EXHIBIT "A"

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
RAMON VASQUEZ,	:	
Appellant	:	No. 1132 MDA 2017

Appeal from the PCRA Order June 19, 2017
in the Court of Common Pleas of Berks County,
Criminal Division at No(s): CP-06-CR-0004704-2013

BEFORE: GANTMAN, P.J., MURRAY, J., and MUSMANNO, J.

MEMORANDUM BY MUSMANNO, J.: **FILED MARCH 21, 2018**

Ramon Vasquez ("Vasquez"), *pro se*, appeals from the Order dismissing his first Petition filed pursuant to the Post Conviction Relief Act ("PCRA"). ***See*** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On April 15, 2014, a jury found Vasquez guilty of flight to avoid apprehension, trial or punishment, as well as two summary offenses. On April 29, 2014, the trial court imposed an aggregate sentence of nine months to two years in jail. This Court subsequently affirmed Vasquez's judgment of sentence.[1] ***See Commonwealth v. Vasquez***, 144 A.3d 208 (Pa. Super. 2016) (unpublished memorandum). Vasquez did not seek allowance of appeal.

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[1] The court of common pleas had previously granted Vasquez the right to file a direct appeal, *nunc pro tunc*, in response to a PCRA Petition that he filed in November 2014.

Vasquez filed the instant *pro se* PCRA Petition on February 2, 2017, after which the PCRA court appointed Vasquez counsel. Counsel thereafter filed a "no-merit" letter requesting leave to withdraw as counsel, pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). The PCRA court granted counsel permission to withdraw.

In May 2017, the PCRA court issued a Pa.R.Crim.P. 907 Notice of its intent to dismiss Vasquez's PCRA Petition without a hearing. In response, Vasquez filed a *pro se* Petition for Writ of *Coram Nobis* (hereinafter, the "*Coram Nobis* Petition"), which the PCRA court treated as a response to the Rule 907 Notice. On June 19, 2017, the PCRA court entered an Order dismissing Vasquez's PCRA Petition.[2] Thereafter, Vasquez filed the instant timely appeal, followed by a court-ordered Pa.R.A.P. 1925(b) Concise Statement of errors complained of on appeal.

Vasquez now presents the following issue for our review: "Whether 42 Pa.C.S.[A.] § 954[3](a)(1)[,] as applied by the [PCRA] court[,] presents a substantive liberty interest upon [Vasquez's] actual innocence to collateral civil and criminal consequences?" Brief for Appellant at 4.

To be eligible for PCRA relief, a petitioner must prove that, at the time relief is granted, he or she is "currently serving a sentence of imprisonment,

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[2] By a separate Order entered on June 19, 2017, the PCRA court denied the *Coram Nobis* Petition.

probation or parole for the crime[.]" 42 Pa.C.S.A. § 9543(a)(1)(i). "Case law has strictly interpreted the requirement that the petitioner be currently serving a sentence for the crime to be eligible for relief." ***Commonwealth v. Plunkett***, 151 A.3d 1108, 1109 (Pa. Super. 2016).

> As our Supreme Court has explained,
>
> > [b]ecause individuals who are not serving a state sentence have no liberty interest in and therefore no due process right to collateral review of that sentence, the statutory limitation of collateral review to individuals serving a sentence of imprisonment, probation, or parole is consistent with the due process prerequisite of a protected liberty interest.

Commonwealth v. Turner, 80 A.3d 754, 766 (Pa. 2013).

In the instant case, the trial court sentenced Vasquez to nine months to two years in jail. The effective date of Vasquez's sentence was August 28, 2013. Thus, at the very latest, Vasquez's sentence in the instant case would have expired on August 28, 2015, approximately 1½ years prior to his filing the instant PCRA Petition.[3] Because Vasquez is not "currently serving" a sentence for his underlying convictions, he is no longer eligible for relief under the PCRA, ***see*** 42 Pa.C.S.A. § 9543(a)(1)(i), and the PCRA court thus properly dismissed his Petition. Moreover, in light of our Supreme Court's above-mentioned reasoning in ***Turner***, ***supra***, there is no merit to Vasquez's claim that the PCRA court's application of section 9543(a)(1)(i)

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[3] Vasquez asserted in his *Coram Nobis* Petition that he completed his sentence on April 29, 2015.

"presents a substantive liberty interest upon [Vasquez's] actual innocence to collateral civil and criminal consequences[.]" Brief for Appellant at 4.

We additionally note that the PCRA court properly determined that Vasquez is not entitled to *coram nobis* relief. "The PCRA ... subsumes the remedies of *habeas corpus* and *coram nobis*" where the PCRA provides a remedy for the claim. ***Turner***, 80 A.3d at 770; ***see also*** 42 Pa.C.S.A. § 9542 (providing that "[t]he action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including ... *coram nobis*."). Here, Vasquez sought *coram nobis* relief based on a claim alleging that his prior counsel were ineffective. Because such a claim is cognizable under the PCRA, Vasquez is not entitled to *coram nobis* relief. ***See Turner***, 80 A.3d at 770.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 03/21/2018

EXHIBIT "B"

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
	:	BERKS COUNTY, PENNSYLVANIA
v.	:	CRIMINAL DIVISION
	:	
RAMON VASQUEZ,	:	No. CP-06-CR-4704-2013
Appellant	:	LIEBERMAN, S.J.

MEMORANDUM OPINION, August 10, 2017

Appellant appeals from the June 19, 2017 dismissal of his February 2, 2017 *pro se* PCRA petition for the above-docketed matters. On July 21, 2017, this Court directed Appellant to file a Concise Statement of Errors Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant filed a *pro se* "Concise Statement of Errors Complained of on Appeal" on August 8, 2017.

Appellant alleges the following errors in his Concise Statement:

1. "WHETHER 42 PA.C.S. 9541(A)(1) [*sic*] AS APPLIED BY THE TRIAL COURT PRESENTS A SUBSTANTIVE LIBERTY INTEREST UPON APPELLANTS [*sic*] ACTUAL INNOCENCE TO COLLATERAL CIVIL AND CRIMINAL CONSEQUENCES?"
2. "WHETHER APPELLANTS [*sic*] PETITION FOR WRIT OF CORAM NOBIS PRESENTS CLEAR AND CONVINCING EVIDENCE, FACTS, AND CIRCUMSTANCES, WHICH SHOWED A MISCARRIAGE OF JUSTICE OCCURRED?"
3. "WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN FAILURE TO
   A. RAISE DUE PROCESS VIOLATIONS OF MATERIALLY EXCULPATORY EVIDENCE I.E. THE VIDEO
   B. RAISE 6TH AMENDMENT VIOLATIONS OF RIGHT TO CONFRONT ACCUSER.
   C. MOVE FOR AQUITAL [*sic*] ON THE COUNT OF FLIGHT TO AVOID APPREHENSION AT THE SAME TIME AS ESCAPE?"
4. "WHETHER APPEAL COUNSEL WAS INEFFECTIVE IN FAILURE TO RAISE TRIAL COUNSELS [*sic*] INEFFECTIVENESS OR OTHER CONSTITUTIONAL VIOLATIONS?

("Concise Statement of Errors Complained of on Appeal", August 8, 2017)

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DISCUSSION

Regarding paragraph 1 and the alleged error contained within, the Court maintains as it did in its Order and Notice of Intent to Dismiss dated May 23, 2017 that Appellant is facially ineligible for relief under the Post Conviction Relief Act. In order for a petitioner to be eligible for relief under the PCRA, the petitioner must plead and prove that he or she "has been convicted of a crime under the laws of this Commonwealth" and is at the time relief is granted is "currently serving a sentence of imprisonment, probation or parole for the crime". 42 Pa.C.S.A. § 9543(a)(1)(i). "To be eligible for relief a petitioner must be currently serving a sentence of imprisonment, probation or parole. To grant relief at a time when appellant is not currently serving such a sentence would be to ignore the language of the statute." Commonwealth v. Ahlborn, 699 A.2d 718, 720 (Pa. 1997). Appellant's argument that this Court's application of the statute "presents a substantive liberty interest upon Appellants [*sic*] actual innocence to collateral civil and criminal consequences" is simply not supported by caselaw. "Because individuals who are not serving a state sentence have no liberty interest in and therefore no due process right to collateral review of that sentence, the statutory limitation of collateral review to individuals serving a sentence of imprisonment, probation, or parole is consistent with the due process prerequisite of a protected liberty interest." Commonwealth v. Turner, 80 A.3d 754, 766 (Pa. 2013). Therefore, this Court again asserts that Appellant had no grounds to seek relief under the Post Conviction Relief Act.

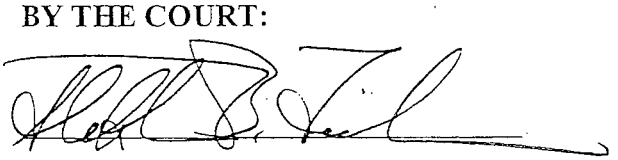
Consequently, with respect to paragraphs 3 and 4 of Appellant's Concise Statement, this Court declines to discuss the alleged errors raised therein. Even if Appellant's claims were of arguable merit, Appellant's failure to fulfill the requirements of 42 Pa.C.S.A. § 9543(a)(1)(i) renders any discussion of bases for relief moot. *See* Commonwealth v. Matin, 832 A.2d 1141

(Pa. Super. 2003) (holding that a defendant was ineligible under the Post Conviction Relief Act, even if his claim that counsel provided ineffective assistance in advising him to plead guilty to a charge had arguable merit, where defendant's two-and-one-half to five-year sentence on the charge had expired).

With respect to paragraph 2, this Court dismissed Appellant's Petition for Writ of Coram Nobis on June 20, 2017. In that dismissal Order, this Court explained that as the petition raised no new issues for the Court, there was no reason to grant the same petition. Moreover, as Appellant has failed to meet the eligibility requirements of the Post Conviction Relief Act, a petition for a writ of coram nobis is by its very nature unavailable to Appellant as an avenue for relief. "If we were to allow appellant to petition for a writ of coram nobis without satisfying the eligibility requirements of the PCRA, we will have created a second means of obtaining collateral relief, thereby contravening the legislative intent that the PCRA be the sole means of obtaining such relief. Accordingly, we conclude that appellant is not eligible for post-conviction relief in any form unless he meets the eligibility requirements set forth in the PCRA." Commonwealth v. Fiore, 665 A.2d 1185, 1192 (Pa. Super. 1995). Appellant cannot now claim relief under an alternative means of collateral review when he has not met the requirements of the Post Conviction Relief Act.

Therefore, based on the reasons set forth above, this Court respectfully requests that Appellant's appeal be **DENIED**.

BY THE COURT:



Stephen B. Lieberman, Senior Judge

DISTRIBUTION: Clerk, CIM, DA – PCRAs, Appellant, SJ Lieberman

EXHIBIT "C"

J-S18027-16

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

COMMONWEALTH OF PENNSYLVANIA Appellee v. RAMON VASQUEZ Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1171 MDA 2015

Appeal from the Judgment of Sentence April 29, 2014
In the Court of Common Pleas of Berks County
Criminal Division at No(s): CP-06-CR-0004704-2013

BEFORE: BOWES, J., LAZARUS, J., and STRASSBURGER, J.*

MEMORANDUM BY LAZARUS, J.: **FILED MARCH 23, 2016**

Ramon Vasquez appeals from his judgment of sentence, imposed in the Court of Common Pleas of Berks County, after a jury found him guilty of flight to avoid apprehension[1] and related offenses. Upon careful review, we affirm.

Around 3:00 p.m. on June 19, 2013, Vasquez entered the office of Magisterial District Judge Wally Scott to turn himself in on an outstanding warrant. N.T. Trial, 4/15/14, at 51. At the time, Vasquez believed that the outstanding warrant was for a summary offense. ***Id.*** After discovering that Vasquez had an outstanding warrant for misdemeanor theft, Judge Scott

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. § 5126.

called Vasquez into his courtroom and informed him of this fact. ***Id.*** at 55-56. Judge Scott informed Vasquez of his rights and read him the affidavit of probable cause and complaint from the bench. ***Id.*** When Judge Scott had finished and handed Vasquez the arraignment information sheet, Vasquez told the judge that there had been a mistake and that his girlfriend had contacted the police department to drop the charges against him. ***Id.*** at 59-60. Judge Scott agreed to call Vasquez's girlfriend to ask if she wanted to go forward with the charges. ***Id.*** at 60-61.

Vasquez testifies that, at this point, he told the guard, Kyley Scott, that he was going to use the bathroom. ***Id.*** at 120. As Judge Scott hung up the phone, Vasquez stood up from his chair and put on his backpack and hat, as if preparing to leave. ***Id.*** at 62. Judge Scott repeatedly directed Vasquez to retake his seat and walked out from behind the bench and stood at the top of the courtroom's exit ramp. As Vasquez approached the courtroom door, Judge Scott positioned himself between Vasquez and the threshold, blocking Vasquez's exit. Kyley Scott grabbed Vasquez and attempted to pull him back into the courtroom. Vasquez shook off Kyley Scott's grasp, pushed past Judge Scott, and exited the courtroom. ***Id.*** at 121.

Vasquez then exited the building and ran towards his motorcycle, which was parked outside on the street. Luis Negron, who was taking a cigarette break outside of a business across the street, witnessed Vasquez fleeing from the building, with Judge Scott and Kyley Scott trailing behind

him. ***Id.*** at 100-01. Negron ran across the street and grabbed Vasquez by the back of the shoulders as he attempted to start his motorcycle. Vasquez then revved the engine suddenly and reared back on the bike, freeing himself of Negron's grip. Vasquez then took off down the street at a high rate of speed. ***Id.*** at 101-02. Shortly thereafter, Vasquez crashed his motorcycle into a guardrail. ***Id.*** at 109. As Vasquez attempted to restart the motorcycle, he was approached by off-duty Reading Police Officer Christian Morar, who had been pursuing him since he left Magisterial Judge Scott's office. ***Id.*** at 110. After identifying himself as a police officer, Officer Morar approached Vasquez with his firearm drawn and ordered him to stop. When Officer Morar came within arm's length of Vasquez, he reached out with his hand and pushed Vasquez away from the motorcycle. The push caused Vasquez to fall backwards, allowing Officer Morar to grab the keys from the ignition. N.T. Omnibus Pretrial Hearing, 1/10/14, at 44. After securing his own vehicle and grabbing his taser, Officer Morar then pursued Vasquez on foot, but soon lost sight of him. ***Id.*** at 45. Vasquez later turned himself in to his bail bondsman and was taken to Berks County Prison. ***Id.*** at 127.

The trial court gave the following account of the procedural history of this case:

> On April 15, 2014, following a jury trial, [Vasquez] was found guilty of flight to avoid apprehension, trial or punishment and other related offenses. On April 29, 2014, [Vasquez] was sentenced to nine months to two years of incarceration in a state correctional facility. [Vasquez] was represented at trial and

> sentencing by Holly B. Freeney, Esquire, of the Berks County Public Defender's Office.
>
> On April 29, 2014, this court granted Ms. Feeney's Motion for Leave to Withdraw as Counsel, and appointed Nicholas Stroumbakis, Esquire, to represent [Vasquez] on Appeal. On or about November 19, 2014, [Vasquez] filed a *pro se* Motion for Withdrawal of Counsel and Appointment of Replacement Counsel, which this court interpreted to be a petition filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. § 9541-9546. Accordingly, on December 2, 2014, this court appointed Osmer S. Deming, Esquire, to represent [Vasquez].
>
> On June 11, 2015, Attorney Deming filed an Amended Petition for Post Conviction Collateral Relief in which he sought to have [Vasquez's] direct appellate rights reinstated, *nunc pro tunc*. This court granted [Vasquez's] Amended Petition that same day, and on July 9, 2015, Attorney Deming filed a Notice of Appeal on [Vasquez's] behalf. On July 13, 2015 the court ordered [Vasquez] to file a Concise Statement of Errors Complained of on Appeal. [Vasquez] complied with this court's order on August 3, 2015.

Trial Court Opinion, 9/18/15, at 1-2. The trial court filed its Pa.R.A.P. 1925(a) memorandum opinion on September 18, 2015. Vasquez raises the following two issues on appeal:

> 1. Was the evidence sufficient to support the conviction for flight to avoid apprehension?
>
> 2. Was the verdict against the weight of the evidence to support the conviction for flight to avoid apprehension?

Appellant's Brief, at 5.

Vasquez claims the evidence was insufficient to prove beyond a reasonable doubt that he acted with the intent to avoid apprehension, trial or punishment or that he intentionally attempted to elude law enforcement. Appellant's Brief, at 14-15. Vasquez argues that he arrived at Magisterial Judge Scott's office with the intent to turn himself in to authorities and then

only fled after being attacked by Judge Scott and his staff. He also asserts that his flight cannot be characterized as an intentional attempt to elude law enforcement because Judge Scott and his security guard are not law enforcement and he did not know that Officer Morar was an off-duty police officer. ***Id.*** at 15.

Our standard of review in assessing a challenge to the sufficiency of the evidence is well-settled. "The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt." ***Commonwealth v. Garland***, 63 A.3d 339, 344 (Pa. Super. 2013). "Any doubts concerning an appellant's guilt [are] to be resolved by the trier of fact unless the evidence was so weak and inconclusive that no probability of fact could be drawn therefrom." ***Commonwealth v. West***, 937 A.2d 516, 523 (Pa. Super. 2007). "[T]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence." ***Commonwealth v. Perez***, 931 A.2d 703, 707 (Pa. Super. 2007).

Section 5126 of the Crimes Code defines the crime of flight to avoid apprehension, trial or punishment as:

> **(a) Offense defined.—**A person who willfully conceals himself or moves or travels within or without the Commonwealth with the intent to avoid apprehension, trial or punishment commits a

> felony of the third degree when the crime which he has been charged with or has been convicted of is a felony and commits a misdemeanor of the second degree when the crime he has been charged with or has been convicted of is a misdemeanor.

18 Pa.C.S. § 5126(a). This Court has elaborated on the intent prong of section 5126 as follows:

> [T]he plain language of the statute requires that the defendant intend to avoid apprehension, trial or punishment. The statute does not mandate that the defendant have knowledge of the precise grading of the offense for which he is attempting to avoid capture. The intent element of the crime is separate and apart from whether the person has been convicted or is charged with a felony. Furthermore, nothing in the statutory language requires that police have knowledge of the underlying charge or conviction. It is sufficient for the defendant to intentionally elude law enforcement to avoid apprehension, trial or punishment on a charge or conviction.

Commonwealth v. Steffy, 36 A.3d 1109, 1111-12 (Pa. Super. 2012).

Here, the trial court concluded that the Commonwealth proved beyond a reasonable doubt that Vasquez had the specific intent to support a conviction for flight to avoid apprehension, trial or punishment. According to Vasquez's own testimony, he fled from Magisterial Judge Scott's office on his motorcycle after learning that there was a warrant for his arrest. Trial Court Opinion, 9/18/15, at 3. Vasquez then fled a second time, this time on foot, after Officer Morar identified himself as an off-duty police officer and ordered Vasquez to stop. ***Id.***

In addition to the evidence cited by the trial court, the Commonwealth presented testimony from the only other two people in the courtroom besides Vasquez, Judge Scott and his guard, Kyley Scott; their testimony refuted Vasquez's testimony that he had asked to go to the bathroom to call

his lawyer. The Commonwealth also offered testimony from Judge Scott and Kyley Scott, as well as Officer Morar and Negron, that Vasquez did not go to the bathroom, nor did he call his lawyer, but instead ran from the office and rode away very quickly on his motorcycle.

Accordingly, we agree with the trial court that the evidence, viewed in the light most favorable to the Commonwealth, was sufficient to sustain Vasquez's conviction under section 5126(a). ***Garland***, ***supra***.

Next, Vasquez argues that he must be awarded a new trial because the verdict was against the weight of the evidence. Appellant's Brief, at 16. An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. ***Commonwealth v. Dupre***, 866 A.2d 1089, 1101 (Pa. Super. 2005) (citations omitted). ***Commonwealth v. Diggs***, 949 A.2d 873, 879-80 (Pa. 2008). A verdict is against the weight of the evidence only where the Commonwealth's evidence is so fundamentally inconsistent, unreliable, or tenuous that it shocks one's sense of justice to imagine that a factfinder could have credited it and used it to convict someone. ***Commonwealth v. Widmer***, 744 A.2d 745 (Pa. 2000). Moreover:

> [o]ur purview [with respect to a weight-of-the-evidence claim] is extremely limited and is confined to whether the trial court abused its discretion in finding that the jury verdict did not shock its conscience. Thus, appellate review of a weight claim consists of a review of the trial court's exercise of discretion, not a review of the underlying question of whether the verdict is against the weight of the evidence.

Commonwealth v. Knox, 50 A.3d 732, 738 (Pa. Super. 2012) (citations omitted).

Before we address the merits of Vasquez's weight claim, we must first determine whether Vasquez has preserved his weight challenge. Pursuant to Pa.R.Crim.P. 607, a challenge to the weight of the evidence "shall be raised with the trial judge in a motion for a new trial . . . orally, on the record, at any time before sentencing[,] by written motion at any time before sentencing[,] or in a post-sentence motion." Pa.R.Crim. 607(A)(1), (2), & (3). Moreover, a post-sentence motion "shall be filed no later than 10 days after imposition of sentence." Pa.R.Crim.P. 720(A)(1).

Instantly, the trial court reinstated only Vasquez's direct appeal rights *nunc pro tunc*. Where the court reinstates direct appeal rights *nunc pro tunc*, the appellant is not automatically entitled to reinstatement of his post-sentence rights *nunc pro tunc* as well. ***Commonwealth v. Liston***, 977 A.2d 1089 (2009). Nevertheless, a PCRA court can reinstate a defendant's post-sentence rights *nunc pro tunc* if the defendant requested such relief from the PCRA court and if the court held an evidentiary hearing on the issue. ***Commonwealth v. Fransen***, 986 A.2d 154 (Pa. Super. 2009).

In ***Commonwealth v. Corley***, 31 A.3d 293 (Pa. Super. 2011), we explained that where the appellant was denied counsel entirely throughout the post-sentence and direct appeal period when he was constitutionally entitled to counsel, reinstatement of his appellate rights *nunc pro tunc* should have included the right to file a post-sentence motion *nunc pro tunc*,

because the appellant was without counsel at the time the post-sentence motion was due. Accordingly, we determined in ***Corley*** that the appellant did not waive his discretionary challenge to his sentence on direct appeal *nunc pro tunc*, even though his post-sentence rights were not reinstated *nunc pro tunc*. ***Id.*** at 297.

Here, as in ***Corley***, Vasquez's direct appeal rights were reinstated on the basis that he had been denied the right to counsel in pursuing a direct appeal. Trial Court Order, 6/11/15. The trial court does not recognize, however, that immediately after imposing sentence on April 29, 2014, the court granted trial counsel's motion for leave to withdraw.[2] Notably, the court did not appoint Vasquez new counsel, for the purpose of filing post-sentence motions and an appeal, until May 7, 2014 – 8 days following sentencing. Accordingly, Vazquez was unrepresented 80% of the time within which he had to file timely post-sentence motions under Rule 720. In fact, Vasquez submitted a handwritten document entitled "Post Sentence Motion for Judgment of Acquittal" to the Clerk of Courts, dated May 7, 2014 and postmarked May 15, 2014. In the document, Vasquez requested to proceed with his post-sentence motion *pro se* until the court could appoint

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[2] At this time, Holly Freeney, Esquire, reviewed the procedure for filing post-sentence motions and appeals with Vasquez and had him sign the "Defendant's Acknowledgement of Post Sentence Procedures Following Trial." ***See*** Defendant's Acknowledgement of Post Sentence Procedures Following Trial, 4/29/14, at 3.

replacement counsel. A copy of the letter was sent to Attorney Stroumbakis on May 19, 2014, well after the time period for filing timely post-sentence motions had expired. Additionally, Vasquez contends that he made several attempts to get in touch with Attorney Stroumbakis regarding the filing of post-sentence motions, both by mail and phone, but was unable to establish contact.

As in ***Corley***, Vasquez's PCRA claim was based on appointed counsel's failure to file a post-sentence motion or appeal on his behalf, and Vasquez raises no other claims of ineffectiveness of counsel in his petition. In reliance on ***Corley***, we decline to find waiver of Vasquez's weight challenge on the basis that he failed to preserve the claim in a post-sentence motion where: He was effectively denied the right to counsel during the time when he could file timely post-sentence motions and where he attempted to preserve those rights by objecting at sentencing and filing *pro se* post-sentence motions raising a weight of the evidence claim.[3] ***See*** Defendant's Post Sentence Motion for Judgement of Acquittal, 5/16/14, at 3.

Vasquez contends that the weight of the credible testimony establishes that he fled Judge Scott's office in order to escape the attacks of Judge Scott and Kyley Scott and not to avoid apprehension, trial, or punishment. Appellant's Brief at 16-17. First, Vasquez argues that his voluntary presence

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[3] Vasquez acknowledges in his PCRA petition that he submitted a post-sentence motion.

at Judge Scott's office establishes that he "was trying to do the opposite of avoiding apprehension." ***Id.*** at 16. Second, Vasquez argues that the jury should have credited his testimony that he asked Kyley Scott for permission to "go to the bathroom to call a lawyer" before getting up to leave the courtroom and was then the victim of unprovoked attacks by Judge Scott and Kyley Scott. ***Id.***

Whether or not Vasquez asked for permission to leave Judge Scott's courtroom, both Judge Scott and Kyley Scott testified that Vasquez ignored Judge Scott's repeated demands that he return to his seat and then physically pushed past Judge Scott to exit the courtroom. N.T. Trial, 4/15/14, at 62-66, 82-85. As the trial court noted in its Rule 1925(a) opinion, the jury "obviously found the testimony of [Judge] Scott, Kyley Scott, and Officer Morar to be credible." Trial Court Opinion, 9/18/15, at 4. Vasquez's own testimony largely corroborates the Commonwealth's account of his flight from Judge Scott's office. Once outside the building, the evidence shows that Vasquez ran to his motorcycle and rode off at a high rate of speed, crashing the vehicle shortly thereafter. ***Id.*** at 125. As Vasquez attempted to restart his motorcycle, Officer Morar approached him with his weapon drawn, identified himself as a police officer, and ordered him to get down. ***Id.*** at 110; 126. Vasquez ignored Officer Morar's orders and fled the scene on foot. ***Id.*** at 126.

Vasquez contends that he did not hear Officer Morar identify himself and, therefore, did not recognize him as a police officer. ***Id.*** However, the

evidence shows that Officer Morar approached Vasquez within moments of his flight from Judge Scott's office, drew his firearm, and ordered Vasquez to get on the ground. Taken together with the testimony of Judge Scott and Kyley Scott, these facts would support a conviction under section 5126.

After careful review, we find that the trial court did not abuse its discretion. ***Knox***, ***supra***.

Judgment of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/23/2016

EXHIBIT "D"

COMMONWEALTH OF PENNSYLVANIA:	:	IN THE COURT OF COMMON PLEAS
	:	OF BERKS COUNTY, PENNSYLVANIA
	:	CRIMINAL DIVISION
VS.	:	
	:	No. 4704-13
	:	
RAMON VASQUEZ	:	LIEBERMAN, J.

John T. Adams, Esquire, District Attorney,
Attorney for the Commonwealth

Osmer S. Deming, Esquire,
Attorney for the Defendant

MEMORANDUM OPINION, LIEBERMAN, S.B. JUDGE, September 18, 2015

On April 15, 2014, following a jury trial, the Defendant was found guilty of flight to avoid apprehension, trial or punishment[1] and related offenses. On April 29, 2014, he was sentenced to nine months to two years of incarceration in a state correctional facility. The Defendant was represented at trial and sentencing by Holly B. Feeney, Esquire, of the Berks County Public Defender's Office.

On April 29, 2014, this court granted Ms. Feeney's Motion for Leave to Withdraw as Counsel, and appointed Nicholas Stroumbakis, Esquire, to represent the Defendant on Appeal. On or about November 19, 2014, the Defendant filed a *pro se* Motion for Withdrawal of Counsel and Appointment of Replacement Counsel, which this court interpreted to be petition filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. § 9541 *et seq.* Accordingly, on December 2, 2014, this court appointed Osmer S. Deming, Esquire, to represent the Defendant.

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[1] 18 Pa.C.S.A. § 5126(a)

On June 11, 2015, Attorney Deming filed an Amended Petition for Post Conviction Collateral Relief in which he sought to have the Defendant's direct appellate rights reinstated, *nunc pro tunc*. This court granted the Defendant's Amended Petition that same day, and on July 9, 2015, Attorney Deming filed a Notice of Appeal on the Defendant's behalf. On July 13, 2015, this court ordered the Defendant to file a Concise Statement of Errors Complained of on Appeal. The Defendant complied with this court's order on August 3, 2015. In his appeal, the Defendant alleges the following errors:

1. Was the evidence sufficient to support the verdict?
2. Was the verdict against the weight of the evidence?
3. Was trial counsel ineffective for failing to file an appeal on Defendant's behalf?

(Concise Statement of Errors Complained of on Appeal, 8/3/15).

SUFFICIENCY OF THE EVIDENCE

The Defendant's first argument is that the evidence was insufficient to support his conviction for flight to avoid apprehension, trial or punishment. Sufficiency of the evidence claims are questions of law. *Commonwealth v. Widmer*, 560 Pa. 308, 319, 744 A.2d 745, 751 (Pa. 2000). "Evidence will be deemed sufficient to support the verdict where it establishes each material element of the crime charged, and the commission thereof by the accused, beyond a reasonable doubt." *Id.* When reviewing a sufficiency claim, an appellate court must view the evidence in the light most favorable to the verdict winner. *Id.* The facts and circumstances established by the Commonwealth

need not preclude every possibility of innocence. *Commonwealth v. Lewis*, 911 A.2d 558, 563 (Pa. Super. 2006). Furthermore, "any doubts regarding an appellant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances." *Id.*

In the instant case, the Defendant contends that the evidence was insufficient to support his conviction for flight to avoid apprehension, trial or punishment. Pursuant to the Crimes Code, a person is guilty of that offense if he "willfully conceals himself or moves or travels within or outside this Commonwealth with the intent to avoid apprehension, trial or punishment." 18 Pa.C.S.A. § 5126(a).

Here, the record reflects that according to the Defendant's own testimony, he fled from Magisterial District Judge Wally Scott's office on his motorcycle after learning that there was a warrant for his arrest. The Defendant then encountered Officer Christian Morar of the Reading Police Department after crashing the motorcycle. (N.T. Trial at 123-26). Officer Morar testified that he identified himself as an off-duty police officer and told the Defendant to stop. In response, the Defendant ran off on foot. (N.T. at 110-11). This evidence was clearly sufficient to support the Defendant's conviction of flight to avoid apprehension, trial or punishment. Therefore, the Defendant's first claim must fail.

WEIGHT OF THE EVIDENCE

The Defendant next argues that the verdict was against the weight of the evidence. It is well established that a weight of the evidence claim must be raised in a

post-sentence motion to the trial court, or else it is deemed waived for the purposes of appeal. See *Commonwealth v. Washington*, 825 A.2d 1264, 1266 (Pa. Super. 2003). The record reflects that a post-sentence motion challenging the weight of the evidence was never filed in the instant case. Therefore, the issue should be deemed waived.

Even assuming, *arguendo*, that the weight of the evidence claim had been properly preserved, the record reflects that it is without merit. "A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict, but contends, nevertheless, that the verdict is against the weight of the evidence." *Commonwealth v. Davis*, 799 A.2d 860, 865 (Pa. Super. 2002). A true "weight of the evidence" claim therefore alleges that the verdict is a product of speculation or conjecture. *Commonwealth v. Dougherty*, 451 Pa. Super. 248, 249, 679 A.2d 779, 785 (Pa. Super. 1996). "Such a claim requires a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice." *Id.*

It is the exclusive role of the finder of fact to determine the proper weight to assign to the evidence. The finder of fact is free to believe all, part, or none of the evidence, and is also responsible for determining the credibility of the witnesses. *Commonwealth v. McCloskey*, 835 A.2d 801, 809 (Pa. Super. 2003). "An appellate court cannot substitute its judgment for that of the finder of fact." *Id.*

In the instant case, the jury obviously found the testimony of Wally Scott, Kyley Scott, and Officer Morar to be credible. In addition, the Defendant's own testimony mostly corroborated the testimony of the Commonwealth's witnesses. Given these

facts, the verdict fails to shock one's sense of justice. Therefore, the Defendant's second allegation of error is also without merit.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Finally, the Defendant argues that trial counsel was ineffective for failing to file an appeal on the Defendant's behalf. Because this court granted the Defendant's Amended PCRA Petition, reinstated his direct appellate rights *nunc pro tunc,* and because current counsel subsequently perfected the Defendant's direct appeal, this issue is moot.

For the aforementioned reasons, we respectfully request that the Defendant's appeal be denied.

EXHIBIT "E"

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 262 MAL 2018
Respondent	:	
	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.	:	
RAMON VASQUEZ,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 16th day of November, 2018, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 11/16/2018

Attest: _____
Chief Clerk
Supreme Court of Pennsylvania

Additional material from this filing is available in the Clerk's Office.