NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JOSEPH A. FLOWERS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 234 WDA 2011

Appeal from the PCRA Order entered January 3, 2011
in the Court of Common Pleas of Allegheny County Criminal Division
at No(s): CP-02-CR-0001077-1999; CP-02-CR-0001904-1999

BEFORE: SHOGAN, MUNDY, AND OTT, JJ.

MEMORANDUM BY MUNDY, J.: **FILED DECEMBER 02, 2013**

Appellant, Joseph A. Flowers, appeals *pro se* from the January 3, 2011 order denying his second petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

The relevant factual history as set forth by a prior panel of this Court follows.

> The evidence established that on January 5, 1999, [Appellant] was staying at Apartment 57G in the Crawford Village Apartments in McKeesport. He was supposed to meet a Tara Evans there. Evan[s'] boyfriend, Carlos Bray, went to [A]partment 57G to confront [Appellant] over his involvement with Evans. Bray was accompanied by his cousin, Michael Bray. Neither was armed. The Brays entered the apartment and [Appellant] retreated to the kitchen. When Carlos Bray entered the kitchen, [Appellant]

> shot him [fatally]. After Bray fell to the floor, [Appellant] shot him again.
>
> When Michael Bray turned and tried to flee the apartment, [Appellant] stepped over the body of Carlos Bray, knelt, aimed and shot Michael Bray in the back. [Appellant] fled the apartment and was arrested a short time later.[1] He gave a statement to detective James Morton in which he admitted that he shot Carlos and Michael Bray but claimed that he did so in self-defense. [Appellant] did not testify at trial or present any other evidence.

Commonwealth v. Flowers, 828 A.2d 396 (Pa. Super. 2003) (unpublished memorandum), *appeal denied*, 836 A.2d 121 (Pa. 2003).

On October 7, 1999, Appellant was convicted of first-degree murder, carrying a firearm without a license, and aggravated assault.[2]

> [On January 26, 2000] Appellant was subsequently sentenced to life imprisonment for his murder conviction and to concurrent terms of five to ten years' imprisonment for his aggravated assault conviction; in addition, he was sentenced to three and one-half to seven years' imprisonment for [carrying a firearm without a license], the latter sentence to be served consecutively to the aggravated assault sentence. Timely post-sentence motions were denied, and this Court affirmed the judgment of sentence on April 23, 2003. ***Commonwealth v. Flowers***, 828 A.2d 396 (Pa. Super. 2003) (unpublished memorandum). Our Supreme Court subsequently denied Appellant's petition for allowance of appeal. ***Commonwealth v. Flowers***, 575 Pa. 696, 836 A.2d 121 (2003).

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[1] At the time of the incident Appellant was 17 years old.

[2] 18 Pa.C.S.A. §§ 2502(a), 6106, and 2702(a)(1), respectively.

> Thereafter, Appellant filed a timely *pro se* PCRA petition. Counsel was appointed, an amended PCRA petition was filed, and on September 18, 2006, the PCRA court dismissed the amended petition without a hearing. Appellant then filed a timely appeal[.]

Commonwealth v. Flowers, 935 A.2d 10 (Pa. Super. 2007) (unpublished memorandum), *appeal denied*, 944 A.2d 756 (Pa. 2008). On August 28, 2007, this Court affirmed the order denying Appellant's PCRA petition. ***Id.*** Thereafter, Appellant filed a petition for allowance of appeal which was subsequently denied by our Supreme Court on March 6, 2008. ***Id.***

On July 13, 2010, *pro se* Appellant filed a untimely second PCRA petition. On August 31, 2010, the trial court issued a memorandum opinion and a notice of its intent to dismiss Appellant's petition pursuant to Pennsylvania Rule of Criminal Procedure 907. Appellant filed a response on September 16, 2010. Thereafter, on January 3, 2011, the trial court dismissed Appellant's *pro se* PCRA petition. Appellant timely appealed.[3]

Preliminarily, we will address the Commonwealth's contention that Appellant's brief fails to conform to the Pennsylvania Rules of Appellate Procedure, and should therefore be dismissed.

> Specifically, Appellant does not set forth a statement of jurisdiction, the scope and standard of review, a separate section entitled 'Statement of the Case' or a copy of the trial court's Opinion as required by Pa.R.A.P. 2111(a)(1), 2111(b), 2114 and 2117. Appellant has also failed to include in his brief a

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[3] Appellant and the trial court have complied with Pa.R.A.P. 1925.

> statement of the questions involved setting forth an issue for this Court's review.

Commonwealth's Brief at 14.

Generally, parties to an appeal are required to submit briefs in conformity, in all material respects, with the requirements of the appellate rules, as nearly as the circumstances of the particular case will admit. ***See*** Pa.R.A.P. 2101. "This Court may quash or dismiss an appeal if the appellant fails to conform to the requirements set forth in the Pennsylvania Rule[] of Appellate Procedure [Pa.R.A.P. 2111(a)(1)-(10)]." ***Commonwealth v. Adams***, 882 A.2d 496, 497 (Pa. Super. 2005) (citation omitted).

Pennsylvania Rule of Appellate Procedure 2111 sets forth the following list of requirements that an appellate brief must contain.

> **Rule 2111. Brief of the Appellant**
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> **(a) General rule.--**The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:
>
> (1) Statement of jurisdiction.
>
> (2) Order or other determination in question.
>
> (3) Statement of both the scope of review and the standard of review.
>
> (4) Statement of the questions involved.
>
> (5) Statement of the case.
>
> (6) Summary of argument.

> (7) Statement of the reasons to allow an appeal to challenge the discretionary aspects of a sentence, if applicable.
>
> (8) Argument for appellant.
>
> (9) A short conclusion stating the precise relief sought.
>
> (10) The opinions and pleadings specified in Subdivisions (b) and (c) of this rule.
>
> (11) In the Superior Court, a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Rule 1925(b), or an averment that no order requiring a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered.

Pa.R.A.P. 2111(a). Additionally, Rules 2114 through 2119 specify in greater detail the material to be included in briefs on appeal. ***See id.*** at 2114-2119.

We note that "although this Court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant." ***Commonwealth v. Lyons****,* 833 A.2d 245, 251-252 (Pa. Super. 2003) (citation omitted), *appeal denied*, 879 A.2d 782 (Pa. 2005). "[A]ny person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing." ***Adams***, ***supra*** at 498.

We agree with the Commonwealth that the defects in Appellant's brief are substantial, and on this basis alone we could dismiss Appellant's appeal. However, because we can discern Appellant's argument from his brief, in the interest of judicial economy we will address the merits of Appellant's issue.

Specifically, Appellant asserts that the recent decision of the United States Supreme Court in ***Graham v. Florida***, 130 S. Ct. 2011 (2010), makes it unconstitutional to sentence a juvenile to life without parole. Appellant's Brief at 12.

Our standard when reviewing a denial of a PCRA petition is limited to the determination of whether the PCRA court's findings are supported by the record and whether the order is free of legal error. ***Commonwealth v. Reaves***, 923 A.2d 1119, 1124 (Pa. 2007), *appeal denied*, 959 A.2d 929 (Pa. 2008). "This Court grants great deference to the findings of the PCRA court, and we will not disturb those findings merely because the record could support a contrary holding." ***Commonwealth v. Alderman***, 811 A.2d 592, 594 (Pa. Super. 2002), *appeal denied*, 825 A.2d 1259 (Pa. 2003) (citations omitted). The timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Burton***, 936 A.2d 521, 527 (Pa. Super. 2007), *appeal denied*, 959 A.2d 927 (Pa. 2008). "A petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final[.]" ***Commonwealth v. Harris***, 972 A.2d 1196, 1199-1200 (Pa. Super. 2009), *appeal denied*, 982 A.2d 1227 (Pa. 2009).

While a petition for relief under the PCRA must be filed within one year of the date the judgment is final, the petition may be addressed if the petition alleges, and the petitioner proves, one of three statutory exceptions

set forth at 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). ***Commonwealth v. Gamboa-Taylor***, 753 A.2d 780, 783 (Pa. 2000); 42 Pa.C.S.A. § 9545. The three statutory exceptions are: (1) interference by government officials in attempting to present a claim, (2) after-discovered facts or evidence, and (3) an after-recognized constitutional right. 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). "[I]t is now well settled that there is no generalized equitable exception to the jurisdictional one year time bar pertaining to post-conviction petitions." ***Commonwealth v. Brown***, 943 A.2d 264, 267 (Pa. 2008).

A PCRA petition invoking one of these statutory exceptions must "be filed within 60 days of the date the claim[] could have been presented." ***See Gamboa-Taylor***, ***supra*** at 783; ***see also*** 42 Pa.C.S.A. § 9545(b)(2). "[I]t is the burden of a petitioner to plead in the PCRA petition exceptions to the time bar and that burden necessarily entails an acknowledgement by the petitioner that the PCRA petition under review is untimely but that one or more of the exceptions apply." ***Commonwealth v. Wharton***, 886 A.2d 1120, 1126 (Pa. 2005) (citations omitted). "If the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed without a hearing because Pennsylvania courts are without jurisdiction to consider the merits of the petition." ***Commonwealth v. Perrin***, 947 A.2d 1284, 1285 (Pa. Super. 2008).

As noted above, Appellant was sentenced on January 26, 2000, this Court affirmed his judgment of sentence, and our Supreme Court denied his

petition for allowance of appeal on October 28, 2003. Therefore, Appellant's judgment of sentence became final 90 days later, on January 26, 2004, when the period for Appellant to file a petition for a writ of *certiorari* in the United States Supreme Court expired. ***See*** 42 Pa.C.S.A. § 9545(b)(3); U.S. Sup. Ct. R. 13(1). Therefore, Appellant's appeal is patently untimely. Instantly, however, Appellant in essence argues an after-recognized constitutional right pursuant to section 9545(b)(1)(iii) applies. We are cognizant of Appellant's failure to specifically acknowledge the untimeliness of his petition and to specifically assert an exception to the PCRA timeliness requirement. And as previously stated, Appellant's procedural missteps are grounds for dismissal. However, it is apparent that Appellant is asserting an after-recognized constitutional right set forth by the United States Supreme Court in ***Graham***.

While this appeal was pending before this Court, the United States Supreme Court issued its decision in ***Miller v. Alabama***, 132 S. Ct. 2455 (2012). ***Miller*** extended ***Graham*** and concluded that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile [homicide] offenders." ***Id.*** at 2469. Following the United States Supreme Court's decision, our Supreme Court, in ***Commonwealth v. Cunningham***, --- A.3d ---, 2013 WL 5814388 (Pa. 2013), agreed to consider whether the holding in ***Miller*** applied retroactively

to judgments of sentence that became final prior to the filing of the ***Miller*** decision.

In ***Cunningham***, our Supreme Court held that ***Miller*** did not apply retroactively to cases on collateral review. ***Id.*** at *7 (specifically concluding that "nothing in [Cunningham's] arguments persuades us that ***Miller***'s proscription of the imposition of mandatory life-without-parole sentences upon [homicide] offenders under the age of eighteen at the time their crimes were committed must be extended to those whose judgments of sentence were final as of the time of ***Miller***'s announcement[]"). Herein, Appellant's judgment of sentence became final on January 26, 2004, prior to the announcement of ***Miller***. Therefore, based on our Supreme Court's decision in ***Cunningham***, we conclude Appellant's PCRA petition is facially untimely, and he has failed to meet his burden of proof with regard to any of the enumerated exceptions to the timeliness requirement.

Accordingly, we affirm the PCRA court's January 3, 2011 order dismissing Appellant's PCRA petition.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/2/2013