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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
v.	:	
ANGELO A. BARRETT,	:	
Appellant	:	No. 388 WDA 2013

Appeal from the Order entered on October 23, 2012
in the Court of Common Pleas of Beaver County,
Criminal Division, No. CP-04-CR-0000073-1988

BEFORE: DONOHUE, OLSON and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED: July 23, 2013

Angelo A. Barrett ("Barrett") appeals, *pro se*, from the dismissal of his Petition for Writ of *Habeas Corpus*. We affirm.

After being found guilty of first-degree murder, Barrett was sentenced to life in prison on July 19, 1989. This Court affirmed the judgment of sentence on February 26, 1990, and Barrett did not seek further review with the Supreme Court of Pennsylvania. **See *Commonwealth v. Barrett*, 576 A.2d 1130 (Pa. Super. 1990) (unpublished memorandum)**. Barrett subsequently filed his first Post Conviction Relief Act ("PCRA") Petition, which the PCRA court dismissed as untimely on August 10, 1999. This Court affirmed the dismissal on October 11, 2000. **See *Commonwealth v. Barrett*, 761 A.2d 145 (Pa. Super. 2000)**.

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Barrett filed the instant *habeas corpus* Petition on October 17, 2012. This Petition was treated as a PCRA Petition by the PCRA court, and on October 23, 2012, the PCRA court dismissed the Petition due to its untimeliness. Barrett filed a timely Notice of appeal.

Initially, we must determine whether the relief Barrett seeks is governed by the law of *habeas corpus* or whether it is subsumed by the PCRA. ***Commonwealth v. West***, 938 A.2d 1034, 1042-43 (Pa. 2007).

This Court set forth the scope of the PCRA eligibility requirements:

[W]e note that both the PCRA and the state *habeas corpus* statute contemplate that the PCRA subsumes the writ of *habeas corpus* in circumstances where the PCRA provides a remedy for the claim. [T]he scope of the PCRA eligibility requirements should not be narrowly confined to its specifically enumerated areas of review. Such narrow construction would be inconsistent with the legislative intent to channel post-conviction claims into the PCRA's framework, and would instead create a bifurcated system of post-conviction review where some post-conviction claims are cognizable under the PCRA while others are not.

Commonwealth v. Stout, 978 A.2d 984, 986 (Pa. Super. 2009) (citations omitted); **see also** 42 Pa.C.S.A. § 9542.

In his Petition for writ of *habeas corpus*, Barrett claims that he was denied due process when he was arrested absent the issuance of an affidavit of probable cause, in violation of Pa.R.Crim.P. 119 (now Rule 513). Brief for Appellant at 8. This claim falls squarely within the confines of the PCRA. **See** 42 Pa.C.S.A. § 9543(a)(2)(i); **see also** ***Commonwealth v. Smith***, 995 A.2d 1143, 1152-53 (Pa. 2010) (addressing claim under the PCRA regarding

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illegal arrest on expired warrant). Accordingly, the PCRA court properly considered the Petition as filed under the PCRA.

Under the PCRA, any PCRA petition, "*Including a second or subsequent petition*, shall be filed within one year of the date the judgment becomes final[.]" 42 Pa.C.S.A. § 9545(b)(1) (emphasis added). The PCRA's timeliness requirements are jurisdictional in nature and a court may not address the merits of the issues raised if the PCRA petition is not timely filed. ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010).

Here, Barrett's judgment of sentence became final on March 28, 1990, thirty days after this Court affirmed his judgment of sentence and the time for filing a petition for allowance of appeal with the Supreme Court of Pennsylvania expired. ***See*** 42 Pa.C.S.A. § 9545(b)(3); ***see also*** Pa.R.A.P. 1113(a). Barrett had until March 29, 1991, to file this PCRA Petition, but he did not file the Instant Petition until October 17, 2012. Thus, Barrett's Petition is facially untimely under the PCRA. Further, Barrett has not explicitly pled or proven any of the exceptions to the PCRA's timeliness requirements. ***See*** 42 Pa.C.S.A. § 9545(b)(1); ***Albrecht***, 994 A.2d at 1094. Accordingly, the Instant PCRA Petition was properly dismissed as untimely.

Order affirmed.

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Judgment Entered.

Nicholas V. Cusatt

Deputy Prothonotary

Date: July 23, 2013