

V.

Appellant

No. 1274 MDA 2025

FILED SEPTEMBER 28, 2026

³ This Court entered an Order on April 10, 2026, staying this appeal pending the outcome of **Commonwealth v. Ramsey**, __ A.3d __, 2026 WL 209742 (Pa. Super. 2026)(*en banc*). That stay is, hereby, lifted.

sentenced Appellant to 2½ to 7 years of incarceration. Subsequently, the trial court allowed Appellant's plea counsel, Attorney Markosky, to withdraw and appointed the Public Defender's Office to represent Appellant for the purpose of post-sentence motions or appeals. On April 11, 2025, Appellant filed a timely post-sentence motion for reconsideration of his sentence. On May 6, 2025, prior to the denial of his post-sentence motion, Appellant filed a PCRA petition alleging that Attorney Markosky had been ineffective as plea counsel. Although filed prematurely, the court did not quash the petition. On May 13, 2025, the court denied Appellant's post-sentence motion.

Subsequently, on June 23, 2025, Appellant filed an amended PCRA petition. After a hearing, the PCRA court dismissed the PCRA petition on August 19, 2025. On September 15, 2025, Appellant's counsel filed a notice of appeal on Appellant's behalf. On September 22, 2025, Appellant filed his own *pro se* notice of appeal. On September 30, 2025, Appellant's counsel, Attorney Domalakes, filed a statement of intent to withdraw stating that there were no meritorious claims to pursue on appeal. With this appeal, Appellant's counsel has filed an **Anders** No-Merit Brief.⁴

⁴ **Anders v. California**, 386 U.S. 738 (1967). Although counsel has filed an **Anders** brief, the proper mechanism when seeking to withdraw in PCRA proceedings is a **Turner/Finley** no-merit letter. **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). However, because an **Anders** brief provides greater protection to a criminal appellant, we may accept an **Anders** brief in lieu of a **Turner/Finley** no-merit letter. **Commonwealth v. Widgins**, 29 A.3d 816, 817 n.2 (Pa. Super. 2011); **Commonwealth v. Fusselman**, 866 A.2d 1109, 1111 n.3 (Pa. Super. 2004).

On appeal, Appellant raises issues of ineffective assistance of counsel. However, before we may address Appellant's substantive claims, we must first determine whether the trial court had jurisdiction to consider his PCRA petition. **See Commonwealth v. Hackett**, 956 A.2d 978, 983 (Pa. 2008) (explaining that the timeliness of a PCRA petition is a jurisdictional requisite).

A PCRA petition “shall be filed within one year of the date the judgment becomes final[.]” 42 Pa.C.S. § 9545(b)(1). “If post-sentencing motions are timely filed, [] the judgment of sentence does not become final for purposes of appeal until the trial court disposes of the motion[.]” **Commonwealth v. Percell**, 328 A.3d 1115, 1118 (Pa. Super. 2024) (citation omitted). The PCRA “is not intended to be a substitute for . . . the availability of appeal or a post-sentence motion.” Pa.R.Crim.P. 901 cmt. A premature PCRA petition constitutes a legal nullity and the PCRA court lacks authority to consider such a filing. **See Commonwealth v. Ramsey**, __ A.3d __, 2026 WL 2209742 (Pa. Super. 2026)(*en banc*)(quashing appeal where PCRA petition was filed within thirty-day direct appeal period); **Commonwealth v. Leslie**, 757 A.2d 984, 985 (Pa. Super. 2000) (where petitioner filed pro se PCRA petition before filing a direct appeal, “the trial court should have dismissed the PCRA petition without prejudice as premature”); **see also Commonwealth v. Kubis**, 808 A.2d 196, 198 n.4 (Pa. Super. 2002) (“The PCRA provides petitioners with a means of collateral review, but has no applicability until the judgment of sentence becomes final.”).

Here, Appellant filed his PCRA petition before the court denied his post-sentence motion. The petition was, therefore, filed before his judgment of sentence had become final and the PCRA court lacked authority to consider Appellant's premature filing. We are, therefore, constrained to quash this appeal.

Appeal quashed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 09/28/2026