**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| SQUANNE KIRBY | : | |
| Appellant | : | No. 2352 EDA 2020 |

Appeal from the PCRA Order Entered November 18, 2020
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0009308-2016

BEFORE: PANELLA, P.J., OLSON, J., and STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.: **FILED JUNE 28, 2022**

Appellant, Squanne Kirby, appeals from the order entered in the Court of Common Pleas of Philadelphia County, which dismissed Appellant's first petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46, without an evidentiary hearing. Appellant's court-appointed counsel has filed a petition to withdraw as counsel, and an accompanying brief under ***Anders***.[1] After a careful review, we grant counsel's petition to withdraw and affirm the PCRA court's order.

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* Former Justice specially assigned to the Superior Court.

[1] Counsel filed a brief pursuant to ***Anders v. California***, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), apparently in the mistaken belief that an ***Anders*** brief is required where counsel seeks to withdraw on appeal from the dismissal of a PCRA petition. A ***Turner/Finley*** "no-merit" letter, however, is the appropriate filing. ***See Commonwealth v. Turner***, 518 Pa. 491, 544
*(Footnote Continued Next Page)*

The relevant facts and procedural history are as follows: Appellant was arrested in connection with a home invasion, which occurred on August 30, 2016, at the home of the victim. On August 31, 2017, Appellant, who was represented by Attorney Michael McDermott, proceeded to a guilty plea hearing at which he pled guilty to the charges of burglary, robbery, conspiracy, and a violation of the Uniform Firearms Act.[2]

The Commonwealth recited the facts underlying the charges as follows:

> [T]he complainant in this case is…Latanya Pressley. And this is the home invasion robbery that occurred at **** Hutchinson Street in Philadelphia. And that occurred on August 30, 2016, sometime in the earlier morning hours of that day….
>
> The complainant indicated that on that day at around 4:15 a.m. she was inside her residence, and she was letting her friend, Tia [Chaunita or Chaunita McLaughlin], who is the co-defendant in this case,…stay on her couch.
>
> Tia had been there earlier in the day along with [Appellant], her boyfriend. [Appellant] had asked to used [*sic*] the complainant's bathroom and then the complainant saw [Appellant] coming out of her bedroom and asked the complainant—the co-defendant—and the complainant asked [Appellant] and his girlfriend to leave the house.
>
> Later, at around 2:00 a.m., Tia came back indicating that her boyfriend wouldn't let her stay with him, and Tia needed a place to stay; that's why she was staying in [the complainant's] house that morning.
>
> The [complainant], at around 4:15 a.m., [went] upstairs and Tia was lying on the couch. The [complainant] heard a noise downstairs. When she went downstairs, she saw Tia's boyfriend,

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A.2d 927 (1988); ***Commonwealth v. Finley****,* 550 A.2d 213 (Pa.Super. 1988) (*en banc*). Since an ***Anders*** brief provides greater protection to a defendant, this Court may accept an ***Anders*** brief in lieu of a ***Turner/Finley*** letter. ***Commonwealth v. Fusselman***, 866 A.2d 1109, 1111 n.3 (Pa.Super. 2004).

[2] 18 Pa.C.S.A. §§ 3701(a)(1), 3502(a)(1), 903, and 6106(a)(1), respectively.

> [Appellant], in her house. [Appellant] came towards the steps and pointed a silver handgun at the complainant's neck and said, "Bitch, where is your pocketbook at?"
>
> The complainant had her two style Metro cell phone in her hand. Tia's boyfriend grabbed [the complainant's] cell phone out of her hand. At that point, Tia went upstairs into the complainant's bedroom and took the complainant's pocketbook, which contained $150 in cash, a debit card, and all identification, and [she] handed this pocketbook to [Appellant]. Then both Tia and [Appellant] left the house. The complainant called the police.
>
> Later that night, Tia actually came back to the complainant's house and left before the police arrived. However, police were called again. She was apprehended just down the block….And found right outside of the house was a cell phone that the complainant recognized to be a cell phone that Tia had been carrying. That cell phone was recovered, and a forensic analysis was done on that cell phone. It was determined that [Appellant] is the owner of the cell phone.
>
> On the cell phone there were text messages between [Appellant] and the co-defendant, [Tia], arranging the home invasion.

N.T., 8/31/17, at 6-9.

Appellant agreed these were the facts to which he was pleading guilty. ***Id.*** at 9. He also agreed he reached a plea bargain with the Commonwealth in which he would plead guilty to various charges, and in exchange, the Commonwealth would recommend an aggregate sentence of nine years to twenty years in prison, plus $200.00 in restitution. ***Id.*** at 2. The Commonwealth indicated this was Appellant's "second strike," and in exchange for Appellant's guilty plea, the Commonwealth was waiving the "second strike." ***Id.*** at 10. Appellant acknowledged his understanding of the Commonwealth's waiver. ***Id.***

The following relevant exchange occurred between Appellant and the trial court during the guilty plea hearing:

> THE COURT: I have in front of me a written guilty plea colloquy form. I see you signed the bottom of page 3. Did you do that after you went through pages one, two, three, and four with your—
>
> [APPELLANT]: Yes.
>
> THE COURT: Let me just finish the question.
>
> [APPELLANT]: Okay.
>
> THE COURT: With your attorney, Mr. McDermott?
>
> [APPELLANT]: Yes.
>
> THE COURT: All right. Did you understand all the rights you're giving up on pages one, two, three, and four of this written guilty plea colloquy form by pleading guilty instead of going [to] a trial?
>
> [APPELLANT]: Yes.
>
> THE COURT: Have you had a chance to fully discuss your case with Mr. McDermott?
>
> [APPELLANT]: Yes.
>
> THE COURT: Did you tell him everything he should know?
>
> [APPELLANT]: Yes.
>
> THE COURT: And did you fully discuss your decision to plead guilty with him?
>
> [APPELLANT]: Yes.
>
> THE COURT: And are you satisfied with his representation?
>
> [APPELLANT]: Yes.
>
> THE COURT: Now, in this case, you're charge[d] with—this is a burglary. There was somebody in the house when this occurred.
>
> [APPELLANT]: Yes.
>
> THE COURT: You broke into a residential house. [T]here was someone in the house. And you broke in with a gun with somebody else helping you. That's the criminal conspiracy.
>
> Violation of the Uniform Firearms Act. That you had a gun and because of your prior criminal record you could not possess a

gun. And the robbery is the property [that] was taken. Is that correct?

[APPELLANT]: Yes.

THE COURT: Property was taken at gunpoint. Those are the four charges. They carry a maximum penalty of 70 years and a $100,000 fine. Do you understand that?

[APPELLANT]: Yes.

THE COURT: Now, has anyone forced you or threatened you to get you to plead guilty?

[APPELLANT]: Nobody.

THE COURT: Has anyone promised you anything other than the recommended sentence?

[APPELLANT]: No.

THE COURT: Are you pleading guilty of your own free will?

[APPELLANT]: Yes.

THE COURT: How old are you?

[APPELLANT]: Twenty-six.

THE COURT: Last grade of school you completed?

[APPELLANT]: Twelfth.

THE COURT: Read, write, and understand the English language?

[APPELLANT]: Yes.

THE COURT: Under the influence of any drugs, alcohol, or medication?

[APPELLANT]: No.

THE COURT: Ever been diagnosed with any mental illness?

[APPELLANT]: No.

THE COURT: Do you have any questions of [your attorney] or [the court] concerning your decision to plead guilty in this case?

[APPELLANT]: No.

***Id.*** at 3-5.

Moreover, Appellant signed a written guilty plea colloquy in which he, *inter alia*, affirmatively indicated he was "knowingly, voluntarily, and

intelligently" pleading guilty. Written Guilty Plea Colloquy, filed 8/31/17. Appellant affirmatively indicated: he understood the nature of the charges to which he was pleading guilty; there was a factual basis for the plea; he had a right to a trial by jury;[3] he was presumed innocent until proven guilty; and he was aware of the permissible range of sentences. ***Id.***

Furthermore, in the written guilty plea, Appellant admitted he could read and write English; he was not under the influence of alcohol or drugs; and he had not taken any medicine in the last week. ***Id.*** Appellant affirmatively indicated "[he has] never seen a doctor or been in a hospital for any mental problems—[he] can understand what is going on." ***Id.***

The trial court set forth the sentencing guidelines on the record at the guilty plea hearing and accepted Appellant's guilty plea. N.T., 8/31/17, at 10. Defense counsel indicated Appellant was waiving the pre-sentence investigation report and mental health evaluation, and he wished to proceed immediately to sentencing. ***Id.*** at 10-11. Defense counsel requested the trial court accept the Commonwealth's sentencing recommendation, and Appellant indicated he had nothing else to say. ***Id.*** at 14. The trial court accepted the Commonwealth's sentencing recommendation, and accordingly, the trial court sentenced Appellant to an aggregate of nine years to twenty years in prison, plus ordered him to pay restitution in the amount of $200.00.

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[3] The written guilty plea colloquy explained Appellant's right to a jury trial in detail.

Appellant filed a timely motion for reconsideration and modification of his sentence. Specifically, he averred his aggregate sentence was excessive, and the trial court failed to consider the mitigating factors in imposing sentence. Appellant's post-sentence motion was denied by operation of law on January 10, 2018. Appellant did not file a direct appeal with this Court.

On June 28, 2018, Appellant filed a timely *pro se* PCRA petition, and the court appointed Attorney Leo Michael Mulvihill, Jr. to represent Appellant. On July 1, 2020, Attorney Mulvihill filed an amended PCRA petition, and on August 25, 2020, the Commonwealth filed a motion to dismiss the petition.

On September 16, 2020, the PCRA court provided notice of its intent to dismiss the PCRA petition without an evidentiary hearing under Pa.R.Crim.P. 907. On November 18, 2020, the PCRA court dismissed Appellant's PCRA petition. On December 9, 2020, the PCRA court permitted PCRA counsel to withdraw and appointed Attorney Matthew F. Sullivan to represent Appellant on appeal. This counseled appeal followed on December 9, 2020. The PCRA court directed Appellant to file a Pa.R.A.P. 1925(b) statement, Appellant complied, and the PCRA court filed a responsive Pa.R.A.P. 1925(a) opinion.

On October 27, 2021, Attorney Sullivan filed with this Court an application to withdraw and an accompanying ***Anders*** brief.[4]

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[4] Appellant has not filed a *pro se* brief or a brief with privately retained counsel.

As indicated *supra*, the procedure set forth in ***Anders*** is not the appropriate vehicle for withdrawing from PCRA representation, ***see Commonwealth v. Karanicolas***, 836 A.2d 940, 947 (Pa.Super. 2003), as counsel seeking to withdraw on collateral appeal must follow the procedure outlined in ***Turner***/***Finley***. Relevantly:

> ***Turner***/***Finley*** counsel must review the case zealously. ***Turner***/***Finley*** counsel must then submit a "no-merit" letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel's diligent review of the case, listing the issues which the petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw.
>
> Counsel must also send to the petitioner: (1) a copy of the "no-merit" letter/brief; (2) a copy of counsel's petition to withdraw; and (3) a statement advising petitioner of the right to proceed *pro se* or by new counsel.
>
> If counsel fails to satisfy the foregoing technical prerequisites of ***Turner***/***Finley***, the court will not reach the merits of the underlying claims but, rather, will merely deny counsel's request to withdraw. Upon doing so, the court will then take appropriate steps, such as directing counsel to file a proper ***Turner***/***Finley*** request or an advocate's brief.
>
> However, where counsel submits a petition and "no-merit" letter that do satisfy the technical demands of ***Turner***/***Finley***, the court—trial court or this Court—must then conduct its own review of the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief. By contrast, if the claims appear to have merit, the court will deny counsel's request and grant relief, or at least instruct counsel to file an advocate's brief.

***Commonwealth v. Wrecks***, 931 A.2d 717, 721 (Pa.Super. 2007) (citations omitted). Because an ***Anders*** brief provides greater protection to a defendant, this Court may accept it in lieu of a ***Turner***/***Finley*** letter. ***Commonwealth v. Widgins***, 29 A.3d 816, 817 n.2 (Pa.Super. 2011).

In the case *sub judice*, counsel has satisfied the requirements of ***Turner/Finley***. Specifically, he (1) set forth the issues Appellant wished to have reviewed; (2) stated he conducted a thorough review of the record and applicable law; (3) determined there are no non-frivolous claims Appellant can raise; and (4) explained why Appellant's claims are meritless. Moreover, counsel has verified that he mailed Appellant a letter informing him of his intention to seek permission to withdraw from representation, as well as Appellant's rights in lieu of representation. ***See Widgins***, 29 A.3d at 818. Since counsel has complied with ***Turner***/***Finley***, we may proceed to an independent review of the appeal.

On appeal, counsel raises in his ***Anders*** brief the issue of whether "the ineffective assistance of plea counsel for failing to investigate [Appellant's] psychiatric conditions" caused Appellant to enter an involuntary and unknowing plea. ***Anders*** Brief at 7. Initially, we note the following well-established applicable legal precepts:

Our standard of review for an order denying PCRA relief is limited to whether the record supports the PCRA court's determination, and whether that decision is free of legal error. ***Commonwealth v. Sattazahn***, 597 Pa. 648, 952 A.2d 640, 652 (2008). "We must accord great deference to the findings of the PCRA court, and such findings will not be disturbed unless they have no support in the record." ***Commonwealth v. Scassera,*** 965 A.2d 247, 249 (Pa.Super. 2009) (citation omitted).

In reviewing Appellant's ineffective assistance of counsel claim, we are mindful that, since there is a presumption counsel provided effective representation, the defendant bears the burden of proving ineffectiveness. ***Commonwealth v. Ali***, 608 Pa. 71, 10 A.3d 282 (2010). To prevail on an ineffective assistance claim, a defendant must establish "(1) [the] underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his [client's] interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different." ***Id.***, ***supra***, 10 A.3d at 291 (citations omitted). A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim. ***Id.*** Notably, "[c]ounsel cannot be deemed ineffective for failing to raise a meritless claim." ***Commonwealth v. Johnson***, 635 Pa. 665, 139 A.3d 1257, 1272 (2016) (citation omitted).

> A criminal defendant has the right to effective counsel during a plea process as well as during trial. Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief…if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.

***Commonwealth v. Moser***, 921 A.2d 526, 531 (Pa.Super. 2007) (quotations and quotation marks omitted). ***See Commonwealth v. Kersteter***, 877 A.2d 466, 467 (Pa.Super. 2005) (holding PCRA petitioner will be eligible to

withdraw his plea if he establishes ineffective assistance of counsel caused the petitioner to enter an involuntary guilty plea, or the guilty plea was unlawfully induced, and the petitioner is innocent). "[T]he law does not require that [the defendant] be pleased with the outcome of his decision to enter a plea of guilty: All that is required is that [his] decision to plead guilty be knowingly, voluntarily, and intelligently made." ***Commonwealth v. Anderson***, 995 A.2d 1184, 1192 (Pa.Super. 2010) (citations, quotation, and quotation marks omitted).

Appellant avers the PCRA court erred in dismissing his petition since he raised a claim of arguable merit regarding whether plea counsel was ineffective "for failing to investigate Appellant's existing psychiatric conditions." Appellant's Amended PCRA Petition, filed 7/1/20, at 3. Appellant avers plea counsel's failure to discover Appellant's "mental deficiencies" caused Appellant to enter an involuntary and unknowing guilty plea. ***Id.***

As this Court has relevantly held:

> With regard to an attorney's duty to investigate, the Supreme Court has noted that the reasonableness of a particular investigation depends upon evidence known to counsel, as well as evidence that would cause a reasonable attorney to conduct a further investigation. ***Commonwealth v. Hughes***, 581 Pa. 274, 865 A.2d 761 (2004). With regard to the voluntariness of a plea, a guilty plea colloquy must affirmatively demonstrate the defendant understood what the plea connoted and its consequences. Once the defendant has entered a guilty plea, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him. Competence to plead guilty requires a finding that the defendant comprehends the crime for which he stands accused, is able to cooperate with

> his counsel in forming a rational defense, and has a rational and factual understanding of the proceedings against him.

***Commonwealth v. Willis***, 68 A.3d 997, 1002 (Pa.Super. 2013) (citation, quotations, and quotations marks omitted).

In the case *sub judice*, during the lengthy guilty plea colloquy, the trial court extensively questioned Appellant. During this questioning, Appellant confirmed, *inter alia*, that he had fully discussed his case and decision to plead guilty with counsel, told plea counsel everything he should know, and was satisfied with plea counsel's representation. N.T., 8/31/17, at 3-5. Appellant further confirmed no one had forced or threatened him to plead guilty, he was pleading guilty of his own free will, and he understood the charges, possible range of sentences, and sentence recommended by the Commonwealth. ***Id.*** at 1-10. Appellant specifically confirmed he was not under the influence of drugs, alcohol, or medication, and he had never been diagnosed with any mental illness. ***Id.*** at 4-5.

Moreover, Appellant signed a written plea colloquy in which he confirmed he was "knowingly, voluntarily, and intelligently" pleading guilty. Written Guilty Plea Colloquy, filed 8/31/17. Relevantly, he confirmed "[he has] never seen a doctor or been in a hospital for any mental problems—[he] can understand what is going on." ***Id.***

Based on the aforementioned oral and written guilty plea colloquies, the PCRA court concluded Appellant was not entitled to relief on his claim of ineffective assistance of guilty plea counsel, and we find no error in this

regard. ***See Anderson***, ***supra***. Specifically, as the PCRA court noted in its Rule 1925(a) opinion:

> [A]ppellant was able to intelligently answer all of the questions asked of him when he pled guilty, and he was clearly able to cooperate with counsel.
>
> ***
>
> Further, [A]ppellant affirmed during his colloquy with [the trial] court and counsel that he told his attorney everything his attorney should know and that he was satisfied with his counsel's representation. Moreover, [A]ppellant affirmed that he understood all of the questions asked of him during the colloquy, that he had no questions, and that his guilty plea was voluntary. Notably, during the entire court proceedings and especially during the colloquy, [A]ppellant did not demonstrate any hesitations during questioning or exhibit any sign that he was suffering from any mental health issues. N.T., 8/31/17, at 2-15.
>
> On this same date, [A]ppellant also voluntarily signed a written guilty plea wherein he averred he understood his various rights and that he was voluntarily waiving those rights and pleading guilty….[The trial court] subsequently signed the written guilty plea colloquy, [thus] attesting that [the trial court] was 'satisfied the defendant understands fully the nature and quality of the guilty plea that the defendant is entering before [the court].' Written Guilty Plea, dated 8/31/17, at 3-4.

PCRA Court Opinion, filed 8/20/21, at 6-8 (footnote omitted).

Appellant is bound by his statements, which he made in open court while under oath, and he may not now assert grounds for withdrawing the plea which contradict the statements. ***Willis***, ***supra***. Moreover, the trial court judge, who was also the PCRA court judge, observed Appellant as he participated in a lengthy guilty plea colloquy, cogently answering each question addressed to him. As a result, the PCRA court concluded there was no evidence that Appellant was suffering from a mental illness, that a mental

illness interfered with Appellant's capabilities, or that a mental illness rendered Appellant incompetent to plead guilty. ***See Willis***, ***supra***; ***Commonwealth v. Hazen***, 462 A.2d 732 (Pa.Super. 1983) (where the defendant was on medication after an apparent suicide attempt, and he later asserted counsel was ineffective in permitting him to plead guilty since he felt tranquilized during the plea hearing, the defendant was not entitled to relief since counsel and the trial court indicated the defendant showed no signs of being under the influence of medication at the hearing).

Additionally, as the PCRA court indicated:

> Here, this record overwhelmingly establishes the voluntariness of [A]ppellant's plea and his competence to enter it when he did. There is nothing in the record to support [A]ppellant's newfound claims that he was suffering from "mental health deficiencies" during counsel's period of representation. Appellant offers nothing—such as medical records or an affidavit or a certification from a mental health professional—to substantiate that he was mentally incompetent to such an extent that he would have been incapable of tendering a knowing and voluntary guilty plea.
>
> Further, both the oral and written colloquies that [A]ppellant affirmed and signed, fully comply with the six (6) requirements set forth in ***Cole***.[5] Appellant cogently and properly responded to

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[5] In ***Commonwealth v. Cole***, 564 A.2d 203 (Pa.Super. 1989) (*en banc*), this Court noted the six areas in which a valid plea colloquy must delve in order to be valid. Specifically, the trial court must ensure the defendant is aware of 1) the nature of the charges, 2) the factual basis of the plea, 3) the right to a jury trial, 4) the presumption of innocence, 5) the sentencing ranges, and 6) the plea court's power to deviate from any recommended sentence. ***See Cole***, ***supra***. "Furthermore, nothing in [the Rules of Criminal Procedure] precludes the supplementation of the oral colloquy by a written colloquy that is read, completed, and signed by the defendant and made a part of the plea proceedings." ***Commonwealth v. Bedell***, 954 A.2d 1209, 1212-13 (Pa.Super. 2008).

> all questions posed by [the trial court], and it was evident to [the trial court] that [A]ppellant comprehended the crimes for which he stood accused, was able to cooperate with his counsel in creating a reasonable defense, and that he had a genuine understanding of the proceedings against him. Appellant specifically attested that he had never been diagnosed with or treated for a mental illness and that he fully understood the ramifications of his plea. Consequently, [the trial court] accepted his plea as voluntarily and knowingly entered.
>
> Moreover, in order to negate the voluntariness of his guilty plea, [A]ppellant must show more than just a mental illness to disprove that his plea was voluntary, knowing, and intelligent[.] The mere existence of a defendant's mental health history does not alone render the defendant incompetent. ***Commonwealth v. Counterman***, [553 Pa. 370,] 719 A.2d 284 (1998).

PCRA Court Opinion, filed 8/20/21, at 8-9 (footnote omitted) (footnote added).

We agree with the PCRA court's sound reasoning, and we conclude there is no evidence Appellant entered an involuntary, unknowing, or unintelligent plea due to "mental deficiencies." ***Willis***, ***supra***.

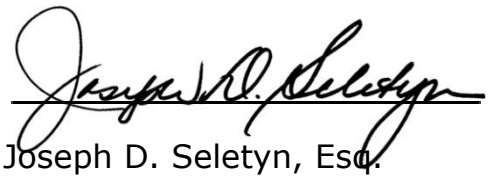
Moreover, we conclude Appellant has failed to demonstrate there was any evidence known to counsel which would have caused a reasonable attorney to conduct a further investigation into Appellant's mental health. ***Id.*** Appellant confirmed during his oral plea colloquy that he fully discussed his case with counsel and told him everything he should know. N.T., 8/31/17, at 3. He further stated in open court that he had never been diagnosed with a mental illness. ***Id.*** at 5. Appellant has proffered no evidence that guilty plea counsel should have reasonably believed Appellant was suffering from any "mental deficiencies" rendering him incompetent to enter a voluntary and

knowing guilty plea. ***See Willis***, ***supra***. Thus, we conclude Appellant has failed to meet his burden that guilty plea counsel was ineffective in this regard.[6] ***See id.***

After conducting our independent review, we are in agreement with PCRA counsel that there is no basis for relief in the present case. Accordingly, we affirm the PCRA court's dismissal of Appellant's petition, and we grant counsel's petition to withdraw.

Order affirmed. PCRA counsel's petition for leave to withdraw granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/28/2022

[6] To the extent Appellant contends the PCRA court erred in dismissing his petition without an evidentiary hearing, we note it is well-settled that "[t]here is no absolute right to an evidentiary hearing on a PCRA petition, and if the PCRA court can determine from the record that no genuine issues of material fact exist, then a hearing is not necessary." ***Commonwealth v. Jones***, 942 A.2d 903, 906 (Pa.Super. 2008). In the case *sub judice*, the PCRA court properly concluded that Appellant did not raise a genuine issue of material fact, and there is no legitimate purpose that would be served by further proceedings. Accordingly, the PCRA court did not abuse its discretion in failing to hold a hearing. ***See id.***