

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

THOMAS DAVIS,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
BRIAN THOMPSON, WARDEN S.C.I.	:	
MERCER,	:	
	:	
Appellee	:	No. 1130 WDA 2012

Appeal from the Order Entered June 20, 2012,
In the Court of Common Pleas of Allegheny County,
Civil Division, at No. G.D. 12-9762.

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY SHOGAN, J.:

Filed: January 14, 2013

Appellant, Thomas Davis, appeals from an order entered on June 20, 2012, dismissing his writ of *habeas corpus*. We affirm.

The factual and procedural history is as follows. On June 4, 2012, Appellant filed a writ of *habeas corpus* seeking discharge from custody on the basis of an improper sentence. According to the writ, Appellant was arrested in February of 1989 and charged with several counts of robbery. Appellant sought the benefit of a plea bargain that he maintains his counsel entered into with the district attorney's office in January of 1990. Appellant believes that the charges for which he remains in prison were to be dropped pursuant to the plea bargain agreement. The agreement purportedly provides:

*Retired Senior Judge assigned to the Superior Court. Judge Colville did not participate in the consideration or decision of this case.

That if petitioner would agree to a postponement of trial until March 2nd, 1990, for DNA testing of physical evidence namely one Newport cigarette butt smoked by the robber and if the DNA test exonerated petitioner the office of district attorney would dismiss all charges[.]

Writ of Habeas Corpus, 6/04/12, at 3. Appellant contended that the Commonwealth obtained DNA samples from him and that the samples exonerated him. In the writ, Appellant stated, “[I]t appears that the herein pretrial plea bargain proceedings and its acquittal were never filed, transcribed, recorded nor entered in the judgment book and/or docket to-date as a result of delay/fraud/breakdown in the court’s operation[.]” *Id.* Appellant asserted that he has been illegally detained for nineteen years; he, therefore, requested discharge from custody.

The court dismissed Appellant’s writ and offered the following rationale in support of its decision:

In this habeas corpus petition filed June 4, 2012, [Appellant] seeks discharge from custody on the basis that he should not be serving the sentence he is now serving (an aggregate term of 14 to 28 years of imprisonment imposed on January 14, 1992). He seeks the benefit of a plea bargain he alleges was entered into between his attorney and the Allegheny County District Attorney’s Office, under which the charges of which he was convicted and for which he remains imprisoned were to be dropped. [Appellant’s] prayer, i.e., discharge from custody, is nothing more than an attempt to circumvent the time-bar provisions of the Post Conviction Relief Act, 42 Pa.C.S.A. § 9545(b). . . .

PCRA Court Opinion, 6/21/12, at 1. Appellant timely filed a notice of appeal.

In his brief to this Court, Appellant asks us to consider one question, namely, “Whether[] the lower court committed an error of law and/or abuse of discretion in its pre-screening determination?” Appellant’s Brief at 4.

The Pennsylvania Supreme Court has made clear that the PCRA subsumes the writ of *habeas corpus* in circumstances where the PCRA provides a remedy for the claim. ***Commonwealth v. Peterkin***, 554 Pa. 547, 552, 722 A.2d 638, 640 (1998). ***See also*** 42 Pa.C.S.A. § 9542 (“The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including *habeas corpus* and *coram nobis*.”); 42 Pa.C.S.A. § 6503(b) (“[T]he writ of *habeas corpus* shall not be available if a remedy may be had by post-conviction hearing proceedings authorized by law.”).

“In ***Commonwealth v. Peterkin***, [], the Supreme Court held that where a *habeas corpus* petitioner alleged violations which undermined the truth-determining process, such claims were cognizable under the PCRA; therefore, the petition would be treated as a PCRA petition.” ***Commonwealth v. Weimer***, 756 A.2d 684, 685 (Pa. Super. 2000). “The PCRA ‘provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief.’ 42 Pa.C.S. § 9542. To that end, the claims deemed reviewable

under the PCRA all deal with matters affecting 'the conviction and sentence.' 42 Pa.C.S. § 9543." **Commonwealth v. O'Brian**, 811 A.2d 1068, 1070 (Pa. Super. 2002).

Instantly, the specific issue underlying Appellant's request for relief in his writ of *habeas corpus* is his claim that he did not receive the benefit of the plea bargain agreement. Appellant's Brief at 7-9. Thus, Appellant is indeed alleging that his sentence is based on constitutional violations that undermined the truth-determining process. Such a claim is cognizable under the PCRA.

Our standard of review for an order denying post-conviction relief is limited to whether the record supports the PCRA court's determination, and whether that decision is free of legal error. **Commonwealth v. Allen**, 557 Pa. 135, 142, 732 A.2d 582, 586 (1999). 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, the trial court may decline to hold a hearing on the petition if it 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, 1014 (Pa. Super. 2001).

Here, the PCRA court dismissed Appellant's request for relief, concluding that filing of the writ of *habeas corpus* was "nothing more than

an attempt to circumvent the time-bar provisions of the Post Conviction Relief Act, 42 Pa.C.S.A. § 9545(b).” PCRA Court Opinion, 6/20/12, at 1. We agree.¹

Substantively, despite the fact that Appellant framed his issue as a claim that the PCRA court erred “in its pre-trial screening” of the writ, the argument he offers in support of this issue fails to assign any error to the PCRA court. In fact, Appellant’s argument is a near word-for-word reproduction of the “MATERIAL FACTS OF FEDERAL LAW OFFENDED” portion of his writ. **See** Writ of Habeas Corpus, 6/04/12, at 2-4. Accordingly, Appellant has failed to convince this Court that the PCRA court erred by denying his writ or that he is otherwise due relief. **See Commonwealth v. Wrecks**, 931 A.2d 717, 722 (Pa. Super. 2007) (“An appellant also has the

¹ While little is included in the record, it is apparent that Appellant was sentenced on January 14, 1992. PCRA Court Opinion, 6/20/12, at 1. Appellant was required to file any PCRA petition within one year of the date that his judgment of sentence became final, unless one of three statutory exceptions applies. 42 Pa.C.S.A. § 9545(b)(1). The one-year time limitation is jurisdictional and a PCRA court has no power to address the substantive merits of an untimely filed petition. **Commonwealth v. Abu-Jamal**, 833 A.2d 719, 723-724 (Pa. 2003); **Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000). Here, no timeliness exceptions were alleged. Appellant’s petition, filed 20 years later, on June 4, 2012, is, thus, patently untimely.

The PCRA was amended in 1995, and it provides a grace period for petitioners whose judgments of sentence became final on or before the November 17, 1995 effective date of the amendments. However, this grace period only applies to petitions that were filed by January 16, 1997. **Commonwealth v. Thomas**, 718 A.2d 326, 329 (Pa. Super. 1998) (*en banc*). Additionally, this proviso only applies to first PCRA petitions. **Id.** Clearly, Appellant is not entitled to the relief provided by the proviso.

burden to convince us that there were errors and that relief is due because of those errors."). We, therefore, affirm the PCRA court's order dismissing his writ of *habeas corpus*.

Order affirmed.