

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Antonio Sierra, :
Appellant :
 :
v. : No. 80 C.D. 2021
 : SUBMITTED: May 14, 2021
Commonwealth of Pennsylvania :

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE CEISLER

FILED: October 6, 2021

Antonio Sierra appeals, *pro se*, from the September 29, 2020 Order of the Court of Common Pleas of Lebanon County (Trial Court) denying Mr. Sierra’s “General Writ of Error, Alternatively, Motion to Vacate and Set Aside” (Writ of Error). We affirm the Trial Court’s Order.¹

Background

In September 1998, after a four-day trial, a jury convicted Mr. Sierra of 31 criminal counts, including criminal attempt to commit criminal homicide, robbery, and arson.² In October 1998, the Trial Court sentenced Mr. Sierra to an aggregate term of 30 to 64 years in prison.

Mr. Sierra filed timely post-sentence motions, which the Trial Court denied. Thereafter, Mr. Sierra filed an appeal with the Superior Court, which affirmed his

¹ The Pennsylvania Superior Court transferred this matter to our Court for disposition on February 5, 2021.

² The criminal charges against Mr. Sierra and his co-defendants stemmed from an incident that occurred in an apartment in Annville, Pennsylvania, on the evening of November 4, 1997. At the time of the crimes, Mr. Sierra was a resident of the State of New York.

judgment of sentence on May 2, 2001. Mr. Sierra did not seek further appellate review at that time.

Beginning in May 2004, Mr. Sierra filed a series of petitions in the Trial Court pursuant to the Post Conviction Relief Act (PCRA), 42 Pa. C.S. §§ 9541-46, asserting that his sentence was illegal and should be vacated. In particular, Mr. Sierra averred that the Trial Court sentenced him for the crime of “criminal attempt to commit third-degree murder” when no such crime is recognized under the Crimes Code, 18 Pa. C.S. §§ 101-9546. Because each of Mr. Sierra’s PCRA petitions was filed more than one year after his judgment of sentence became final, and because he failed to plead a statutory exception to the PCRA’s one-year time bar, the Trial Court dismissed Mr. Sierra’s petitions as untimely.³ Mr. Sierra’s subsequent appeals from those orders were unsuccessful.

On September 24, 2020, Mr. Sierra filed the instant Writ of Error in the Trial Court. In his Writ of Error, Mr. Sierra asserted that the Trial Court should exercise inherent jurisdiction pursuant to Section 5505 of the Judicial Code, 42 Pa. C.S. § 5505, to correct an “obvious and patent mistake[.]” in his sentence.⁴ Writ of Error, 9/24/20, at 2.

³ Mr. Sierra’s judgment of sentence became final on June 1, 2001, 30 days after the Superior Court affirmed his judgment of sentence, when the time for filing a petition for allowance of appeal with the Pennsylvania Supreme Court expired. *See* 42 Pa. C.S. § 9545(b)(3). Therefore, to be considered timely, any PCRA petition had to be filed within one year of that date, or by June 1, 2002. *See* 42 Pa. C.S. § 9545(b)(1).

⁴ Section 5505 of the Judicial Code states: “*Except as otherwise provided or prescribed by law*, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.” 42 Pa. C.S. § 5505 (emphasis added). As discussed more fully in the Analysis section of this Opinion, our Supreme Court has interpreted Section 5505 as encompassing an exception, under which a trial court retains inherent jurisdiction to correct obvious or patent **(Footnote continued on next page...)**

On September 29, 2020, the Trial Court entered an Order denying Mr. Sierra's Writ of Error. In its Order, the Trial Court concluded:

[Mr. Sierra] has not raised any new issue that has not already been litigated through all of the [a]ppellate [c]ourts, and if he would consider this [Writ of Error] a [PCRA] Petition, [Mr. Sierra] has not raised any new factor that would make him eligible [for relief], since [the Writ of Error] is well out of time for the filing of post-conviction [collateral] relief.

Trial Ct. Order, 9/29/20, at 1.⁵ Mr. Sierra now appeals from that decision.

Analysis

1. Inherent Jurisdiction

On appeal, Mr. Sierra asserts that the Trial Court erred in refusing to invoke its inherent jurisdiction to correct his illegal sentence. Mr. Sierra maintains that his claim of an illegal sentence does not fall within the scope of the PCRA. Essentially, he asserts that because he is asking the Trial Court to correct a patent and obvious error in its sentencing order, his claim is encompassed by the inherent jurisdiction exception to Section 5505 of the Judicial Code.

In support of his claim, Mr. Sierra relies on *Commonwealth v. Holmes*, 933 A.2d 57 (Pa. 2007). In *Holmes*, our Supreme Court upheld the trial court's sentence modifications, recognizing that there is a "limited class of cases amenable to the

errors in its orders beyond Section 5505's 30-day window. *See Com. v. Hoover*, 231 A.3d 785, 792 (Pa. 2020).

⁵ The original record contains a subsequent Trial Court Order entered on January 11, 2021, titled "Amended Order," which states: "[P]ursuant to [Mr. Sierra's] Notice of Appeal and upon consideration of [his] post[-]sentence motions, the [Trial] Court DENIES [Mr. Sierra's] Motions." Trial Ct. Am. Order, 12/29/20, at 1. This Order appears to relate to a "Motion in Objection to Process," which Mr. Sierra filed in the Trial Court on November 30, 2020 while this appeal was pending. However, the only matter properly before this Court is Mr. Sierra's appeal from the Trial Court's September 29, 2020 Order denying his Writ of Error.

exercise by a trial court of the inherent power to correct patent errors despite the absence of traditional jurisdiction.” *Id.* at 65. The Supreme Court reasoned that this inherent jurisdiction would apply in the absence of jurisdiction under Section 5505, because the statute “was never intended to eliminate the inherent power of a court to correct *obvious and patent mistakes* in its orders, judgments[,] and decrees.” *Id.* (emphasis added). Because the cases at issue in *Holmes* “involve[d] clear errors in the imposition of sentences that were incompatible with the record . . . or black letter law,” the Supreme Court held that the trial court had inherent jurisdiction to correct the sentences, despite the absence of statutory jurisdiction under Section 5505. *Id.* at 67. However, the Supreme Court expressly cautioned:

Although the defendants before this court warrant relief under the inherent power of courts to correct patent errors, *we must also emphasize the limits of this power*. This exception to the general rule of Section 5505 cannot expand to swallow the rule. In applying the exception to the cases at bar, we note that *it is the obviousness of the illegality, rather than the illegality itself, that triggers the court’s inherent power*. *Not all illegal sentences will be amendable to correction as patent errors*.

Id. at 66-67 (emphasis added); accord *Com. v. Jackson*, 30 A.3d 516, 519 (Pa. Super. 2011) (“*Holmes* . . . recognized the limited authority of a trial court to correct patent errors in sentences absent statutory jurisdiction under [S]ection 5505; *it did not establish an alternate remedy for collateral relief that sidesteps the jurisdictional requirements of the PCRA.*”) (emphasis added).

Despite the creative title of Mr. Sierra’s filing, this Court must treat his Writ of Error as a PCRA petition. See *Com. v. Johnson*, 803 A.2d 1291, 1293 (Pa. Super. 2002) (“We have repeatedly held that . . . *any petition filed after the judgment of sentence becomes final will be treated as a PCRA petition.*”) (emphasis added).

Because Mr. Sierra's claim is cognizable under the PCRA, his Writ of Error must comply with the PCRA's timeliness requirements. *See Com. v. Fahy*, 737 A.2d 214, 223 (Pa. 1999) ("Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto.").

Here, Mr. Sierra filed his Writ of Error 19 years after his judgment of sentence became final. Not only is his Writ of Error patently untimely, Mr. Sierra also did not plead any of the statutory exceptions to the PCRA's one-year time bar in his Writ of Error. Thus, the Trial Court correctly concluded that it did not have jurisdiction to consider the merits of Mr. Sierra's Writ of Error. *See Moss v. SCI-Mahanoy Superintendent Pa. Bd. of Prob. & Parole*, 194 A.3d 1130, 1139 (Pa. Cmwlth. 2018) (concluding that neither the trial court nor this Court had jurisdiction to correct an inmate's sentence, where the inmate filed his petition for writ of *habeas corpus* more than 20 years after the sentence was imposed and failed to plead an exception under the PCRA); *Jackson*, 30 A.3d at 523 (holding that "when the [PCRA's] one-year filing deadline . . . has expired, and no statutory exception has been pled or proven, a PCRA court cannot invoke inherent jurisdiction to correct orders, judgments[,] and decrees, even if the error is patent and obvious") (emphasis added).⁶

Furthermore, to the extent Mr. Sierra claims that *Holmes* created a new legal basis under which he could seek relief from the Trial Court for his allegedly illegal sentence, he did not file his Writ of Error within one year of the *Holmes* decision, as is required to claim an exception under the PCRA. *See* 42 Pa. C.S. § 9545(b)(2)

⁶ Additionally, as the Trial Court noted in its September 29, 2020 Order, the record establishes that Mr. Sierra raised the same claim regarding his allegedly illegal sentence in prior PCRA petitions, which were dismissed and subsequently affirmed by the appellate courts. Trial Ct. Order, 9/29/20, at 1.

(“Any petition invoking an exception provided in [42 Pa. C.S. § 9545(b)(1)] shall be filed *within one year of the date the claim could have been presented.*”) (emphasis added). Therefore, we conclude that the Trial Court lacked jurisdiction to consider Mr. Sierra’s Writ of Error.

2. Recusal

Next, Mr. Sierra asserts that the trial judge, Judge Samuel A. Kline, should have recused himself from the recent post-conviction proceedings in the Trial Court. Although the exact basis for Mr. Sierra’s recusal argument is unclear, he appears to be asserting that Judge Kline should have recused himself from ruling on the Writ of Error because he also presided over Mr. Sierra’s criminal trial, thereby demonstrating bias and prejudice against him.

The party requesting recusal must produce evidence establishing bias, prejudice, or unfairness on the part of the jurist that “raises a substantial doubt as to the jurist’s ability to preside impartially.” *Com. v. Abu-Jamal*, 720 A.2d 79, 89 (Pa. 1998); *see Cellucci v. Laurel Homeowners Ass’n*, 142 A.3d 1032, 1044 (Pa. Cmwlth. 2016) (“Obviously, the party seeking a judge’s recusal bears the burden of producing evidence of bias, unfairness or prejudice.”). A motion for recusal “is initially directed to and decided by the jurist whose impartiality is being challenged.” *Abu-Jamal*, 720 A.2d at 89.⁷

⁷ In *Abu-Jamal*, our Supreme Court explained why a recusal request should be presented to the jurist whose impartiality is being challenged in the first instance:

In considering a recusal request, the jurist must first make a conscientious determination of his or her ability to assess the case in an impartial manner, free of personal bias or interest in the outcome. The jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. This is a personal and unreviewable decision that only the jurist can make Where a

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Furthermore, “a party must seek recusal of a jurist *at the earliest possible moment, i.e., when the party knows of the facts that form the basis for a motion to recuse.*” *Lomas v. Kravitz*, 170 A.3d 380, 390 (Pa. 2017) (emphasis added). In other words, “[i]f the party fails to present a motion to recuse at that time, then the party’s recusal issue is *time-barred and waived.*” *Id.* (emphasis added); *see DeLuca v. Mountaintop Area Joint Sanitary Auth.*, 234 A.3d 886, 895 (Pa. Cmwlth. 2020) (holding that a “party that does not move promptly to recuse the assigned judge upon learning the facts relevant to recusal waives the issue”), *appeal denied*, 252 A.3d 599 (Pa. 2021).

Here, the record shows that Mr. Sierra did not file a recusal motion with Judge Kline, nor did he request that Judge Kline recuse himself in the Writ of Error. Not only did Mr. Sierra fail to request that Judge Kline recuse himself, he actually directed the Writ of Error “To: Honorable Samuel A. Kline, Judge” and served Judge Kline with the Writ of Error, as evidenced by the Certificate of Service appended thereto. *See* Writ of Error, 9/24/20, at 1, 27. Mr. Sierra did not raise the recusal issue until he filed his Pa. R.A.P. 1925(b) Concise Statement of Errors Complained of on Appeal. Therefore, because Mr. Sierra did not request recusal at the earliest opportunity, we conclude that he has waived this claim. *See Steiner v. Markel*, 968 A.2d 1253, 1257 (Pa. 2009) (stating that “a Rule 1925(b) statement cannot resurrect an otherwise untimely claim or objection”); *Butler v. Dauphin Cnty. Dist. Att’y’s Office*, 163 A.3d 1139, 1143-44 (Pa. Cmwlth. 2017) (finding a recusal claim waived

jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overruled on appeal but for an abuse of discretion. . . . In reviewing a denial of a disqualification motion, we recognize that our judges are honorable, fair and competent.

720 A.2d at 89.

on appeal where the appellant did not file a recusal motion or motion for reconsideration to allow the trial judge to consider whether to recuse himself).

Conclusion

We conclude that the Trial Court properly refused to invoke inherent jurisdiction to consider Mr. Sierra's untimely collateral attack on his judgment of sentence. We also conclude that Mr. Sierra waived his recusal claim by failing to raise it before the trial judge. Accordingly, we affirm the Trial Court's Order denying Mr. Sierra's Writ of Error.

ELLEN CEISLER, Judge

