

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DARRYL WOODS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1182 EDA 2012

Appeal from the PCRA Order Entered March 30, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-1004761-1996

BEFORE: FORD ELLIOTT, P.J.E., BENDER, J., and SHOGAN, J.

MEMORANDUM BY BENDER, J.:

Filed: January 15, 2013

Appellant, Darryl Woods, appeals *pro se* from the March 30, 2012 order denying as untimely his second petition for relief filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546. For the following reasons, we affirm.

In June of 1999, Appellant was convicted of first-degree murder, aggravated assault, and criminal conspiracy based on his involvement in a drive-by shooting in Philadelphia. Appellant was sentenced to an aggregate term of life imprisonment. He filed a direct appeal, and this Court affirmed his judgment of sentence on July 11, 2000. *Commonwealth v. Woods*, No. 2058 EDA 1999, unpublished memorandum (Pa. Super. filed July 11, 2000). Appellant did not file a petition for permission to appeal to our Supreme Court and, thus, his judgment of sentence became final on August

11, 2000. **See** 42 Pa.C.S. § 9545(b)(3) (judgment of sentence becomes final at the conclusion of direct review or the expiration of the time for seeking the review); Pa.R.A.P. 1113(a) (“a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days of the entry of the order of the Superior Court sought to be reviewed”).

Appellant filed a *pro se* PCRA petition on May 1, 2001, and counsel was appointed. On June 17, 2002, that petition was denied, and this Court dismissed Appellant’s subsequent appeal based on his failure to file a brief. On September 1, 2010, Appellant filed a second *pro se* PCRA petition which underlies the instant appeal. After issuing Pa.R.Crim.P. 907 notice of its intent to dismiss, the court entered an order dismissing Appellant’s petition as untimely on March 30, 2012. Appellant filed a timely *pro se* notice of appeal and, herein, he raises four issues for our review:

- (1) Did the Lower Court error [*sic*] by failing to address the proper legal standard regarding obtaining suppressed exculpatory evidence from the police and prosecution?
- (2) Did the Lower Court error [*sic*] in failing to review and make a decision on the standards that [were] claimed by the police as applicable with [*sic*] made the prosecution as [*sic*] appellate judge?
- (3) Did the Lower Court error [*sic*] on timeliness issues after admitting that such matters was [*sic*] timely filed with in [*sic*] the statutory exceptions?
- (4) Should this Honorable Court remand ion [*sic*] order to be able to ascertain just what type of a legal standard would be applicable to the premise espoused by the police and by the prosecution?

Appellant's Brief at vii.

This Court's standard of review regarding an order denying 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. Ragan***, 923 A.2d 1169, 1170 (Pa. 2007). 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).

We must begin by addressing the timeliness of Appellant's petition, as the PCRA time limitations implicate our jurisdiction and may not be altered or disregarded in order to address the merits of a petition. ***Commonwealth v. Bennett***, 930 A.2d 1264, 1267 (Pa. 2007); ***Commonwealth v. Johnson***, 803 A.2d 1291, 1294 (Pa. Super. 2002). Under the PCRA, any petition for post-conviction relief, including a second or subsequent one, must be filed within one year of the date the judgment of sentence becomes final, unless one of the exceptions set forth in 42 Pa.C.S. § 9545(b)(1)(i)-(iii) applies. Here, Appellant's judgment of sentence became final on August 11, 2000, and thus, he had until August 11, 2001, to file a timely petition. Consequently, his petition is facially untimely and, for this Court to have jurisdiction to review the merits thereof, Appellant must prove that he meets one of the exceptions to the timeliness requirements set forth in 42 Pa.C.S. § 9545(b). That section states, in relevant part:

(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;

(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. § 9545(b)(1)(i)-(iii). Any petition attempting to invoke one of these exceptions “shall be filed within 60 days of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2).

Instantly, Appellant’s *pro se* brief to this Court is virtually incomprehensible.¹ However, after reviewing his brief and *pro se* PCRA

¹ The following language taken from Appellant’s third issue regarding the timeliness of his petition, evidences this point:

Did the lower court error on timeliness issues after admitting that such matter was timely filed within the statutory exceptions?

This is answered as Yes, by Appellant. Where [A]ppellant relies upon the record that is preserved.

Because the record reflects that the judge specifically indicated such in her position as taken. Where this is indicated as the initial position the judge did take.

(Footnote Continued Next Page)

petition, as well as the PCRA court's opinion, we interpret Appellant's timeliness claims, and underlying factual basis therefore, as follows. On June 24, 2010, Appellant sent a request under the Pennsylvania Right-To-Know Law (RTK Law), 65 P.S. §§ 67.101-67.3104, to the Police Department of the City of Philadelphia. In that request, Appellant asked to see a "cross check" report for a pistol, and a copy of a photographic array, both of which he claimed were located in the police files for his case.

On August 2, 2010, the Police Department sent Appellant a letter denying his request. The Police Department explained that the items sought by Appellant were part of the record relating to his criminal investigation,

(Footnote Continued) _____

The reflection in this area causes this [A]ppellant to seek review. Due to the series of legal concerns emanating out of such a decision.

Appellant is unable to understand just how timeliness can be accorded. Then under a circumstance where neither the prosecution nor the police are recorded as providing any type of response or position on such matters to negate timeliness, the position that is taken by the court appears to indicate a dual position. Which abdicates court authority.

On the one hand, the filing within such court is the proper venue. Under the proper legal standard. Within the proper legal timeframe.

On the other hand, a possible implication that the prosecution exerts a judicial authority of fact. Which is not demonstrated or validated. Which somehow serves to negate timeliness. Where it is the police whom have asserted such possibility. Without even a scintilla of any record of any prosecutorial response.

Appellant's Brief at 3 (pages unnumbered).

and that such records are exempt from the RTK Law. The letter stated that if Appellant wanted to appeal the denial of his request, he must file an appeal with the Philadelphia District Attorney's (D.A.) Office within 15 days. The letter also provided him with the address of where he should send his appeal.

However, Appellant did not file any appeal with the Philadelphia D.A.'s Office. Instead, he filed a PCRA petition, alleging that the August 2, 2010 letter revealed "new evidence" that "the charges he is presently incarcerated for are currently being investigated by police and the prosecution has been withholding their knowledge of other suspects in this case." PCRA Court Opinion, 3/30/12, at 3 (unnumbered pages). Appellant further argued that the Police Department's denial of his request under the RTK Law constituted interference by government officials that prohibited him from obtaining evidence and bringing an after-discovered evidence claim in his PCRA petition. *Id.*

The PCRA court concluded that neither of these arguments satisfied an exception to the PCRA time-bar. We agree. First, the Police Department properly denied Appellant's request for the "cross check" report and photographic array, as those items were part of the criminal investigation of the drive-by shooting and were exempt from disclosure under the RTK Law. **See** 65 P.S. § 67.708(b)(16) (stating that "[a] record of an agency relating to or resulting in a criminal investigation" are "exempt from access by a requester under this act"). Therefore, the Police Department did not act "in

violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States," as required by the governmental interference exception to the PCRA time-bar.²

Furthermore, the discovery that the Philadelphia Police Department continued to investigate the drive-by shooting after Appellant's conviction does not satisfy the after-discovered evidence exception. As the Commonwealth points out, it was no secret that the police were continuing to investigate the drive-by shooting, as witnesses stated that there were multiple people involved who had not yet been apprehended. Therefore, Appellant has failed to demonstrate that he could not have obtained information regarding the ongoing investigation earlier had he exercised due diligence.

In sum, Appellant has failed to present a coherent - let alone persuasive - argument that the PCRA court erred in denying his facially untimely *pro se* petition. The August 2, 2010 letter denying Appellant's request under the RTK Law did not reveal evidence that Appellant could not

² Moreover, the August 2, 2010 letter informed Appellant of the method for filing an appeal of a decision under the RTK Law, but Appellant chose not to file an appeal with the Philadelphia D.A.'s Office. **See** 65 P.S. 67.1101 (if request for access to a record is denied, "the requester may file an appeal with the ... officer designated ... within 15 business days"). Therefore, he failed to exhaust his administrative remedies before seeking relief via the PCRA.

have discovered earlier with the exercise of due diligence, and did not constitute interference by government officials in asserting a claim for post-conviction relief. Accordingly, the PCRA court properly denied his petition.

Order affirmed.