

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

HENRY WILLIAM WALLACE WATTS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1090 MDA 2012

Appeal from the Order entered May 8, 2012,
in the Court of Common Pleas of Wyoming County,
Criminal Division, at No(s): CP-66-CR-0000433-2001.

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

MEMORANDUM BY ALLEN, J.:

Filed: January 4, 2013

Henry William Wallace Watts ("Appellant") appeals *pro se* from the order denying his latest 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 procedural history may be summarized as follows: Appellant was arrested and charged with various sex offenses and corruption of minors involving his two minor sons. At trial, the victims blamed the sexual abuse on other men. Although the jury acquitted Appellant of the sex offenses, Appellant was convicted of two counts of corruption of minors. Thereafter, the trial court imposed an aggregate sentence of five to ten years, the statutory maximum. Appellant filed a timely appeal to this Court, in which he challenged the discretionary aspects

of his sentence. In an unpublished memorandum filed on February 11, 2004, we affirmed his judgment of sentence. ***Commonwealth v. Watts***, 849 A.2d 611 (Pa. Super. 2004). Our Supreme Court denied Appellant's petition for allowance of appeal on January 25, 2005. ***Commonwealth v. Watts***, 868 A.2d 1200 (Pa. 2005).

On or about November 7, 2005, Appellant filed his first PCRA petition. The PCRA court appointed counsel, and the PCRA court held an evidentiary hearing on February 28, 2006. That same day, the PCRA court dismissed the petition. Appellant did not file an appeal. Appellant filed his second PCRA petition on or about January 14, 2008. After Pa.R.Crim.P. 907 notice, the PCRA court dismissed this petition on February 1, 2008. Once again, Appellant did not file an appeal. Appellant filed his third PCRA petition on or about April 17, 2008. The PCRA court dismissed this petition on May 7, 2008. Although Appellant filed a timely appeal to this Court, we later dismissed it for failure to file a brief.

Appellant filed the instant PCRA petition, his fourth, on or about August 22, 2011. The PCRA court dismissed this petition on May 10, 2012. This timely appeal followed. The PCRA court did not require Pa.R.A.P. 1925 compliance.

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 May 2, 2005, when the ninety-day period for filing a writ of certiorari with the United States Supreme Court expired. ***See*** 42 Pa.C.S.A. § 9545(b)(3); U.S.Sup.Ct.R. 13. Therefore, Appellant had to file the PCRA petition at issue by May 2, 2006, in order for it to be timely. As Appellant filed the instant petition on or about August 22, 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. Appellant failed to raise any exception in his fourth petition. **See *Burton, supra***. Within his brief, Appellant asserts he has established governmental interference because the PCRA court did not address all of his claims of ineffectiveness presented in a previously filed, timely PCRA, and that he has a "gateway claim of actual, factual innocence" that entitles him to *habeas corpus* relief. Appellant's Brief at 2. Appellant also asserts that the PCRA time restrictions are unconstitutional, as they constitute an *ex post facto* law. We disagree.

Initially, "any claims of error that are cognizable under the PCRA must be brought under the PCRA"; the PCRA generally subsumes all other post-conviction remedies, including *habeas corpus* relief. ***Commonwealth v. Grafton***, 928 A.2d 1112, 1115 (Pa. Super. 2007); **see also *Commonwealth v. Peterkin***, 722 A.2d 638, 639 n.1 (Pa. 1998) (stating that the PCRA subsumes other post-conviction remedies). Moreover, it is now well settled that the time restrictions of the PCRA are constitutional. ***Burton***, 936 A.2d at 527; ***Commonwealth v. Johnson***, 732 A.2d 639, 643 (explaining that time restrictions of the PCRA do not violate *ex post facto* clause). Finally, Appellant's claim that the PCRA court interfered with the presentation of his post-conviction claims is specious, and Appellant has not adequately developed how his "gateway" claim constitutes any enumerated exception to the PCRA's time bar.

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.