

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
LYNN ALAN PADGETT,		
Appellant		No. 1003 MDA 2012

Appeal from the Order entered January 11, 2012,  
in the Court of Common Pleas of Bradford County,  
Criminal Division, at No(s): CP-08-CR-0000888-1997.

BEFORE: FORD ELLIOTT, P.J.E., PANELLA and ALLEN, JJ.

MEMORANDUM BY ALLEN, J.:

Filed: January 7, 2013

Lynn Alan Padgett ("Appellant") appeals *pro se* from the order denying his latest (fifth) petition for post-conviction relief filed pursuant to the Post Conviction Relief Act ("PCRA"). 42 Pa.C.S.A. §§ 9541-46. We affirm.

The pertinent facts and prolonged procedural history have been summarized as follows:

On January 8, 1998, Appellant entered guilty pleas in two cases to two counts of involuntary deviate intercourse and one count of rape. The offenses took place in Lycoming and Bradford Counties, and were prosecuted together in Bradford County. Appellant's initial sentence entered on March 5, 1998 was vacated, and he was resentenced on October 7, 1999, to an aggregate term of fifteen to thirty years' imprisonment. Appellant then filed a direct appeal which raised challenges to jurisdiction. This Court affirmed Appellant's judgment of sentence on October 10, 2001. ***See Commonwealth v. Padgett***, 790 A.2d 341 (Pa. Super. 2001). [Appellant did not file a timely petition for allowance of appeal].

On February 12, 2003, Appellant filed his first PCRA petition, which was dismissed as untimely on June 10, 2003. We affirmed on June 10, 2004. **See *Commonwealth v. Padgett***, 858 A.2d 1279 (Pa. Super. 2004), *appeal denied*, 871 A.2d 190 (Pa. 2005).

Appellant filed a second PCRA petition on October 22, 2007, which the PCRA court dismissed as untimely on October 2, 2008. Appellant filed a *pro se* appeal to this Court, and subsequently also filed with this Court a motion for remand and stay of proceedings, seeking a remand so that the PCRA court could consider an amended petition (Appellant's third PCRA petition) that was filed on November 17, 2009. On September 8, 2010, this Court affirmed the dismissal of Appellant's second PCRA petition and denied the motion for remand. **See *Commonwealth v. Padgett***, [13 A.3d 974 (Pa. Super. 2010)] (unpublished memorandum). [Our Supreme Court denied Appellant's petition for allowance of appeal on April 20, 2011.]

Appellant filed his fourth PCRA petition on April 12, 2010. The PCRA court issued an order on April 21, 2010, directing Appellant to file an amended petition within 30 days. On June 21, 2010, the PCRA court issued a notice of its intent to dismiss pursuant to Pa.R.Crim.P. 907, which specified five reasons why Appellant is not entitled to PCRA relief. The PCRA court then entered an order on June 24, 2010, granting Appellant "leave to re-submit his claim for relief as a petition for relief under the Post Conviction Relief Act" within 30 days. On July 8, 2010, Appellant filed a *pro se* notice of appeal of the June 21, 2010, [Rule] 907 order to this Court.

***Commonwealth v. Padgett***, 26 A.3d 1176 (Pa. Super. 2011), unpublished memorandum at 1-3 (citation and footnotes omitted). Because Appellant filed his 2010 appeal during the pendency of his prior appeal from the denial of his second PCRA petition, and his motion for remand for consideration of his third PCRA petition, this Court quashed his appeal. ***Padgett***, unpublished memorandum at 1.

Undaunted, on September 29, 2011, Appellant filed a "Petition for a hearing to strike the court's judgment of conviction in the above-captioned matter as being void '*ab initio*.'" On October 11, 2011, Appellant filed a motion for the appointment of counsel and leave to supplement his petition. By order dated October 12, 2011, the PCRA court stated that it would treat Appellant's latest petition as a PCRA petition and afforded Appellant thirty days in which to file an amended petition. On November 14, 2011, Appellant filed an amended PCRA petition, his fifth. By order entered December 2, 2011, the PCRA court issued notice pursuant to Pa.R.Crim.P. 907, of its intent to dismiss Appellant's petition as untimely. Appellant did not file a response. By order dated January 11, 2012, the PCRA court dismissed Appellant's fifth PCRA petition. This appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

The PCRA court dismissed Appellant's latest petition because it was untimely. Thus, before addressing the merit of any issue raised by Appellant on appeal, we must first review this determination.

This Court's standard of review regarding an order dismissing 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. ***Commonwealth v. Halley***, 870 A.2d 795, 799 n.2 (Pa. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***Commonwealth v. Carr***, 768 A.2d 1164,

1166 (Pa. Super. 2001). Moreover, a PCRA court may decline to hold a hearing on the petition if the PCRA court determines that the petitioner's claim is patently frivolous and is without a trace of support in either the record or from other evidence. ***Commonwealth v. Jordan***, 772 A.2d 1011 (Pa. Super. 2001).

The timeliness of a post-conviction petition is jurisdictional. ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010) (citation omitted). Thus, if a PCRA petition is untimely, neither an appellate court nor the PCRA court has jurisdiction over the petition. ***Id.*** "Without jurisdiction, we simply do not have the legal authority to address the substantive claims" raised in an untimely petition. ***Id.***

Generally, 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 unless the petition alleges, and the petitioner proves, an exception to the time requirement for filing the petition. ***Commonwealth v. Gamboa-Taylor***, 753 A.2d 780, 783 (Pa. 2000); 42 Pa.C.S.A. § 9545(b)(1). Under these exceptions, the petitioner must plead and prove that "(1) there has been interference by government officials in the presentation of the claim; or (2) there exists after-discovered facts or evidence; or (3) a new constitutional right has been recognized." ***Commonwealth v. Fowler***, 930 A.2d 586, 591 (Pa. Super. 2007) (citations omitted). A PCRA petition invoking one of these statutory exceptions must

“be filed within sixty days of the date the claim first could have been presented.” *Id.* at 783. **See also** 42 Pa.C.S.A. § 9545(b)(2). Moreover, exceptions to the time restrictions of the PCRA must be pled in the petition, and may not be raised for the first time on appeal. **Commonwealth v. Burton**, 936 A.2d 521, 525 (Pa. Super. 2007); **see also** Pa.R.A.P. 302(a) (“Issues not raised before the lower court are waived and cannot be raised for the first time on appeal.”).

Appellant’s judgment of sentence became final on or about November 12, 2001, after the thirty-day period for filing an allowance of appeal to the Pennsylvania Supreme Court had expired. 42 Pa.C.S.A. § 9545(b)(3). Therefore, Appellant had to file this PCRA petition by November 12, 2002, in order for it to be timely. As Appellant filed the instant petition on September 29, 2011, it is patently untimely unless he has satisfied his burden of pleading and proving that one of the enumerated exceptions applies. **See Commonwealth v. Beasley**, 741 A.2d 1258, 1261 (Pa. 1999).

Appellant has failed to prove the applicability of any of the exceptions to the PCRA’s time restrictions. Within his latest PCRA petition, Appellant asserted that he has newly discovered facts. The PCRA Court found no merit to this claim, explaining:

Appellant’s only attempt to invoke an exception to the time bar is the claim in his petition that there are newly discovered facts, however, it is not enough to plead that these facts were previously unknown to the petitioner. The petitioner must also explain why, with the exercise of due diligence, the facts supporting the claim could not

have been unearthed earlier. ***Commonwealth v. Marshall***, 596 Pa. 586, 947 A.2d 714 (2008). Here, Appellant's petition lacks even the most cursory or conclusory explanation for his failure to learn [of] the facts he now relies upon to claim that the trial court did not have jurisdiction to hear his guilty pleas.

PCRA Court Opinion, 5/1/12, at 3-4 (footnote omitted). Our review of Appellant's latest PCRA petition supports this conclusion. In addition, although Appellant's fifth PCRA petition claims governmental interference with his right to appeal, this claim is unsupported by Appellant, and refuted by the certified record.

In sum, Appellant's PCRA petition is facially untimely, and he has failed to meet his burden of proof with regard to any exception to the timeliness requirements of the PCRA. Thus, the PCRA court properly dismissed Appellant's latest petition for post-conviction relief.

Order affirmed.