

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| TYRELL PRESTON WARE, | : | |
| | : | |
| Appellant | : | No. 1190 WDA 2012 |

Appeal from the PCRA Order June 28, 2012,
Court of Common Pleas, Erie County,
Criminal Division at No. CP-25-CR-0003042-2005

BEFORE: FORD ELLIOTT, P.J.E, BOWES and DONOHUE, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: February 6, 2013

Tyrell Preston Ware (“Ware”) appeals from the order of court denying his petition filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541 – 9546. Finding that we lack jurisdiction to entertain this appeal, we quash.

In 2006, Ware was convicted of involuntary deviate sexual intercourse, sexual assault, aggravated assault, and unlawful restraint, and sentenced to an aggregate term of 8 to 16 years of incarceration. This Court affirmed his judgment of sentence on direct appeal. *Commonwealth v. Ware*, 932 A.2d 264 (Pa. Super. 2007) (unpublished memorandum). The Pennsylvania Supreme Court denied Ware’s petition for allowance of appeal on February 27, 2008. *Commonwealth v. Ware*, 994 A.2d 757 (Pa. 2008). Ware timely filed his first PCRA petition on August 20, 2008. After an evidentiary

hearing, PCRA court denied Ware's PCRA petition, and this Court subsequently affirmed the PCRA court's determination. ***Commonwealth v. Ware***, 996 A.2d 17 (Pa. Super. 2010) (unpublished memorandum). Ware filed the PCRA petition at issue in this appeal, his second such petition, on June 25, 2012.

It is firmly established that "[t]he PCRA's timeliness requirements are jurisdictional in nature, and a court may not address the merits of the issues raised if the PCRA petition was not timely filed." ***Commonwealth v. Copenhefer***, 596 Pa. 104, 108, 941 A.2d 646, 648-49 (2007). The PCRA provides that "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 one of three exceptions applies. 42 Pa.C.S.A. § 9545(b). The relevant PCRA provision provides as follows:

(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.A. § 9545(b)(1)(emphasis added).

The PCRA petition at issue, filed in 2012, was filed more than one year after Ware's conviction became final;¹ therefore, it was incumbent on Ware to establish one of the three exceptions to the timeliness requirement contained in § 9545(b)(1). Ware did not allege, much less prove, any of these exceptions in his PCRA petition. Similarly, in the argument in his appellate brief, Ware fails to even so much as mention the timeliness exceptions contained in § 9545(b)(1). Accordingly, as Ware's petition is untimely on its face and he has failed to establish an exception to the PCRA's time-bar, we are without jurisdiction to entertain this appeal.

Appeal quashed.

¹ "[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." 42 Pa.C.S.A. § 9545(b)(3). The Pennsylvania Supreme Court denied Ware's petition for allowance of appeal on February 27, 2008, and he had 90 days in which to seek further review by the United States Supreme Court. **See** U.S.SUP.CT.R. 13; Thus, Ware's sentence became final on May 28, 2008.