

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

YVONNE SWAIN,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1030 EDA 2012

Appeal from the PCRA Order March 12, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No.: CP-51-CR-0005174-2008

BEFORE: MUSMANNO, J., WECHT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

Filed: February 19, 2013

Appellant, Yvonne Swain, appeals from the order denying her first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541–9546, on the basis that she was ineligible for relief because she had served her sentence. We affirm.

On November 5, 2008, after a non-jury trial, the court convicted Appellant of theft, receiving stolen property, criminal trespass, and criminal mischief. On March 17, 2009, the court ordered restitution and sentenced Appellant to a term of two years' probation. On direct appeal, this Court affirmed. *Commonwealth v. Swain*, 998 A.2d 1028 (Pa. Super. filed April 30, 2010) (unpublished memorandum). On September 14, 2010, our Supreme Court denied Appellant's petition for extension of time to file

* Retired Senior Judge assigned to the Superior Court.

petition for allowance of appeal, treated as a petition for leave to file a petition for allowance of appeal. (**See** Order, 9/14/10).

On March 28, 2011, Appellant filed a timely *pro se* first PCRA petition. The PCRA court appointed counsel who filed an amended petition, acknowledging that Appellant was no longer serving a sentence for this matter, but seeking relief from the collateral consequences of her conviction. (**See** Amended PCRA Petition, 11/29/11, at 2).

The Commonwealth moved to dismiss. On January 30, 2012, the court gave notice, pursuant to Pennsylvania Rule of Criminal Procedure 907, of its intention to dismiss the petition, concluding that it had no jurisdiction because Appellant has already served her sentence. The PCRA court dismissed the petition on March 12, 2012. This timely appeal followed on March 20, 2012.¹

Appellant raises four questions for our review, which we reproduce verbatim except as noted:

A. Whether [t]he [t]rial [c]ourt erred in dismissing the Post Conviction Relief Act Petition Where a Petitioner has a federal and state constitutional right to pursue one where she continues to suffer collateral consequences?

B. Whether [t]he Appellant claimed that trial counsel was ineffective for failing to interview alibi witnesses including her daughter who would have presented any [sic] alibi?

¹ Appellant also filed a statement of errors pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), on April 20, 2012. **See** Pa.R.A.P 1925. The court filed a Rule 1925(a) opinion on April 30, 2012.

3. [sic] Whether [t]he Appellant claimed that trial counsel was ineffective for failing to cross-examine the complainant regarding his testimony given at a small claims court proceeding which contradicted his testimony at trial and was available to counsel?

4 [sic] Whether [t]he Appellant claimed that appellate counsel failed to introduce newly discovered evidence in the form of a trial held before the Honorable Rosemary Defino that involved the same parties and where the judge found the complainant incredible and acquitted the Appellant?

(Appellant's Brief, at 5).

This Court's standard of review for an order dismissing a PCRA petition is whether the determination of the PCRA court is supported by the record evidence and is free of legal error. **See 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. **See 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. **See Commonwealth v. Jordan**, 772 A.2d 1011, 1014 (Pa. Super. 2001).

At the outset we must determine whether Appellant's various claims for relief are cognizable under the PCRA. In pertinent part, the PCRA provides that:

(a) General rule.—To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence **all** of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

(i) **currently serving** a sentence of imprisonment, **probation** or parole for the crime[.]

42 Pa.C.S.A. § 9543(a)(1)(i) (emphases added).

Appellant concedes that relief is not warranted pursuant to *Commonwealth v. Ahlborn*, 699 A.2d 718, 721 (Pa. 1997) (petitioner ineligible for PCRA relief where, following filing of PCRA petition and pending hearing, he was unconditionally released from prison).² (**See** Appellant's Brief, at 9-10). However, she maintains that *Ahlborn* is "constitutionally unsound." (*Id.* at 10)

Appellant fails to develop any argument to support her bald assertion of unconstitutionality. Accordingly, it is waived, and we decline to address

² We note for clarity that Appellant's term of probation ended before she filed her PCRA petition.

In cases where petitioners have filed for relief **after** their sentences have been completely served, relief has been uniformly denied on the basis of the statutory eligibility provision. *Commonwealth v. Hayes*, 408 Pa.Super. 68, 596 A.2d 195 (1991), *appeal denied*, 529 Pa. 646, 602 A.2d 856 (1992); *Commonwealth v. Pierce*, 397 Pa.Super. 126, 579 A.2d 963 (1990), *appeal denied*, 527 Pa. 609, 590 A.2d 296 (1991).

Ahlborn, supra at 720 n* (emphasis in original).

it. **See** Pa.R.A.P. 2119(a), (b). Furthermore, the “currently serving” requirement was enacted by the Legislature in the statute, not caselaw. **See** 42 Pa.C.S.A. § 9543(a)(1)(i). “It is well established that when the language of a statute is clear and unambiguous, it must be given effect in accordance with its plain and obvious meaning.” **Ahlborn, supra** at 720 (citations omitted).

Moreover, this Court has long rejected the claim of an exception for collateral consequences advanced by Appellant. “This Court has . . . interpreted the Post Conviction Relief Act to preclude relief for those petitioners whose sentences have expired, regardless of the collateral consequences of their sentence. As a result, appellant’s collateral consequences argument must fail.” **Commonwealth v. Fisher**, 703 A.2d 714, 716 (Pa. Super. 1997) (citations omitted); **accord Commonwealth v. Williams**, 977 A.2d 1174, 1176 (Pa. Super. 2009), *appeal denied*, 990 A.2d 730 (Pa. 2010).

Because Appellant’s claims are not cognizable under the PCRA, we decline to address her remaining three questions.

Order affirmed.