 A.2d 582 (Pa. 1999).

⁷⁷ 615 A.2d 1305 (Pa.1992).

⁷⁸ ___ A.2d ___ (Pa. Super. ___) (Lexis 350).

⁷⁹ 743 A.2d 790 (Pa. Super. 1999).