

**[J-21-2006 ]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 6 EAP 2005
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court dated February 4, 2004 at No. 3511
	:	EDA 2001 quashing the appeal from the
v.	:	Order of the Court of Common Pleas of
	:	Philadelphia County, Criminal Division,
	:	dated February 19, 1999 at Nos. 9007-
TONY L. BENNETT,	:	000102/2 and 9007-0018-0025
	:	
Appellant	:	842 A.2d 953 (Pa. Super. Ct. 2004) (en
	:	banc)
	:	
	:	SUBMITTED: January 19, 2006
	:	

**DISSENTING OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: August 23, 2007**

I dissent because I believe Commonwealth v. Chester, 895 A.2d 520 (Pa. 2006) controls this matter.

Under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9541 et seq., all petitions, including second or subsequent petitions, must be filed within one year of the date the judgment of sentence becomes final, unless one of the statutory exceptions applies. Chester, at 522 (citing 42 Pa.C.S. § 9545(b)(1)); Commonwealth v. Yarris, 731 A.2d 581 (Pa. 1999)). The PCRA's time-bar is jurisdictional in nature. Commonwealth v. Peterkin, 722 A.2d 638, 641 (Pa. 1998). Appellant argues this Court should consider his PCRA petition under the exception to the one-year time limitation in 42 Pa.C.S. § 9545(b)(1)(ii). This subsection requires a petitioner to prove the facts upon which the claim is predicated were unknown to him and could not have been ascertained by the

exercise of due diligence. Chester recognized “for purposes of 42 Pa.C.S. § 9545(b)(1)(ii), information is not ‘unknown’ to a PCRA petitioner when the information was a matter of public record.” Chester, at 523 (citing Commonwealth v. Lark, 746 A.2d 585, 588 n.4 (Pa. 2000); Commonwealth v. Whitney, 817 A.2d 473, 478 (Pa. 2003)). Under Chester, it is clear information that is a matter of public record--like the dismissal of an appeal--is not “unknown” to a PCRA petitioner. Therefore, appellant cannot meet § 9545(b)(1)(ii).

Because the time-bar is jurisdictional, and this PCRA petition is clearly time-barred, I respectfully dissent.

Mr. Justice Castille joins this dissenting opinion.