

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LONJRELL LYNN,	:	
	:	
Appellant	:	No. 1137 EDA 2013

Appeal from the PCRA Order March 20, 2013
In the Court of Common Pleas of Lehigh County
Criminal Division No(s).: CP-39-CR-0005164-2008

BEFORE: BOWES, PANELLA, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED DECEMBER 23, 2013**

Pro se Appellant, Lonjrell Lynn, appeals from the order entered in the Lehigh County Court of Common Pleas that denied his first Post-Conviction Relief Act¹ ("PCRA") petition as untimely and permitted his appointed counsel to withdraw. He claims the court erred by not granting him credit for time served. This case returns to us after another panel of this Court vacated the order denying Appellant's petition and remanded for a determination by the PCRA court on whether to appoint counsel for Appellant. We affirm.

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

We state the procedural history as set forth by the prior panel of this Court:

On November 21, 2008, Appellant was charged with two counts of corrupt organizations, two counts of conspiracy, criminal use of a communication facility, and possession of a controlled substance (cocaine) with intent to deliver ("PWID"). He received the assistance of appointed counsel. On February 22, 2010, Appellant tendered a negotiated guilty plea to PWID and the two conspiracy offenses in exchange for a sentence of four to nine years imprisonment, and, that same day, the court imposed the agreed-upon sentence.

Appellant did not file a direct appeal, and the next docketed document is a January 30, 2012 *pro se* request for credit for time served. Although the record is sparse as to the matter, it appears that Appellant was incarcerated in New Jersey when the present charges were filed and that he was seeking credit for time served as to this conviction for the time that he spent in the New Jersey penitentiary.

Regardless of the merits, however, the record reveals that, on May 25, 2012, Appellant's *pro se* motion was denied without the appointment of counsel.

Commonwealth v. Lynn, 1705 EDA 2012, at 1-2 (Pa. Super. Nov. 28, 2012) (unpublished memorandum). The **Lynn** Court construed Appellant's *pro se* motion as a PCRA petition, and vacated and remanded to have the court ascertain whether Appellant was entitled to appointed counsel. **Id.** at 4.

On remand, the PCRA court appointed counsel, who subsequently filed a motion to withdraw as counsel. On March 21, 2013, the court granted counsel's petition to withdraw and denied Appellant's PCRA petition.

Appellant timely appealed on April 11, 2013.² Appellant timely filed a court-ordered Pa.R.A.P. 1925(b) statement.

Appellant raises the following issues:³

The court erred in its [sic] determination that the time Appellant spent in a Pennsylvania jail on a Pennsylvania detainer awaiting disposition of a Pennsylvania criminal matter must be credited to a New Jersey sentence. . . .

The court erred in failing to recognize that Pennsylvania is a day for day state, but the State of New Jersey is not. . . .

The court erred in failing to realize that New Jersey could have made . . . Appellant serve his sentence in full prior to relinquishing him to the custody/jurisdiction of Pennsylvania

Appellant's Pa.R.A.P. 1925(b) statement, 4/30/13, at 2 (unpaginated).

Before examining the merits of Appellant's claims, our Supreme Court has required this Court to examine whether we have jurisdiction to entertain the underlying PCRA petition. **See Commonwealth v. Fahy**, 737 A.2d 214, 223 (Pa. 1999). "Our standard of review of a PCRA court's dismissal of a PCRA petition is limited to examining whether the PCRA court's determination is supported by the evidence of record and free of legal error." **Commonwealth v. Wilson**, 824 A.2d 331, 333 (Pa. Super. 2003) (*en*

² The court docketed Appellant's notice of appeal on April 17, 2013. **See generally Commonwealth v. Wilson**, 911 A.2d 942, 944 n.2 (Pa. Super. 2006) (discussing prisoner mailbox rule).

³ Appellant's brief does not include a statement of questions presented. **See generally** Pa.R.A.P. 2116.

banc) (citation omitted). A PCRA petition “must normally be filed within one year of the date the judgment becomes final, . . . unless one of the exceptions in § 9545(b)(1)(i)-(iii) applies and the petition is filed within 60 days of the date the claim could have been presented.” ***Commonwealth v. Copenhefer***, 941 A.2d 646, 648 (Pa. 2007) (internal citations and footnote omitted).

The PCRA’s timeliness requirements are jurisdictional in nature and must be strictly construed; courts may not address the merits of the issues raised in a petition if it is not timely filed. It is the petitioner’s burden to allege and prove that one of the [three] timeliness exceptions applies.

Commonwealth v. Abu-Jamal, 941 A.2d 1263, 1267-68 (Pa. 2008) (internal citations omitted).

The three timeliness exceptions are:

(i) The failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S. § 9545(b)(1)(i)-(iii).

Instantly, we examine whether the PCRA court erred by holding Appellant's first PCRA petition was untimely. **See** 42 Pa.C.S. § 9545(b)(1), (2); **Abu-Jamal**, 941 A.2d at 1267-68. The trial court sentenced Appellant on February 22, 2010. Appellant's judgment of sentence thus became final on March 24, 2010, as he had thirty days within which to file an appeal with this Court. Appellant then had one year, until March 24, 2011, to file a PCRA petition. **See** 42 Pa.C.S. § 9545(b)(1).

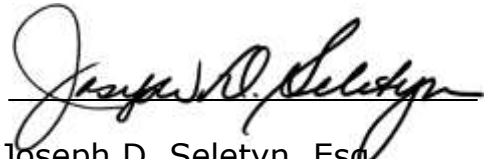
Appellant filed the instant petition on January 30, 2012, almost ten months later. Thus, this Court must discern whether the PCRA court erred in concluding Appellant did not plead and prove one of the three timeliness exceptions. **See** 42 Pa.C.S. § 9545(b)(1)(i)-(iii); **Copenhefer**, 941 A.2d at 648.

In this case, Appellant did not plead or prove any of the timeliness exceptions. **See** 42 Pa.C.S. § 9545(b)(1)(i)-(iii). Accordingly, we agree with the PCRA court's determination that Appellant has not proved one of the three timeliness exceptions. **See Abu-Jamal**, 941 A.2d at 1267-68; **Copenhefer**, 941 A.2d at 648. Thus, the PCRA court lacked jurisdiction to consider his petition. **See Fahy**, 737 A.2d at 223. Having discerned no error of law, we affirm the order below. **See Wilson**, 824 A.2d at 333.

Order affirmed.

J. S59042/13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2013