

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37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. | : | |
| | : | |
| DENNIS FREEMAN, | : | |
| | : | |
| Appellant | : | No. 1207 EDA 2012 |

Appeal from the PCRA Order March 30, 2012
 In the Court of Common Pleas of Philadelphia County
 Criminal Division No(s): CP-51-CR-0801911-2006

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

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

Appellant, Dennis Freeman, appeals *pro se* from the order entered in the Philadelphia County Court of Common Pleas, which dismissed as untimely his petition filed pursuant to the Post Conviction Relief Act ("PCRA")¹. We affirm.

The PCRA court summarized the facts of this case as follows:

On July 23, 2006, at approximately 3:50 a.m., the complainant and her boyfriend were awakened when [Appellant], her ex-boyfriend, forcibly entered their bedroom. [Appellant] fired rounds from a .380 caliber handgun at the complainant and her boyfriend at close

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

range. One bullet pierced the complainant's face, exited the opposite side, and lodged in her shoulder. Two bullets struck the headboard directly above the boyfriend's head. After the shooting, [Appellant] ran from the scene.

PCRA Ct. Op., 7/20/12, at 2.

The PCRA court summarized the procedural history as follows:

[O]n December 5, 2006 [Appellant] entered a negotiated guilty plea to the following charges: one (1) count of Violation of the Uniform Firearms Act . . . and two (2) counts of aggravated assault. . . . On that same day, [A]ppellant was sentenced to five (5) to ten (10) years incarceration followed by ten years reporting probation. . . . Appellant did not file any post-sentence motions or an appeal to the Superior Court.

On August 6, 2010, [A]ppellant filed [the instant] *pro se* petition under the Post Conviction Relief Act ("PCRA"). Appellant's counsel filed a **Finley** letter on October 27, 2011.^[2] On February 16, 2012, [A]ppellant received his [Pa.R.Crim.P.] 907 notice that this court intended to dismiss his PCRA petition. [The PCRA court] formally dismissed [A]ppellant's PCRA petition and granted counsel's motion to withdraw on March 30, 2012. On April 10, 2012, [A]ppellant filed this appeal to the Superior Court.

² By filing a **Turner/Finley** petition,

counsel may withdraw at any stage of collateral proceedings if, in the exercise of his or her professional judgment, counsel determines that the issues raised in those proceedings are meritless and if the post-conviction court concurs with counsel's assessment. The post-conviction petitioner then may proceed *pro se*, by privately retained counsel, or not at all.

Commonwealth v. Glover, 738 A.2d 460, 463 (Pa. Super. 1999) (citation omitted). **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

Id. at 1. Appellant was not ordered to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

Appellant raises the following issues for our review:

Did the trial court err[] in accepting the guilty plea by [Appellant]?

Did the trial court err[] in sentencing [Appellant] to a term of incarceration?

Did the trial court err[] in denying [Appellant's] PCRA action and requested relief therein?

Appellant's Brief at 8. Appellant argues that "counsel did not effectively represent him throughout the court process, nor offer up any defense [for] Appellant." *Id.* at 10. Additionally, Appellant contends that "the ten (10) years of reporting probation was excessive, harsh, and was never brought to the attention of the Appellant in [any] way."³ *Id.* at 17. Appellant claims that he was not advised of the penalties involved in the plea and therefore it was "not knowingly, intelligently entered." *Id.* at 10-11.

As a prefatory matter, we consider whether Appellant's PCRA petition was timely.

Our Supreme Court has stressed that the PCRA's timeliness requirements are jurisdictional in nature and must be strictly construed; courts may not address the merits of the issues raised in a petition if it is not timely filed. It is well settled that any and all PCRA petitions must be filed within one year of the date on which the

³ Appellant's written guilty plea colloquy explicitly includes the ten years' probation and contains a note that the form was read to Appellant verbatim. Witten Guilty Plea Colloquy, 12/5/06, at 1.

petitioner's judgment became final, unless one of three statutory exceptions applies. It is well settled that "[a]ny and all PCRA petitions must be filed within one year of the date on which the petitioner's judgment became final, unless one of three statutory exceptions applies." "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).

Commonwealth v. Garcia, 23 A.3d 1059, 1061-62 (Pa. Super. 2011) (some citations and quotation marks omitted), *appeal denied*, 38 A.3d 823 (Pa. 2012).

The timeliness exceptions to the PCRA requirements are set forth in 42 Pa.C.S. § 9545, which 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 law 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.

(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.

42 Pa.C.S. § 9545(b). To fall within one of the exceptions:

[p]etitioners must plead and prove the applicability of one of the three exceptions to the PCRA timing requirements. If the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed without a hearing because Pennsylvania courts are without jurisdiction to consider the merits of the petition.

Commonwealth v. Lambert, 57 A.3d 645, 648 (Pa. Super. 2012) (citation omitted).

In the instant case, Appellant did not seek direct review with this Court during the thirty days following sentencing; therefore his judgment of sentence became final on January 4, 2007. **See** 42 Pa.C.S. § 9545(b)(3). Appellant had one year, until January 4, 2008 to file his PCRA petition. **See** 42 Pa.C.S. § 9545(b)(1). Appellant's PCRA petition was filed on August 6, 2010. Trial Ct. Op. at 4. Therefore, Appellant's PCRA was patently untimely.

Appellant did not assert an exception to the one-year timeliness requirement in his *pro se* PCRA petition. *Pro Se* PCRA Pet., 8/6/10. His subsequently appointed counsel did not file an amended PCRA, instead filing a ***Turner/Finley*** petition after which the court granted counsel's motion to withdraw. PCRA Ct. Op. at 1. In his appellate brief, Appellant baldly asserts that "the timeliness issue should not be a matter in this case, as pursuant to

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42 Pa.C.S. § 9545 (B)(1)(iii) as Appellant unfolded new evidence.” Appellant’s Brief at 11. Appellant did not affirmatively plead or prove any of the three exceptions to the PCRA’s timeliness requirement. ***See Lambert, supra.*** Thus, we agree with the PCRA court that it could not address Appellant’s claims. ***See id.***

Order affirmed.