NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ROBERTO C. CRUZ AVILES	:	
Appellant	:	No. 370 MDA 2026

Appeal from the PCRA Order Entered February 6, 2026
In the Court of Common Pleas of Lancaster County Criminal Division at No(s): CP-36-CR-0004108-2022

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY SULLIVAN, J.: **FILED: NOVEMBER 13, 2026**

Roberto C. Cruz Aviles ("Cruz Aviles") appeals from the order denying, following a hearing, his first petition filed pursuant to the Post Conviction Relief Act ("PCRA").[1] In addition, Cruz Aviles's court-appointed PCRA counsel. Kristen L. Weisenberger, Esquire ("PCRA Counsel") has filed a petition to withdraw as counsel and an "***Anders***" Brief.[2] For the reasons discussed below, we affirm in part. However, because Cruz Aviles has identified a colorable

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[1] ***See*** 42 Pa.C.S.A. §§ 9541-9546.

[2] A ***Turner***/***Finley*** "no-merit" brief is the correct filing when counsel wishes to withdraw from representing a PCRA petitioner in an appeal. ***See Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). Here, PCRA Counsel filed a brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967). Since an ***Anders*** brief provides greater protection to a defendant, this Court may accept an ***Anders*** brief instead of a ***Turner***/***Finley*** letter. ***See Commonwealth v. Widgins***, 29 A.3d 816, 817 n.2 (Pa. Super. 2011).

claim of PCRA counsel's ineffectiveness, which cannot be resolved based on the record, and because the record does not support denial of his claim of ineffective assistance of pretrial counsel, we vacate in part and remand for appointment of new counsel and a second evidentiary hearing.[3]

Because of our disposition in this matter, we do not discuss the underlying facts except to note a jury convicted Cruz Aviles in 2024 of one count each of strangulation and simple assault.[4] The trial court sentenced Cruz Aviles to eleven to twenty-two years in prison. Cruz Aviles did not file a direct appeal.

In September 2024, Cruz Aviles filed a timely, *pro se* PCRA petition. The PCRA court appointed PCRA Counsel, who filed a supplemental PCRA petition. A PCRA hearing took place in October 2025, at which trial counsel, Rian Thompson ("Attorney Thompson") and Cruz Aviles testified. On February 26, 2026, the PCRA court issued an opinion denying Cruz Aviles's PCRA petition. The instant, timely appeal followed.[5]

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[3] We note with disapproval the failure of the Commonwealth to file a brief in this matter.

[4] The victim was Cruz Aviles's wife of approximately six days. ***See*** N.T., 10/20/25, at 23. They married in Las Vegas. ***See id***. at 19. Cruz Aviles explained that although the victim was his wife, she "wasn't even my girl" and was "just my side girl." ***Id***.

[5] PCRA counsel filed a notice of intent to file an ***Anders*** brief in *lieu* of a Rule 1925(b) statement; Cruz Aviles filed a *pro se* Rule 1925(b) statement. The trial court issued a memorandum opinion adopting its earlier opinion.

PCRA Counsel has filed a petition to withdraw in this Court, attaching an ***Anders*** Brief, and the requisite notice to Cruz Aviles that he had the right to proceed *pro se* or retain private counsel. Cruz Aviles filed a *pro se* response. We first determine whether PCRA Counsel has satisfied the requirements to be permitted to withdraw from representation. ***See Commonwealth v. Freeland***, 106 A.3d 768, 774 (Pa. Super. 2014) (prior to addressing the merits we must determine if counsel complied with the dictates of ***Turner***/***Finley***).

Pursuant to ***Turner***/***Finley***, an "[i]ndependent review of the record by competent counsel is required before withdrawal [on collateral review] is permitted." ***Commonwealth v. Pitts***, 981 A.2d 875, 876 n.1 (Pa. 2009). In ***Pitts***, our Supreme Court explained that independent review requires proof of:

> 1. A "no-merit" letter by [ ] counsel detailing the nature and extent of his review;
>
> 2. The "no-merit" letter by [ ] counsel listing each issue the petitioner wished to have reviewed;
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> 3. [C]ounsel's "explanation", in the "no-merit" letter, of why the petitioner's issues were meritless;
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> 4. The [ ] court conducting its own independent review of the record; and
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> 5. The [ ] court agreeing with counsel that the petition was meritless.

Id. (citation and some brackets omitted).

Additionally:

> 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.
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> 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] 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.

Commonwealth v. Wrecks, 931 A.2d 717, 721 (Pa. Super. 2007) (citations omitted).

Here, PCRA Counsel filed a no-merit brief and a petition to withdraw which stated the nature and extent of his review of the case; listed the issue for which Cruz Aviles seeks review, explained why and how Cruz Aviles's claims lack merit, and requested permission to withdraw. ***See Anders*** Brief; Petition to Withdraw as Counsel, 5/11/26, at 1-3. PCRA Counsel also sent Cruz a copy of the no-merit brief, a copy of the petition to withdraw, and a statement advising Cruz Aviles of his right to proceed *pro se* or with privately retained counsel. ***See id***., Letter Dated 5/11/26. Thus, the record reflects PCRA Counsel submitted a petition to withdraw and a brief that satisfies the technical demands of ***Turner***/***Finley***.

However, we are faced with a conundrum. PCRA Counsel complied with the technical requirements of ***Turner***/***Finley***. After a thorough review of PCRA Counsel's ***Anders*** Brief, we agree that two of the three issues raised and part of the third are frivolous, but, due to deficiencies in the record, we cannot say the same for the remainder of the third issue. Moreover, Cruz Aviles filed a response to the petition in which he claims all previous counsel and PCRA Counsel are ineffective with respect to his third issue, which concerns the failure to apprise him of a guilty plea offer. Thus, because PCRA Counsel has filed a brief asserting a position which may not be supported by law or facts as one of the bases to dismiss Cruz Aviles's appeal and did not file a motion seeking a remand of this matter for an additional hearing to cure the deficiencies in the record, we cannot find PCRA Counsel has complied with the dictates of ***Turner***/***Finley***. Nevertheless, because Cruz Aviles now claims PCRA Counsel is ineffective, we are constrained to grant PCRA Counsel's withdrawal application.

In the ***Anders*** Brief, PCRA Counsel raises a single issue for our review:

> A. Whether the [PCRA] court erred in dismissing [Cruz Aviles's] PCRA [petition] where [Cruz Aviles] presented sufficient evidence that [Attorney Thompson] rendered ineffective assistance of counsel[?]

Anders Brief at 4 (unnecessary capitalization and underling omitted).

In his *pro se* brief, Cruz Aviles also raises a single issue:

> 1. Should this Court, pursuant to [***Commonwealth v.***] ***Bradley***, [261 A.3d 381, 401 (Pa. 2021)] remand and order the appointment of new counsel where, under the circumstances

> of this case, the evidence shows that PCRA Counsel provided ineffective assistance of counsel for failing to litigate all prior counsel[s'] ineffectiveness for failing to convey the plea offer?

Pro Se Brief at 2 (footnote omitted).

Our standard of review is settled.

> Our review of a PCRA court's decision is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error. We view the record in the light most favorable to the prevailing party in the PCRA court. We are bound by any credibility determinations made by the PCRA court where they are supported by the record. However, we review the PCRA court's legal conclusions *de novo*.

Commonwealth v. Staton, 184 A.3d 949, 954 (Pa. 2018) (internal citations and quotation marks omitted). The PCRA petitioner "has the burden to persuade this Court that the PCRA court erred and that such error requires relief." ***Commonwealth v. Wholaver***, 177 A.3d 136, 144–45 (Pa. 2018) (internal citations omitted).

PCRA Counsel addresses Cruz Aviles's intended claims he received ineffective assistance of trial counsel. ***See Anders*** Brief at 10-17. It is well settled that

> counsel is presumed to have been effective and [] the petitioner bears the burden of proving counsel's alleged ineffectiveness. To overcome this presumption, a petitioner must establish that: (1) the underlying substantive claim has arguable merit; (2) counsel did not have a reasonable basis for his or her act or omission; and (3) the petitioner suffered prejudice as a result of counsel's deficient performance, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. A PCRA petitioner must address each of these prongs on appeal. A petitioner's failure to satisfy any prong of this test is fatal to the claim.

Wholaver, 177 A.3d at 144 (citations and quotation marks omitted).

First, PCRA Counsel notes Cruz Aviles wishes to claim Attorney Thompson failed to introduce text messages he provided him at trial, which would have impeached the victim. ***See Anders*** Brief at 15; N.T., 10/20/25, at 18-22. Attorney Thompson testified that he reviewed all the text messages Cruz Aviles gave him, used those he believed would be helpful, but that several of the messages were either irrelevant and/or inadmissible. ***See*** N.T., 10/20/25 at 8-10, 13.

The decision of whether to present certain evidence is a strategic choice by counsel. The United States Supreme Court has stated:

> [s]trategic choices made [by trial counsel] after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

Strickland v. Washington, 466 U.S. 668, 690-91 (1984).

The PCRA court explained:

> Attorney Thompson credibly testified that he reviewed all the messages provided to him and then, after explaining his evaluation to [Cruz Aviles], utilized those that he had concluded were relevant and admissible at trial. Attorney Thompson introduced one text message at trial and referenced it several times. ***See*** Notes of Testimony from Trial, [] February 7, 2024, pp. 99, 107-8. At the evidentiary hearing, [Cruz Aviles] conceded

> that he shared certain messages with [] Attorney Courtney Monson [("Attorney Monson")], who represented him on behalf of the Public Defender's Office prior to Attorney Thompson. He also conceded that Attorney Thompson utilized one of these messages at his trial. The messages [not used] as described by [Cruz Aviles], largely did not concern interactions between the victim and previous partners but, instead, documented a conflict between the victim and [Cruz Aviles] regarding car insurance that—[Cruz Aviles] alleged—connected in some way to his offenses. [Cruz Aviles's] testimony did not effectively challenge Attorney Thompson's credible testimony that he made the strategic decision to only rely on some of the potential evidence that [Cruz Aviles] provided, and that he made this decision based on reasoned determinations regarding admissibility and relevance.

PCRA Court Opinion, 2/5/26, at 10-11 (capitalization regularized, some record citations omitted).

Our review of the record demonstrates that Cruz Aviles never pointed to any specific text message that he believed was admissible and relevant which Attorney Thompson failed to introduce into evidence. ***See*** N.T., 10/20/25, at 18-22. Moreover, Cruz Aviles failed to explain why text messages regarding his employment, his dispute with the victim over car insurance, or text messages between himself and third parties were either relevant or admissible. ***See id***. We have no basis to overturn the PCRA court's credibility determinations, and both the relevant law and the facts support the court's conclusion. ***See Strickland***, 466 U.S. at 690-91; ***Staton***, 184 A.3d at 954. This claim lacks arguable merit.

Second, PCRA Counsel discusses Cruz Aviles's contention Attorney Thompson did not meet with him prior to trial. ***See Anders*** Brief at 14-15;

N.T., 10/20/25, at 17, 19. However, Attorney Thompson testified he met with Cruz Aviles several times prior to trial. ***See id***. at 9.

Our Supreme Court stated a criminal defense attorney must prepare for trial and the failure to do so is "simply an abdication of the minimum performance required of defense counsel." ***Commonwealth v. Johnson***, 3523 A.3d 609, 644 (Pa. 2026), *petition for certiorari docketed*, U.S. Supreme Court 26-5426 (Aug. 31, 2026), (citations omitted). Further, said failure, absent a reasonable basis, satisfies the prejudice prong of the ***Strickland*** standard. ***See Commonwealth v. Brooks***, 839 A.2d 245, 248-50 (Pa. 2003).

The PCRA court concluded:

> Attorney Thompson . . . credibly testified that he held multiple meetings at his office with [Cruz Aviles], including a final meeting on the Monday before trial that required several attempts to contact the hard-to-locate [Cruz Aviles]. It was during these meetings that Attorney Thompson reviewed the text messages that [Cruz Aviles] had provided alongside his client, and discussed which messages would be admissible and relevant at trial, as well as [Cruz Aviles's] own testimony. [Cruz Aviles] failed to establish that [Attorney Thompson] failed to hold substantive meetings with him and thus did not prepare adequately for trial.

PCRA Court Opinion, 2/5/26, at 11-12 (record citations omitted). Here, the PCRA court heard diametrically opposed testimony, with Cruz Aviles claiming counsel never met with him and counsel describing, in detail, several meetings with Cruz Aviles. ***See*** N.T., 10/20/25, at 9, 17, 19. The PCRA court credited Attorney Thompson's testimony and did not credit Cruz Aviles's testimony.

We have no basis to overturn this finding. ***See Staton***, 184 A.3d at 954. This contention lacks merit.

Lastly, we address together PCRA Counsel's assessment that all prior counsel were ineffective for failing to convey to him a plea offer made by the Commonwealth, as well as Cruz Aviles's *pro se* response asserting PCRA Counsel failed to properly litigate this claim. ***See Anders*** Brief at 12-13; *Pro Se* Brief at 6-15.

An independent review of the record provides the following context to PCRA counsel's assessment and Cruz Aviles's intended claims regarding the failure to convey a plea offer. At the evidentiary hearing, Attorney Thompson testified that, prior to the preliminary hearing, the Commonwealth did offer a plea deal but that he did not represent Cruz Aviles at that time. ***See*** N.T., 10/20/25, at 5-6. He stated that, when the plea was offered, Miranda Redzich ("Attorney Redzich"), who is no longer employed by the Public Defender's Office, represented Cruz Aviles. ***See id***. Attorney Thompson explained he had no direct knowledge of whether Attorney Redzich had conveyed the plea offer to Cruz Aviles, but it was office practice to do so. ***See id***. at 6-7, 11. On cross-examination, Attorney Thompson acknowledged the plea offer was contingent on Cruz Aviles waiving his right to a preliminary hearing, which he did not do. ***See id***. at 10-11. Further, Cruz Aviles retained private counsel for the preliminary hearing. ***See id***. The Commonwealth offered into evidence a domestic violence status sheet from the public defender's file, and Attorney

Thompson confirmed this status sheet would not have been placed in the file absent a plea offer.[6] ***See id***. at 12.

Cruz Aviles disagreed with Attorney Thompson's assertions regarding whether the plea offer was ever conveyed to him, and who actually represented him at the time the plea offer would have been conveyed at the preliminary hearing. He testified he had never been represented by Attorney Redzich but by privately retained counsel Hobie Crystle ("Attorney Crystle") "from the beginning." ***Id***. at 14; ***see also id***. at 14-16 (explaining his relationship with Attorney Crystle and saying Attorney Crystle never told him about a plea offer).

A criminal defense attorney must notify a client of a proposed plea offer, and counsel must also review the advantages and disadvantages of the offer. ***See Commonwealth v. Marinez***, 777 A.2d 1121, 1124 (Pa. Super. 2001). The failure to do so can lead to counsel being found ineffective. ***See Commonwealth v. Chazin***, 873 A.2d 732, 735-36 (Pa. Super. 2005). In order to so prove, the petitioner must demonstrate: 1) that an offer for a plea was made; 2) that trial counsel failed to inform the petitioner of the offer; 3) that trial counsel had no reasonable basis for failing to inform the petitioner

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[6] This exhibit was not forwarded to this Court on appeal. It does not appear from the testimony at the hearing that the status sheet was signed by Cruz Aviles or contained any specific statement about whether the plea offer was conveyed to him. ***See*** N.T., 10/20/25, at 12.

of the plea offer; and 4) that the petitioner was consequently prejudiced. ***See id***. at 735.

Initially, we conclude that Cruz Aviles's claims that Attorney Courtney Monson ("Attorney Monson"), who represented him after he discharged Attorney Crystle, and Attorney Thompson, who took over the case after Attorney Monson left the Public Defender's Office, were ineffective for failing to convey the plea offer is meritless. As stated above, the uncontradicted testimony at the evidentiary hearing was that the plea offer was contingent on Cruz Aviles waiving his preliminary hearing which did not occur. Moreover, neither Attorney Monson nor Attorney Thompson represented him at that time. Counsel cannot be found ineffective for failing to convey a plea offer that was no longer valid.

Cruz Aviles also raises, for the first time on appeal, a claim that PCRA Counsel was ineffective for failing to properly litigate his claim of prior counsels' ineffectiveness for failing to convey a plea offer to him. ***See*** *Pro Se* Brief at 6-15.

In ***Bradley***, our Supreme Court held that a PCRA petitioner may "after a PCRA court denies relief, and after obtaining new counsel or acting *pro se*, raise claims of PCRA counsel's ineffectiveness at the first opportunity to do so, even if on appeal." ***Bradley***, 261 A.3d at 401. The ***Bradley*** Court provided the following guidance for considering claims of PCRA counsel's ineffectiveness:

> In some instances, the record before the appellate court will be sufficient to allow for disposition of any newly-raised ineffectiveness claims. However, in other cases, the appellate court may need to remand to the PCRA court for further development of the record and for the PCRA court to consider such claims as an initial matter. Consistent with our prior case law, to advance a request for remand, a petition would be required to provide more than mere boilerplate assertions of PCRA counsel's ineffectiveness; however, where there are material facts at issue concerning claims challenging counsel's stewardship and relief is not plainly unavailable as a matter of law, the remand should be afforded.

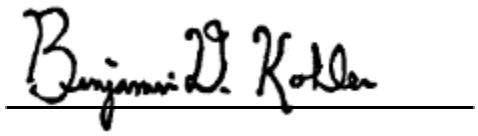
Id. at 402 (internal citations, quotations, footnote, and brackets omitted). An appellate court may decline to consider "mere boilerplate assertions" of PCRA counsel's ineffectiveness, grant or deny relief on straightforward claims, or remand when there are material issues of fact that the petitioner may be entitled to relief. ***See id***. at 402-03.

As noted above, our review of the record demonstrates a great deal of confusion regarding who represented Cruz Aviles at the time the plea offer was tendered. Moreover, we are unable to determine from the record why PCRA Counsel did not call Attorney Redzich and Attorney Crystle to testify at the hearing as they would be able to clear up the confusion and testify as to whether one of them informed Cruz Aviles of the plea offer prior to his preliminary hearing. Instead, PCRA Counsel only called Attorney Thompson who had no personal knowledge of the events in question. Thus, our review of the record compels the conclusion that there are issues of material fact meriting a remand pursuant to ***Bradley***. Accordingly, we are constrained to vacate the denial of PCRA relief as to Cruz Aviles's claim that pretrial counsels

were ineffective for failing to convey a plea offer to him. We also remand for a hearing on his claim of ineffective assistance of PCRA counsel for failing to call Attorneys Redzich and Crystle as witnesses. The PCRA Court shall appoint new counsel for Cruz Aviles and counsel shall ensure that prior PCRA Counsel, Attorney Weisenberger, and pretrial counsels, Attorneys Redzich and Crystle, testify at the hearing.

Order affirmed in part and vacated in part. Case remanded. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/13/2026