

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
MARILYN ANN DOBROLENSKI,	:	
	:	
Appellant	:	No. 1000 EDA 2013

Appeal from the PCRA Order March 13, 2013,
Court of Common Pleas, Delaware County,
Criminal Division at No. CP-23-CR-0000933-1972

BEFORE: GANTMAN, DONOHUE and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED JANUARY 15, 2014

Marilyn Ann Dobrolenski (“Dobrolenski”) appeals *pro se* from the order of court dismissing her petition filed pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541 – 9546. We affirm.

In 1973, Dobrolenski was convicted of first-degree murder and robbery and sentenced to two terms of life imprisonment. Her judgment of sentence was affirmed by this Court and the Supreme Court of Pennsylvania. Dobrolenski filed a *pro se* PCRA petition in August of 2012. Counsel was appointed, but rather than file an amended PCRA petition, he filed a petition seeking permission to withdraw from representation pursuant to the **Turner/Finley**¹ requirements, as he believed the appeal to be wholly without merit. The PCRA court subsequently issued notice of its intent to

¹ **Commonwealth v. Turner**, 518 Pa. 491, 544 A.2d 927 (1998), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988).

dismiss the PCRA petition without a hearing pursuant to Pa.R.Crim.P. 907 and granted appointed counsel's petition to withdraw. Dobrolenski did not file a response to the PCRA court's Rule 907 notice, but filed a notice of appeal to this Court. The PCRA court entered an order requiring Dobrolenski to file a statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Dobrolenski timely complied and the PCRA court authored an opinion addressing the claims raised therein.

In her appellate brief, Dobrolenski presents six issues for review, the first of which challenges the PCRA court's determination that her PCRA petition was untimely. Appellant's Brief at 4, 8. As we consider this claim, we recognize that "[t]his Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." **Commonwealth v. Walls**, 993 A.2d 289, 294-95 (Pa. Super. 2010) (internal citation omitted).

Dobrolenski alleges that although her PCRA petition was facially untimely, the holding of the United States Supreme Court in **Miller v. Alabama**, ___ U.S. ___, 132 S.Ct. 2455, 183 L.E.2d 407 (2102), created a newly-recognized constitutional right, thereby bringing her PCRA petition within one of the exceptions to the PCRA's time-bar. Appellant's Brief at 8. The PCRA court concluded that the holding in **Miller** (specifically, that

mandatory sentences of life imprisonment for those who commit the offense in question while under the age of 18 are unconstitutional) is not applicable to Dobrolenski because she was 19 years old when she committed her crimes. PCRA Court Opinion, 5/14/13, at 2, 5.

It is firmly established that “[t]he PCRA’s timeliness requirements are jurisdictional in nature, and a court may not address the merits of the issues raised if the PCRA petition was not timely filed.” **Commonwealth v. Copenhfer**, 596 Pa. 104, 108, 941 A.2d 646, 648-49 (2007). The PCRA provides that “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 one of three exceptions applies. 42 Pa.C.S.A. § 9545(b). The relevant PCRA provision provides as follows:

(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.

42 Pa.C.S.A. § 9545(b)(1).

It is undisputed that Dobrolenski's PCRA petition was patently untimely. Dobrolenski argues now, as she did in her PCRA petition, that the **Miller** decision created a new constitutional right that has been held to apply retroactively, and therefore that she has established the timeliness exception in § 9545(b)(1)(iii). While acknowledging that she was 19 at the time she committed her crimes, Dobrolenski contends that the **Miller** holding should be extended to her circumstances because scientific studies show that a person's brain does not fully develop until he or she reaches at least 21. Appellant's Brief at 10.

In **Commonwealth v. Cintora**, 69 A.3d 759 (Pa. Super. 2013), the appellants were 21 and 19 years old when they committed the crimes that were the basis for their sentences of life imprisonment. In a PCRA petition, they argued that

because **Miller** created a new Eighth Amendment right, that those whose brains were not fully developed at the time of their crimes are free from mandatory life without parole sentences, and because research indicates that the human mind does not fully develop or mature until the age of 25, it would be a violation of equal protection for the courts to treat them or anyone else with an immature brain, as adults. Thus, they conclude that the holding in **Miller** should be extended to them as they were under the age of 25 at the time of the murder and, as such, had immature brains.

Id. at 764. We concluded that “their contention that a newly-recognized constitutional right **should** be extended to others does not render their petition timely pursuant to section 9545(b)(1)(iii).” **Id.** (emphasis in the original).

Dobrolenski presents the same argument that this Court rejected in **Cintora**. As we said in that case, a claim that a newly-recognized constitutional right should be extended to encompass a petitioner does not suffice to meet the requirements of § 9545(b)(1)(iii).² We therefore find no error in the PCRA court’s decision.

Four of Dobrolenski’s remaining claims are restatements of the issues and arguments set forth in her PCRA petition. Because we have affirmed the PCRA court’s determination that the petition was untimely, the PCRA court was without jurisdiction to rule on the merits of these claims. **See Copenhefer**, 596 Pa. at 108, 941 A.2d at 648-49. Accordingly, we cannot rule on their merit on appeal.

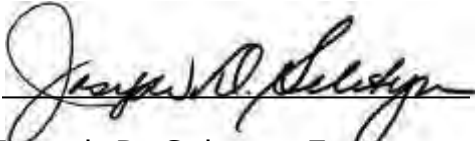
Finally, Dobrolenski argues that the PCRA court erred by not appointing counsel to amend her PCRA petition. Appellant’s Brief at 9. First, it is clear that counsel was appointed for Dobrolenski for this purpose. **See**

² We note that the Supreme Court of Pennsylvania has recently held that the right recognized in **Miller** does not apply retroactively. **Commonwealth v. Cunningham**, ___ Pa. ___, ___ A.3d ___, 2013 WL 5814388 (Oct. 30, 2013). Thus, Dobrolenski would not be entitled to relief on her claim even if she had been under 18 at the time she committed her crimes. **See** 42 Pa.C.S.A. § 9545(b)(1)(iii).

PCRA Court Order, 8/24/12. Second, Dobrolenski did not raise this claim in her Pa.R.A.P. 1925(b) statement of errors complained of on appeal. Accordingly, it is waived. **Commonwealth v. Castillo**, 585 Pa. 395, 403, 888 A.2d 775, 780 (2005) (“Any issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived.”); Pa.R.A.P. 1925(b)(4)(vii).

Order affirmed.

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: 1/15/2014