

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

GREGORY SPRUILL

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1227 WDA 2012

Appeal from the Order Entered June 14, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0004154-1981,
CP-02-CR-0004155-1981, CP-02-CR-0004229-1981

BEFORE: DONOHUE, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.:

Filed: March 4, 2013

Appellant, Gregory Spruill, appeals *pro se* from the June 14, 2012 order dismissing his seventh petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

We summarize the relevant facts and procedural history of this case as follows. On November 10, 1981, the trial court imposed a sentence of life imprisonment after Appellant pled guilty to second-degree murder, robbery and theft by unlawful taking.¹ Appellant did not file a direct appeal with this Court. Since his judgment of sentence became final, Appellant has filed six

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 2502, 3701, and 3921, respectively.

unsuccessful PCRA petitions.² ***See Commonwealth v. Spruill***, 832 A.2d 544, at 1 (Pa. Super. 2003) (unpublished memorandum), *appeal denied*, 847 A.2d 1284 (Pa. 2004); Commonwealth's Brief at 2-4. On May 15, 2012, Appellant filed his seventh petition for collateral relief, his fifth titled as a PCRA petition. The PCRA court issued its intention to dismiss Appellant's petition pursuant to Pennsylvania Rule of Criminal Procedure 907 on May 22, 2012. Appellant filed a *pro se* response on June 5, 2012, and the PCRA court dismissed Appellant's petition on June 14, 2012. On July 5, 2012, Appellant filed a timely notice of appeal.³

On appeal, Appellant raises eight issues for our consideration.

- I. Whether the [PCRA court] made an [sic] legal error in dismissing Appellant's subsequent PCRA petition which was filed within sixty days of an [sic] newly recognized United States constitutional right that was helded [sic] by the United States Supreme Court to apply retroactively and filed pursuant to 42 Pa.C.S. § 9545(b)(1)(iii), for which the [PCRA court] rule and [sic] ordered this Court has no jurisdiction[?]
- II. Whether the [PCRA court] made an [sic] legal error in dismissing Appellant's subsequent

² The Commonwealth points out that in addition to four petitions titled as PCRA petitions, Appellant also filed a petition for a writ of *habeas corpus* in 2009 and a petition for modification of sentence in 2011, both of these petitions were dismissed. Commonwealth's Brief at 4. The record reflects that the PCRA court treated each of these petitions as PCRA petitions and Appellant did not appeal either of those dismissals to this Court.

³ Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

PCRA petition as untimely pursuant to 42 Pa.C.S. § 9545(b), when the PCRA court's [sic] are to recognizes [sic] a timeliness exception based on the issuance of certain court decisions see 42 Pa.C.S. § 9545(b)(1)(iii) Appellant based his claims raised in his subsequent PCRA petition on the opinion of the Court rendered decision in [*Martinez v. Ryan*, 132 S. Ct. 1309 (2012)], decided on March 20, 2012[?]

- III. Whether Appellant's Pennsylvania Constitution [sic] under Article 1 § 9, and under Article 5 § 9, [and] also Appellant's United States Constitution [sic] under the Sixth Amendment and under the Fourteenth Amendment has each been violated by Appellant's guilty plea and sentencing counsel, and also through a "layered claims [sic] of ineffective assistance["] of all subsequent counsels[?]
- IV. Whether Appellant's Pennsylvania Constitution [sic] of Article 1 § 9 and his United States Constitution [sic] under the Sixth Amendment and under the Fourteenth Amendment has each been violated through a layered claim of ineffective assistance of all counsels causing a violation of Appellant due process of rights [sic] for which caused a procedural default by Appellant [sic] first appointed initial review collateral proceeding counsel Mr[.] John Halley for when he failed to raise substantial claims of pretrial counsel ineffectiveness as well as for failing to raise the error that the [trial court] failed to meet the requirements of explaining fully to Appellant all of the Pennsylvania crime [sic] code for which Appellant was being charged with during the "on record" guilty plea colloquys [sic] proceeding which cause the on record guilty plea colloquys [sic] to be defective and deemed void[?]
- V. Whether Appellant has raised newly alleged issues in his fifth PCRA petition that were never

raised in any previously [sic] PCRA petitions because the records will reflect that never before had Appellant raised claims of ineffective assistance of counsel in the form of layered claims of all prior counsel and the newly raised issues that all prior counsels failed to raise in [sic] Appellant [sic] behalf has caused a miscarriage of justice and due to the opinion of [*Martinez v. Ryan*, 132 S. Ct. 1309 (2012)], Appellant raised the newly learned issues within the sixty days time frame allow [sic] to give the [Commonwealth] the opportunity to correct the violation of Appellant [sic] rights and when viewed as a whole Appellant has offered a strong prima facie showing and when reviewing the [PCRA court's] opinion and order of court on page two, the order will show that on [May 30, 2012], that it was ordered that said petition was dismissed pursuant to Pa.R.Crim.P. 907, but on page one that the [PCRA] court issues a notice of intent to dismiss the PCRA petition on May 21, 2012, and that Appellant filed a timely written response on June 5, 2012, this legal error should warrant a remand by this appellate court[?]

- VI. Whether Appellant was chronically unrepresented by all appointed counsels [sic] throughout a lengthy pro se post-conviction history and if counsel's performance [sic] falls within the *per se* ineffective assistance of counsel parameters of [*United States v. Cronin*, 466 U.S. 648 (1984)] then [] Appellant is automatically entitled to relief[?]
- VII. Whether Appellant Pennsylvania Constitution [sic] of Article 5 § 9 and his United States Constitution [sic] under the Sixth Amendment has been violated by Appellant's guilty plea colloquy and sentencing counsel Mr. John Dean when he failed through his representation to take and perfect a direct appeal and all subsequent [sic] counsels failed to allege the

ineffective assistance of counsel against Mr[.] John Dean for his error must also be claimed to have provided ineffective assistance of counsel through a layered claim of ineffective assistance of all appointed counsels[?]

- VIII. Whether Appellant Pennsylvania Constitution [sic] of Article 1 § 9 and his United States Constitution under the Sixth Amendment has been violated by Appellant's initial collateral review and first [PCRA] counsel Mr. John Halley when he failed to raise meritorious claims in an amended [PCRA] petition that trial counsel Mr. John Dean had provided ineffective assistance of counsel when he violated Appellant's Pennsylvania Constitution [sic] Article 1 § 9 when John Dean had without being called upon as required by [Pa.R.Crim.P.] 591, had taken the liberty upon himself to explain [Pa.R.Crim.P.] 590(A)(3) after the [trial court] had himself finished with the on-record guilty plea colloquys [sic] and had himself failed to explain [Pa.R.Crim.P.] 590(A)(3) which was mandatory of the [trial court] to make the inquiry into the six areas of the guilty plea colloquys [sic] on record. [sic] This claim is from a layered claim of ineffective assistance of counsel[?]

Appellant's Brief at 4-7.

We begin by noting our well-settled standard of review. "Our review of a PCRA court's decision is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error." *Commonwealth v. Koehler*, 36 A.3d 121, 131 (Pa. 2012) (citation omitted). "[Our] scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the PCRA court level." *Id.* "The

PCRA court's credibility determinations, when supported by the record, are binding on this Court." ***Commonwealth v. Spatz***, 18 A.3d 244, 259 (Pa. 2011) (citation omitted). "However, this Court applies a *de novo* standard of review to the PCRA court's legal conclusions." ***Id.***

Before we may address the merits of a PCRA petition, we must first consider the petition's timeliness because it implicates the jurisdiction of both this Court and the PCRA court. ***Commonwealth v. Williams***, 35 A.3d 44, 52 (Pa. Super. 2011) (citation omitted), *appeal denied*, 50 A.3d 121 (Pa. 2012). "Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition." ***Id.*** The PCRA "confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar[.]" ***Commonwealth v. Watts***, 23 A.3d 980, 983 (Pa. 2011) (citation omitted). This is to "accord finality to the collateral review process." ***Id.*** "A petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final unless the petition alleges, and the petitioner proves, that an exception to the time for filing the petition, set forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii), is met." ***Commonwealth v. Harris***, 972 A.2d 1196, 1199-1200 (Pa. Super. 2009), *appeal denied*, 982 A.2d 1227 (Pa. 2009). The PCRA provides as follows.

§ 9545. Jurisdiction and proceedings

...

(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.

(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.A. § 9545(b).

As noted above, Appellant was sentenced on November 10, 1981 and no direct appeal was filed. Therefore, Appellant's judgment of sentence became final on December 10, 1981, when the time for Appellant to file a direct appeal expired. *See id.* § 9545(b)(3). The instant PCRA petition was filed on May 15, 2012, over 30 years since his judgment of sentence became

final and more than 15 years after the PCRA's grace period ended, so it was therefore patently untimely.⁴ Appellant acknowledges that his PCRA petition was facially untimely, but alleges an exception to the time-bar. Appellant's Brief at 15. Specifically, Appellant claims that the newly-recognized constitutional right exception set forth in section 9545(b)(1)(iii) applies. *Id.* This Court has recently explained a prisoner's burden under this exception.

Subsection (iii) of section 9545 has two requirements. First, it provides that the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or th[e Pennsylvania] Supreme Court after the time provided in this section. Second, it provides that the right "has been held" by "that court" to apply retroactively. Thus, a petitioner must prove that there is a "new" constitutional right and that the right "has been held" by that court to apply retroactively. The language "has been held" is in the past tense. These words mean that the action has already occurred, i.e., "that court" has already held the new constitutional right to be retroactive to cases on collateral review. By employing the past tense in writing this provision, the legislature clearly

⁴ The 1995 amendments to the PCRA initiated the current one-year time-bar. The 1995 amendments also granted prisoners whose judgment of sentence had become final more than one year before the implementation of the time-bar, one year from the effective date of the amendments to file their first PCRA petition. Act of November 17, 1995, P.L. 1118, No. 32 (Spec. Sess. No. 1), § 3(1). Under this provision "a petitioner's first PCRA petition, that would otherwise be considered untimely because it was filed more than one year after the judgment of sentence became final, would be deemed timely if it was filed by January 16, 1997." *Commonwealth v. Thomas*, 718 A.2d 326, 329 (Pa. Super. 1998) (*en banc*). Our Supreme Court has noted this grace period does not apply to second or subsequent PCRA petitions. *Commonwealth v. Crews*, 863 A.2d 498, 501 (Pa. 2004).

intended that the right was already recognized at the time the petition was filed.

Commonwealth v. Garcia, 23 A.3d 1059, 1063 (Pa. Super. 2011) (citations omitted), *appeal denied*, 38 A.3d 823 (Pa. 2012).

Additionally, as this Court has often explained, all of the PCRA time-bar exceptions are subject to a separate deadline.

The statutory exceptions to the timeliness requirements of the PCRA are also subject to a separate time limitation and must be filed within sixty (60) days of the time the claim could first have been presented. **See** 42 Pa.C.S.A. § 9545(b)(2). The sixty (60) day time limit ... runs from the date the petitioner first learned of the alleged after-discovered facts. A petitioner must explain when he first learned of the facts underlying his PCRA claims and show that he brought his claim within sixty (60) days thereafter.

Commonwealth v. Williams, 35 A.3d 44, 53 (Pa. Super. 2011) (citation omitted), *appeal denied*, 50 A.3d 121 (Pa. 2012). (some citations omitted).

In the case *sub judice*, Appellant avers that the United States Supreme Court's decision in ***Martinez v. Ryan***, 132 S. Ct. 1309 (2012) announced a new constitutional right that is to be applied retroactively.⁵ Appellant's Brief at 15. To begin our analysis under section 9545(b)(1)(iii) we must examine the ***Martinez*** decision itself.

⁵ As noted above, Appellant filed the instant PCRA petition on May 15, 2012. Because the Supreme Court decided ***Martinez*** on March 20, 2012, Appellant did file the instant PCRA petition within 60 days of the Supreme Court's decision. **See** 42 Pa.C.S.A. § 9545(b)(2).

Martinez was convicted in Arizona of two counts of sexual conduct with a minor under the age of 15. *Id.* at 1313. Martinez's direct appeal was denied and his first state post-conviction petition was dismissed.⁶ ***Martinez, supra*** at 1314. Martinez then filed a second state post-conviction petition, alleging that trial counsel was ineffective for challenging the state's case on several different grounds. *Id.* The Arizona courts dismissed the petition, concluding that Martinez should have raised his claims of trial counsel ineffectiveness in his first post-conviction petition.⁷ *Id.* Martinez then filed a petition for a writ of *habeas corpus* in federal court, relying on the same claims of trial counsel ineffectiveness. *Id.* Martinez conceded that his procedural default in the Arizona courts would ordinarily bar the federal *habeas* court from considering the merits of his claim. *Id.* However, Martinez argued that he could overcome procedural default because his first post-conviction counsel was ineffective as well for failing to raise his claims of trial counsel ineffectiveness in his first post-conviction petition. *Id.* at 1315. The District Court disagreed and dismissed Martinez's *habeas* petition and the Court of Appeals affirmed. *Id.*

⁶ The Supreme Court pointed out that Martinez's first post-conviction petition did not allege any claims of trial counsel ineffectiveness. ***Martinez, supra*** at 1314.

⁷ Arizona, like Pennsylvania, does not allow a criminal defendant to argue that trial counsel was ineffective on direct appeal. ***See Commonwealth v. Grant***, 813 A.2d 726, 738 (Pa. 2002); ***State v. Spreitz***, 39 P.3d 525, 527 (Ariz. 2002).

The Supreme Court acknowledged that its decision in *Coleman v. Thompson*, 501 U.S. 722 (1991) left open the question as to “whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial.” *Martinez, supra*. However, critical to this appeal, the Court explicitly noted that “[t]his is not the case ... to resolve whether that exception exists as a constitutional matter.” *Id.* Instead, the Court went on to decide the narrower question of whether allegations of ineffective post-conviction counsel can be cause to excuse procedural default for federal *habeas* purposes under the Antiterrorism and Effective Death Penalty Act (AEDPA). The Court ultimately concluded that it does.

Based upon the above considerations, we conclude that the Supreme Court did not announce a new constitutional right in *Martinez*. The Court explicitly rejected considering the underlying constitutional question in the case, and instead decided *Martinez* on the narrower ground of showing cause to excuse procedural default in federal court. *Id.* at 1315. Because the Supreme Court did not decide there is a constitutional right to effective counsel in collateral proceedings, it cannot have announced “a new constitutional right” for the purposes of section 9545(b)(1)(iii) and our inquiry in this case ends there. *See Garcia, supra*. As a result, Appellant has not met his burden to show an exception to the PCRA time-bar. Additionally, our review of the record reveals Appellant has not alleged any

other exception to the PCRA time-bar.⁸ We therefore agree with the PCRA court that it did not have jurisdiction to consider Appellant's instant PCRA petition.

Based on the foregoing, we conclude that the PCRA court properly dismissed Appellant's seventh PCRA petition. Accordingly, the June 14, 2012 order dismissing said petition is affirmed.

Order affirmed.

⁸ On January 15, 2013, this Court held that *Martinez* does not establish any independent exception to the PCRA time-bar. *See Commonwealth v. Saunders*, --- A.3d ---, 2013 WL 150811, *3 (Pa. Super. 2013).