

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
EARL HARRIS,	:	
	:	
Appellant	:	No. 1124 EDA 2012

Appeal from the PCRA Order March 9, 2012
 In the Court of Common Pleas of Philadelphia County
 Criminal Division No(s): CP-51-CR-0532841-1992

BEFORE: STEVENS, P.J., BOWES, and FITZGERALD, * JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: March 19, 2013

Pro se Appellant, Earl Harris, appeals from the order dismissing his third petition under the Post-Conviction Relief Act¹ ("PCRA") by the County of Philadelphia Court of Court of Common Pleas. Appellant asserts that the PCRA court erred in dismissing his petition as untimely because his claim fell under the interference by government official exception.² We affirm.

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541–9546.

² 42 Pa.C.S. § 9545(b)(1)(i).

On September 25, 1992, Appellant was convicted of, *inter alia*, second-degree murder and robbery.³ Post-verdict motions were filed and denied by the trial court. On March 29, 1994, Appellant was sentenced, in relevant part, to life imprisonment on the murder conviction.

On September 26, 1995, this Court affirmed the judgment of sentence. ***Commonwealth v. Harris***, 01227 PHL 94 (Pa. Super. unpublished memorandum Sept. 26, 1995). Appellant did not seek review with the Pennsylvania Supreme Court.

Appellant filed his first PCRA petition on January 3, 1997. The trial court denied that petition on January 26, 1998. This Court affirmed the denial on June 1, 1999, and the Supreme Court denied allowance of appeal on December 2, 1999. Appellant's second PCRA petition was dismissed on October 29, 2002. This Court dismissed his subsequent appeal for failure to file a brief on June 24, 2003.

On April 27, 2010, Appellant filed the instant *pro se* PCRA petition, his third, which gives rise to this appeal. On August 24, 2011, the PCRA court, pursuant to Pa.R.Crim.P 907, issued a notice of its intent to deny Appellant's petition within twenty days because it was untimely and did not invoke a timeliness exception. On September 6, 2011, Appellant responded to the Rule 907 notice by asserting: (1) he did not plead an exception to the time requirements of the PCRA because the form did not instruct him to do so;

³ 18 Pa.C.S. §§ 2502, 3701.

and (2) "government officials interfered with the presentation of [his] claim." Appellant's Resp. to 907 Notice, 9/6/11, at 1-2. On March 9, 2012, the PCRA court dismissed Appellant's petition. Appellant filed a timely notice of appeal.⁴

In his brief, Appellant raises the following issues for review:

WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO OBJECT/CHALLENGE THE COMPLAINT ON THE GROUNDS THAT IT DID NOT SATISFY THE FOURTH AMENDMENT REQUIREMENT OF SHOWING PROBABLE CAUSE THAT WOULD SUPPORT THE ISSUANCE OF THE ALLEGED ARREST WARRANT?

WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO LITIGATE A MERITORIOUS PRE-TRIAL MOTION TO SUPPRESS THE CONFESSION ON THE GROUNDS THAT IT WAS THE RESULT OF AN ILLEGAL ARREST BECAUSE BY [sic] WARRANT NOT ISSUED UPON PROBABLE CAUSE, OR NO WARRANT NEVER [sic] BEING ISSUED AT ALL, WAS PCRA COUNSEL INEFFECTIVE FOR FAILING TO RAISE TRIAL COUNSEL'S INEFFECTIVENESS CONCERNING TRIAL COUNSEL'S FAILURE TO FILE A PRE-TRIAL MOTION TO SUPPRESS THE CONFESSION ON THE GROUNDS THAT IT WAS THE RESULT OF AN ILLEGAL ARREST?

Appellant's Brief at 5 (unpaginated).

"On appeal from the denial of PCRA relief, [the] standard of review is whether the findings of the common pleas court are supported by the record and free of legal error." *Commonwealth v. Breakiron*, 781 A.2d 94, 97 n.4 (Pa. 2001) (citation omitted). "[T]he timeliness requirements of 42 Pa.C.S.A § 9545(b) are jurisdictional in nature, and the courts lack

⁴ The trial court did not order Appellant to file a statement of errors complained on appeal. *See* Pa.R.A.P. 1925(b).

jurisdiction to grant PCRA relief unless the petitioner can plead and prove that one of the exceptions to the time bar applies.” *Commonwealth v. Davis*, 816 A.2d 1129, 1133 (Pa. Super. 2003). Moreover, “courts may not address the merits of the issues raised in a petition if it is not timely filed.” *Commonwealth v. Abu-Jamal*, 941 A.2d 1263, 1267-68 (Pa. 2008).

In pertinent part, the PCRA provides:

(b) Time for filing petition.—

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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;

* * *

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

(3) For purposes of this subchapter, a judgment becomes 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 the review.

(4) For purposes of this subchapter, “government officials” shall not include defense counsel, whether appointed or retained.

42 Pa.C.S. § 9545(b)(1)(i), (2)–(4) .

Here, Appellant's instant PCRA petition, his third, is untimely on its face. On September 26, 1995, this Court affirmed the judgment of sentence. Appellant had thirty days to file a petition for seek allowance of appeal with the Pennsylvania Supreme Court, but he did not. **See** Pa.R.A.P. 1113(a). Thus, the judgment of sentence became final on October 26, 1995. **See** 42 Pa.C.S. § 9545(b) (1), (3). Appellant filed this petition on April 27, 2010, nearly fifteen years after his judgment of sentence became final.⁵ Therefore, there is no dispute that Appellant was required to plead and prove an exception to the time-bar in order to invoke jurisdiction under the PCRA. **See** 42 Pa.C.S. § 9545(b); **Davis**, 816 A.2d at 1133.

Appellant initially suggests on appeal that the PCRA court erred in failing to afford him an opportunity to amend his petition. **See** Appellant's Brief at 6 (unpaginated). However, he did not formally request leave to amend his petition. Moreover, Appellant was given the opportunity to respond to the PCRA court's Rule 907 notice and alert the PCRA court of any perceived error. **See Commonwealth v. Rykard**, 55 A.3d 1177, 1189 (Pa.

⁵ The General Assembly provided an additional grace-period for the filing of a **first** petition where the underlying conviction was imposed prior to the effective date of the 1995 amendments to the statute. Nov. 17, 1996, P.L. 1118, No. 32, § 3(1) (Spec. Sess. No. 1) (stating that "[A] petition where the judgment of sentence became final before the effective date of the amendments shall be deemed timely if the petitioner's first petition was filed within one year of the effective date of the amendments"). However, that exception applies only to a first petition. **Commonwealth v. Fahy**, 737 A.2d 214, 321–322 (Pa. 1999). Moreover, even if this were Appellant's first petition, the petition was still filed well after the grace-period expired.

Super. 2012) (“The purpose behind a Rule 907 pre-dismissal notice is to allow a petitioner an opportunity to seek leave to amend his petition and correct any material defects, the ultimate goal being to permit merits review by the PCRA court of potentially arguable claims.”). Indeed, Appellant did assert a claim of governmental interference in his response to the Rule 907 notice. Therefore, Appellant is not entitled to relief based on his claim that the trial court failed to provide him an opportunity to amend his petition.

Appellant next claims that the trial court erred by rejecting his assertion of government interference in the presentation of his underlying claim. Specifically, he argues that he was unable to obtain a copy of his warrant for arrest from the Clerk of Quarter Sessions of Philadelphia County, through the Office of the District Attorney, or through the trial court. In short, Appellant asserts, for nearly six years, government officials prevented him from presenting a claim of ineffective assistance of counsel based upon the nonexistence of arrest warrant until the filing of the instant PCRA petition.

Following our review of the record, we detect no error in the decision of the PCRA court to dismiss Appellant’s petition for failure to assert an exception under subsection 9545(b)(1)(i). Appellant’s underlying claim—*i.e.* that all prior counsel were ineffective for failing to challenge the legality of his arrest because a warrant for arrest had not actually issued—did not

require extensive efforts to obtain a document that he alleged did not exist.⁶ Accordingly, even if government officials had interfered with his ability to obtain a copy of his arrest warrant, his failure to raise his underlying claim was not the result of that interference. **See** 42 Pa.C.S. § 9545(b)(1)(i).⁷ Thus, the PCRA court properly dismissed Appellant's third PCRA petition as untimely.

Order affirmed.

⁶ Appellant, in his brief, asserts, "**Back in 2003**, [he] learned that an affidavit of probable cause was never sworn to before an issuing authority and that a warrant was never issued for his arrest." Appellant's Brief at 6 (unpaginated) (emphasis added).

⁷ The Commonwealth, in the responsive brief, did include a copy of an affidavit of probable cause from the arrest warrant as an exhibit.