

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ROBERT LEE PIEL

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1068 MDA 2012

Appeal from the Order Entered May 11, 2012
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0002048-2006

BEFORE: BOWES, J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.:

Filed: February 21, 2013

Appellant, Robert Lee Piel, appeals *pro se* from the order entered in the Lebanon County Court of Common Pleas, which denied his second petition filed under the Post-Conviction Relief Act ("PCRA"), at 42 Pa.C.S.A. 9541-9546. We affirm.

This Court previously provided the relevant facts and procedural history of this case as follows:

On June 7, 2007, a jury convicted Appellant of two counts of aggravated assault and one count each of terroristic threats and unlawful restraint. On August 1, 2007, the trial court sentenced him to an aggregate term of eleven to thirty years imprisonment. On August 10, 2007, Appellant filed post sentence motions, which the trial court denied on November 1, 2007. Appellant did not file a direct appeal.

On June 17, 2008, the trial court received a letter from Appellant in which he stated that counsel had not filed his

requested appeal. Treating the letter as a PCRA motion, the court appointed counsel and scheduled an evidentiary hearing on Appellant's claim. On July 3, 2008, however, Appellant filed a *pro se* PCRA petition....

On October 9, 2008, the PCRA court issued its notice of intent to dismiss Appellant's *pro se* PCRA petition, pursuant to Pa.R.Crim.P. 907, because after review the eight issues raised [by Appellant] did not present factual claims that would require an evidentiary hearing. Accompanying this order was a twenty-two page opinion in which the PCRA court explained why Appellant's *pro se* claims were meritless and why a hearing was not necessary. The PCRA court further scheduled a hearing on Appellant's initial claim that prior counsel did not file a requested appeal. An evidentiary hearing, at which both Appellant and trial counsel testified, was held on November 24, 2008. The same day the PCRA court denied Appellant relief on this claim.

Commonwealth v. Piel, No. 272 MDA 2011, unpublished memorandum at 1-3 (Pa.Super. filed July 27, 2011). The PCRA court set forth additional relevant facts and procedural history of this case:

On December 2, 2008, [Appellant] filed a notice of appeal to the Pennsylvania Superior Court from [the PCRA court's] denial of PCRA relief. On August 7, 2009, the Pennsylvania Superior Court issued a memorandum opinion concluding that PCRA counsel should have taken some action regarding the issues raised in [Appellant's] *pro se* petition[.] ... The Pennsylvania Superior Court vacated [the PCRA court's] order dismissing [Appellant's] applications for PCRA relief and remanded the case with instructions that PCRA counsel either file an amended PCRA petition, or file to withdraw from representation if appropriate consistent with the requirements of ***Commonwealth v. Turner***, 518 Pa. 491, 544 A.2d 927 (1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa.Super. 1988). The Pennsylvania Superior Court directed [the PCRA] court [to] review the issues on the merits.

* * *

[O]n August 28, 2009, [Appellant's] PCRA counsel filed a petition to withdraw as counsel and an accompanying brief, and [the PCRA court] granted PCRA counsel's petition to withdraw on September 1, 2009.

* * *

[The PCRA court] issued an order and accompanying opinion on November 5, 2010, addressing the merits of each of the issues raised in [Appellant's] application for PCRA relief and ultimately concluding that each of the issues raised was without merit. [The PCRA court] expressed [its] intention of dismissing [Appellant's] application for PCRA relief without a hearing and afforded [Appellant] twenty days to file a response to the proposed dismissal. Following [Appellant's] lodging of a *pro se* response on November 17, 2010, [the PCRA court] issued an order and opinion on January 26, 2011, denying [Appellant] the relief sought and dismissing his PCRA application without a hearing. [Appellant] appealed [the PCRA court's] dismissal of his PCRA application to the Pennsylvania Superior Court, and the dismissal of [Appellant's] PCRA application was affirmed on July 27, 2011. [*See Piel, supra.*]

(PCRA Court Opinion, filed April 2, 2012, at 3-4) (footnotes omitted). On September 1, 2011, Appellant filed a second PCRA petition entitled "motion to modify and reduce sentence *nunc pro tunc*," alleging the illegality of his sentence and ineffective assistance of trial counsel.¹ On April 2, 2012, the PCRA court filed an opinion and order delivering notice of its intent to

¹ The PCRA court properly considered Appellant's motion a PCRA petition. *See Commonwealth v. Kutnyak*, 781 A.2d 1259, 1261 (Pa.Super. 2001) (stating PCRA is exclusive vehicle for obtaining post-conviction collateral relief regardless of manner in which petition is titled).

dismiss Appellant's PCRA petition pursuant to Pa.R.Crim.P. 907. The PCRA court filed an order that denied Appellant PCRA relief on May 11, 2012. On Monday, June 11, 2012, Appellant timely filed a *pro se* notice of appeal. The PCRA court did not order Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925, and Appellant filed none.

Appellant raises the following issues for our review:

WHETHER THE TRIAL COURT ERRED WHEN IT IMPOSED AN AGGREGATE SENTENCE OF ELEVEN (11) TO THIRTY (30) YEARS IMPRISONMENT, WHEN IT FAILED TO STATE ON THE RECORD AND THE GUIDELINE SENTENCE FORM THE REASON FOR THE SENTENCE IMPOSED IN VIOLATION OF 204 [PA ADC] § 303.13.

WAS APPELLANT DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE TRIAL COUNSEL ABANDONED APPELLANT WITHOUT FILING ANY POST-SENTENCE MOTIONS AND FAILING TO FILE A TIMELY DIRECT APPEAL[?]

(Appellant's Brief at 4).

As a prefatory matter, the timeliness of a PCRA petition is a jurisdictional requisite. *Commonwealth v. Hackett*, 598 Pa. 350, 956 A.2d 978 (2008), *cert. denied*, 528 U.S. 1163, 129 S.Ct. 2772, 174 L.Ed.2d 277 (2009). Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition. *Commonwealth v. Robinson*, 575 Pa. 500, 508, 837 A.2d 1157, 1161 (2003). The PCRA requires a petition, including a second or subsequent petition, to be filed within one year of the date the underlying judgment becomes final. 42 Pa.C.S.A. § 9545(b)(1). A

judgment is deemed final “at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking review.” 42 Pa.C.S.A. § 9545(b)(3). Further, an appellant has thirty days from the denial of post-sentence motions to file a timely notice of appeal. ***Commonwealth v. Dreves***, 839 A.2d 1122, 1126-27 (Pa.Super. 2003); Pa.R.Crim.P. 720(A).

Generally, to obtain merits review of a PCRA petition filed more than one year after a petitioner’s sentence became final; the petitioner must allege and prove at least one of the three timeliness exceptions. **See** 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). To invoke an exception, the petitioner must allege and prove:

- (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)(i)-(iii). “[W]hen a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of

the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner's PCRA claims." ***Commonwealth v. Gamboa-Taylor***, 562 Pa. 70, 77, 753 A.2d 780, 783 (2000).

Instantly, the court sentenced Appellant on August 1, 2007. On August 10, 2007, Appellant filed post-sentence motions, which the court denied on November 1, 2007. Appellant did not pursue a direct appeal. Thus, Appellant's judgment of sentence became final thirty days later, on or about December 1, 2007. ***See*** 42 Pa.C.S.A. § 9545(b)(3); ***Dreves, supra***. Appellant filed his current PCRA petition on September 1, 2011, which was nearly three years late and untimely on its face. ***See*** 42 Pa.C.S.A. § 9545(b)(1). Further, Appellant did not plead or prove one or more of the statutory exceptions to the PCRA time limits. Therefore, Appellant's PCRA petition remained time barred. ***See Gamboa-Taylor, supra***. Moreover, Appellant's claims of illegality of sentence and ineffective assistance of counsel do not excuse the timeliness requirements of the PCRA. ***See Commonwealth v. Fahy***, 558 Pa. 313, 331, 737 A.2d 214, 223 (1999) (stating challenges to legality of sentence and ineffective assistance of counsel claims must first satisfy PCRA time limits). Accordingly, we affirm.

Order affirmed.