

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TINA MARIE FAKE,	:	
	:	
Appellant	:	No. 1122 MDA 2012

Appeal from the Order Entered May 16, 2012,  
 In the Court of Common Pleas of Lebanon County,  
 Criminal Division, at Nos. CP-38-CR-0000989-2005;  
 CP-38-CR-0000994-2005; CP-38-CR-0000995-2005;  
 CP-38-CR-0001000-2005; and CP-38-CR-0001833-2005.

BEFORE: SHOGAN, OTT and COLVILLE\*, JJ.

MEMORANDUM BY SHOGAN, J.: Filed: February 15, 2013

Appellant, Tina Marie Fake, appeals *pro se* from the dismissal of her petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In a recent memorandum, we stated the procedural history as follows:

On April 18, 2006, Appellant entered a negotiated guilty plea to numerous charges in multiple cases arising from her ownership and operation of a personal care facility. On February 15, 2007, the court sentenced Appellant to an aggregate total sentence of not less than fifteen nor more than thirty-five years in prison.

Appellant filed her first *pro se* PCRA petition on December 27, 2007. The PCRA court appointed counsel. Thereafter, the PCRA court sent Appellant a notice of intent to dismiss the petition without a hearing pursuant to Pa.R.Crim.P. 907(1). Subsequently, counsel filed a

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\*Retired Senior Judge assigned to the Superior Court.

**Turner/Finley** letter. The PCRA court dismissed the petition on May 5, 2008. Appellant did not file an appeal.

On July 7, 2008, Appellant's husband, purportedly acting as her "next friend" filed an "Application to File Appeal *Nunc Pro Tunc*." On December 17, 2009, the PCRA court denied the application. Appellant, through her husband, filed an appeal. On appeal, this Court deemed the "Application to File Appeal *Nunc Pro Tunc*" an untimely, second PCRA petition and affirmed the dismissal of the application. (***See Commonwealth v. Fake***, No. 248 MDA 2010, unpublished memorandum, at 3-5 (Pa. Super. Filed December 21, 2010)). Appellant did not seek leave to appeal to the Pennsylvania Supreme Court.

On February 24, 2011, Appellant's husband filed another PCRA petition on her behalf. Subsequently, the PCRA court returned the petition to Appellant. On April 20, 2011, Appellant filed the instant, third *pro se* PCRA petition. The PCRA court issued a Rule 907(1) notice, and Appellant filed a reply. In an order filed on May 27, 2011, the PCRA court denied and dismissed the petition.

***Commonwealth v. Fake***, No. 1156 MDA 2011, unpublished memorandum, at 2-3 (Pa. Super. filed May 11, 2012) (footnote omitted).

Appellant subsequently filed two applications for a writ of error *coram vobis*, which were both denied by the PCRA court and appealed by Appellant. These cases are docketed at 1703 MDA 2011 and 11 MDA 2012. Appellant filed the current PCRA petition, apparently her sixth, on April 23, 2012.<sup>1</sup> On April 25, 2012, the court filed an order indicating its intent to dismiss the petition without an evidentiary hearing. Appellant filed, on May 14, 2012, a Motion for Enlargement of time for a response. On May 16, 2012, the

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<sup>1</sup> The two *coram vobis* writs were also previously treated as PCRA petitions.

motion was denied and the PCRA petition was dismissed. Appellant then appealed.

Appellant's current PCRA petition challenges the court's dismissal of her petition as untimely and challenges her guilty plea via an assertion that she was mentally ill at the time she entered the plea. Appellant's Brief at 5-8.

In reviewing the propriety of the PCRA court's dismissal of Appellant's petition, we are limited to determining whether the court's findings are supported by the record and whether the order in question is free of legal error. ***Commonwealth v. Ragan***, 592 Pa. 217, 220, 923 A.2d 1169, 1170 (2007). "Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record." ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007), *appeal denied*, 593 Pa. 754, 923 A.2d 74 (2007). "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. Hart***, 911 A.2d 939, 941 (Pa. Super. 2006). "It is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no

genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing." ***Commonwealth v. Turetsky***, 925 A.2d 876, 882 (Pa. Super. 2007), *appeal denied*, 596 Pa. 707, 940 A.2d 365 (2007) (citation omitted).

Before reaching the merits of Appellant's arguments, we must first determine whether Appellant's petition is timely, as the timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Burton***, 936 A.2d 521, 527 (Pa. Super. 2007), *appeal denied*, 598 Pa. 786, 959 A.2d 927 (2008). Where a petitioner fails to satisfy the timeliness requirements of the PCRA, the PCRA court and this Court have no jurisdiction to review the petition by fashioning an equitable exception to timeliness. ***Commonwealth v. Robinson***, 575 Pa. 500, 510, 837 A.2d 1157, 1163 (2003).

The PCRA petition at issue, Appellant's sixth, was filed on April 23, 2012. Thus, it is governed by the 1995 amendments to the PCRA, which were enacted on November 17, 1995, and became effective 60 days later. Pa.R.A.P. 903(a); 42 Pa.C.S.A. § 9545(b)(3). Under those revisions to the PCRA, "Section 9545(b)(1) of the PCRA requires that any PCRA petition, including second or subsequent petitions, must be filed within **one year** of the date the judgment becomes final." ***Commonwealth v. Fairiror***, 809

A.2d 396, 398 (Pa. Super. 2002), *appeal denied*, 573 Pa. 703, 827 A.2d 429 (2003) (emphasis added).

Here, Appellant's judgment of sentence became final on March 19, 2007, thirty days after her February 15, 2007 judgment of sentence, when Appellant failed to file a direct appeal. Insofar as Appellant filed the present PCRA petition in 2012, more than five years later, there can be no dispute that her present petition is untimely.

We note, however, that pursuant to section 9545(b), there are three exceptions to the timeliness requirement:

- (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).

A PCRA petition invoking one of these statutory exceptions must be filed "within 60 days of the date the claim could have first been brought." ***Commonwealth v. Carr***, 768 A.2d 1164, 1167-1168 (Pa. Super. 2001);

42 Pa.C.S.A. § 9545(b)(2). “[I]t is the burden of a petitioner to plead in the PCRA petition exceptions to the time bar and that burden necessarily entails an acknowledgement by the petitioner that the PCRA petition under review is untimely but that one or more of the exceptions apply.” ***Commonwealth v. Wharton***, 886 A.2d 1120, 1126 (Pa. 2005) (citations omitted). Here, none of the exceptions to the time bar apply to Appellant’s petition. Thus, it is untimely.

To the extent that she asserts her mental illness at the time of her guilty plea as an exception, we observe that, pursuant to 42 Pa.C.S.A. § 9543(a)(3), a PCRA petitioner may not allege errors that have been “previously litigated or waived.” For purposes of section 9543(a)(3), “an issue has been previously litigated if ... the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue.” 42 Pa.C.S.A. § 9544(a)(2).

Here, Appellant’s challenge to her guilty plea was previously litigated in a recent decision of this Court. ***See Commonwealth v. Fake***, No. 1156 MDA 2011, unpublished memorandum, at 7 (Pa. Super. filed May 11, 2012).

Accordingly, as Appellant’s petition is untimely and her issue previously litigated, the PCRA court order is affirmed.

Order affirmed.

COLVILLE, J., Concurs in the Result.