

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

BRUCE SILAR

Appellant

No. 439 MDA 2013

Appeal from the PCRA Order February 20, 2013
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0000366-1979

BEFORE: PANELLA, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY PANELLA, J.

FILED DECEMBER 20, 2013

Appellant, Bruce Silar, appeals from the order entered February 20, 2013, by the Honorable Craig T. Trebilcock, Court of Common Pleas of York County, which denied as untimely his second petition filed pursuant to the Post Conviction Relief Act (PCRA).¹ Additionally, Silar's court-appointed counsel, John M. Hamme, Esquire, has petitioned to withdraw and has submitted a **Turner/Finley**² "no-merit" letter in support thereof contending that Silar's appeal is frivolous. After careful review, we grant counsel's petition to withdraw and affirm the denial of Silar's PCRA petition.

* Retired Senior Judge assigned to the Superior Court.

¹ 42 PA.CON.S.TAT.ANN. § 9541, *et seq.*

² **Commonwealth v. Turner**, 518 Pa. 491, 544 A.2d 927 (1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa.Super. 1988).

On July 19, 1979, a jury convicted Silar of second degree murder and robbery. On November 3, 1980, the trial court sentenced Silar to life imprisonment. On March 8, 1983, this Court entered a judgment of non pros due to Silar's failure to proceed on direct appeal.³ Silar did not seek allocatur with the Pennsylvania Supreme Court.

Silar filed a *pro se* PCRA petition on April 12, 1983, after which counsel was appointed and an amended petition was filed on June 7, 1983. The PCRA court dismissed Silar's petition on February 13, 1984. This Court affirmed the dismissal of Silar's PCRA petition on September 27, 1985, and the Supreme Court denied allocatur on April 14, 1986.

Silar filed the current PCRA petition – his second – on August 9, 2012, and counsel was subsequently appointed. On February 20, 2013, the PCRA court dismissed Silar's petition as untimely. This timely appeal followed.

We will first address counsel's motion to withdraw. Our Supreme Court has summarized the procedure for withdrawal of court-appointed counsel in collateral attacks on criminal convictions as follows:

Independent review of the record by competent counsel is required before withdrawal is permitted. Such independent review requires proof of:

- 1) A "no-merit" letter by PCRA counsel detailing the nature and extent of his [or her] review;

³ On February 23, 1983, Silar filed a PCRA petition, however, the PCRA court dismissed the petition pending this Court's disposition of Silar's direct appeal.

- 2) A “no-merit” letter by PCRA counsel listing each issue the petitioner wished to have reviewed;
- 3) The PCRA counsel’s “explanation”, in the “no-merit” letter, of why the petitioner’s issues were meritless;
- 4) The PCRA court conducting its own independent review of the record; and
- 5) The PCRA court agreeing with counsel that the petition was meritless.

Commonwealth v. Pitts, 981 A.2d 875, 876 n.1 (Pa. 2009) (citations omitted). Counsel in this case has complied with the mandates of **Turner** and **Finley**, as summarized in **Pitts, supra**. Thus, we must determine whether we agree with counsel’s assessment of Silar’s claim.

Our standard of review of a PCRA court’s denial of a petition for post-conviction relief is well-settled: We must examine whether the record supports the PCRA court’s determination and whether the PCRA court’s determination is free of legal error. **See Commonwealth v. Hall**, 867 A.2d 619, 628 (Pa. Super. 2005). The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record. **See Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa. Super. 2001). Our scope of review is limited by the parameters of the PCRA. **See Commonwealth v. Heilman**, 867 A.2d 542, 544 (Pa. Super. 2005).

It is axiomatic that a PCRA petition, including a second or subsequent petition, must be filed within *one year* of the date that the judgment of sentence becomes final. **See** 42 PA.CON.S.TAT.ANN. § 9545(b)(1). If a petition is filed after that one year date, the general rule is that the PCRA

court lacks jurisdiction to hear the petition. However, section 9545(b) provides for three limited circumstances to the general rule in which such a petition may be filed beyond that one-year period:

...

(b) Time for filing petition.--

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 PA.CON.S.TAT.ANN. § 9545(b)(1)(i)-(iii), (2). **See also Commonwealth v. Pursell**, 561 Pa. 214, 220, 749 A.2d 911, 914-915 (2000) (“The courts have no jurisdiction to grant [a litigant] relief unless he can plead and prove that one of the exceptions to the time bar provided in 42 [PA.CON.S.TAT.ANN.] § 9545(b)(1)(i)-(iii) applies.”); **Commonwealth v. Wilson**, 824 A.2d 331, 335 (Pa. Super. 2003) (*en banc*), **appeal denied**,

576 Pa. 712, 839 A.2d 352 (2003) (“Since Appellant’s PCRA petition is untimely, our review focuses on whether Appellant has pled and proven that one of the three limited exceptions to the timeliness requirements of the PCRA apply.”).⁴

When pleading one of the foregoing § 9545(b)(1) exceptions, a litigant is subject to a 60-day deadline for invoking an exception which commences from the date in which the claim could have been presented. **See** 42 PA.CON.S.TAT.ANN. § 9545(b)(2). Where the petition is untimely, the litigant bears the burden of pleading and proving in the petition that one of the exceptions to the one-year deadline for filing a PCRA petition applies. **See Commonwealth v. Bretz**, 830 A.2d 1273, 1275-76 (Pa. Super. 2003).

In the instant case, Silar’s judgment of sentence became final once this Court entered a judgment of non pros on March 8, 1983, and the period

⁴ Silar’s second PCRA petition does not benefit from the grace period provided in the statute for those petitioners whose judgments of sentence became final before the effective date of the 1995 amendments to the PCRA. As we explained in **Commonwealth v. Thomas**, 718 A.2d 326, 329 (Pa. Super. 1998):

[I]t was the intention of the legislature to permit an otherwise untimely first PCRA petition to be filed within one year following the effective date of the 1995 PCRA amendments, but that exception was not intended to apply to subsequent petitions regardless of when a first petition was filed.

Id. at 329.

for filing a direct appeal to the Supreme Court of Pennsylvania expired⁵ on April 8, 1983. As the instant petition was not filed until August 9, 2012, it is patently untimely, as it was filed 29 years after Silar's judgment of sentence became final. As such, the PCRA court lacked jurisdiction to review Silar's petition unless he pled and proved in his petition that one of the § 9545(b)(1) statutory exceptions was applicable.

Silar claims that he benefits from the newly recognized constitutional right announced by the United States Supreme Court in ***Miller v. Alabama***, ___ U.S. ___, 132 S.Ct. 2455 (2012). The majority in ***Miller*** expressly held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for ***juvenile*** offenders." ***Id.***, at ___, 132 S.Ct. at 2469 (emphasis added). Silar, who was 20 years old at the time of his arrest and, therefore, not a juvenile, cannot benefit from this newly announced constitutional rule. Accordingly, we find Silar has not shown that a timeliness exception contained in subsection 9545(b)(1) applies.

Accordingly, because our review of the record supports the PCRA court's determination that the issue raised in Silar's PCRA petition was

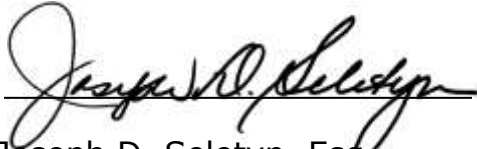
⁵ Pa.R.A.P. 1113 provides, in pertinent part, that "a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days of entry of the order of the Superior Court...."

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meritless, we affirm the order dismissing the PCRA petition and grant PCRA counsel's petition to withdraw.

Order affirmed. Petition to withdraw granted. Jurisdiction relinquished.

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: 12/20/2013