

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

BERNARD JERRY

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1257 WDA 2012

Appeal from the PCRA Order June 12, 2012  
In the Court of Common Pleas of Beaver County  
Criminal Division at No(s): CP-04-CR-0000196-1977  
CP-04-CR-0000197-1977  
CP-04-CR-0000317-1977

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

MEMORANDUM BY MUNDY, J.:

Filed: March 8, 2013

Appellant, Bernard Jerry, appeals *pro se* from the June 12, 2012 order, dismissing his 12th petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

A previous panel of this Court summarized the relevant facts of this case as follows.

Appellant and a co-defendant robbed a grocery store on February 13, 1977, during which the store clerk was shot and killed. Following a jury trial, Appellant was convicted on August 16, 1977 of first-degree murder, robbery, reckless endangerment of another person, aggravated assault, simple assault, and

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\* Retired Senior Judge assigned to the Superior Court.

criminal conspiracy to commit felony murder. On April 12, 1978, Appellant was sentenced to life imprisonment on the first-degree murder conviction and to consecutive terms of imprisonment of 10 to 20 years on the robbery charge and 5 to 10 years on the criminal conspiracy charge. The sentences were suspended on the remaining convictions. Appellant filed an appeal to the Pennsylvania Supreme Court on April 13, 1978; the Court remanded for appointment of counsel and an evidentiary hearing on Appellant's claims of trial counsel's ineffectiveness. ***Commonwealth v. Jerry***, 401 A.2d 310 (Pa. 1979). On remand, the trial court ruled that counsel was not ineffective. Our Supreme Court affirmed the judgment of sentence on March 10, 1982, and the United States Supreme Court denied Appellant's petition for writ of *certiorari* on October 4, 1982. ***Commonwealth v. Jerry***, 441 A.2d 1210 (Pa. 1982), *cert. denied*, 459 U.S. 845 (1982). Subsequently, Appellant filed a series of unsuccessful petitions for post-conviction relief.

***Commonwealth v. Jerry***, 883 A.2d 689 (Pa. Super. 2005) (unpublished memorandum). Appellant has filed a total of 11 unsuccessful PCRA petitions. ***Commonwealth v. Jerry***, 964 A.2d 943, 3 (Pa. Super. 2008) (unpublished memorandum), *appeal denied*, 972 A.2d 529 (Pa. 2009), *cert. dismissed*, 130 S. Ct. 210 (2009).

On June 5, 2012, Appellant filed his 12th PCRA petition. The PCRA court dismissed the petition on June 12, 2012. On June 22, 2012, Appellant filed a motion for reconsideration, which the PCRA court denied on July 2,

2012. On July 11, 2012, Appellant filed a *pro se* notice of appeal.<sup>1</sup> On August 9, 2012, Appellant filed an amended notice of appeal.

On appeal, Appellant raises the following nine issues for our review.

- [1.] Whether the PCRA court abused its discretion and erred [in] denying Appellant's PCRA [petition] as previously been determined to be harmless error as evidenced by the federal court opinion on the [***Bruton v. United States***, 391 U.S. 123 (1968)] mistrial claim without it first being ruled on and determined by state courts as a question of state law that may have contributed to Appellant's conviction and affirmance prohibited by ***Commonwealth v. Story***, 383 A.2d 155 (Pa. 1978)?
- [2.] Whether [the PCRA court] perpetrated a fraud on the court and ineffective [sic] while performing [its] judicial duties and obligation by abandoning and failing to completely address or issue a complete opinion regarding [Appellant]'s raised and preserved ***Bruton*** mistrial claim during post-verdict motions amount to government interference of complete appellate review guaranteed by Pennsylvania Constitution Articles I §§§ [sic] 1, 9, 26, V §§§ [sic] 3, 9, 24, [and] the First, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments of the United States Constitution?

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<sup>1</sup> We observe that Appellant's notice of appeal was docketed on July 13, 2012, which would ordinarily put his appeal outside the 30 day filing-period required by Pennsylvania Rule of Appellate Procedure 903 by one day. However, Appellant has included in the certified record the envelope with postmark that indicates his notice of appeal was mailed on July 11, 2012. Pursuant to the prisoner mailbox rule, we treat July 11, 2012 as the filing date and therefore, Appellant's notice of appeal was timely filed. **See *Commonwealth v. Jones***, 700 A.2d 423, 426 (Pa. 1997). We also observe that Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

- [3.] Whether post-verdict motions counsel abandoned [Appellant]’s **Bruton** mistrial claim by refusing to submit a reargument motion *en banc* pursuant [to] Pennsylvania Rules of Court 1123(e) during post-verdict motions guaranteed by Pennsylvania Constitution Articles I §§§ [sic] 1, 9, 26, V §§§ [sic] 3, 9, 24, [and] the First, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments of the United States Constitution?
- [4.] Whether the State Supreme Court of Pennsylvania perpetrated fraud on the court and ineffective [sic] while performing [its] judicial duties and obligations by abandoning and failing to completely address or issue a complete opinion regarding [Appellant]’s raised and preserved **Bruton** mistrial claim during direct appeal amount to government interference of complete appellate review guaranteed by Pennsylvania Constitution Articles I §§§ [sic] 1, 9, 26, V §§§ [sic] 3, 9, 24, [and] the First, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments of the United States Constitution?
- [5.] Whether direct appeal counsel abandoned [Appellant]’s **Bruton** mistrial claim by refusing to submit a reargument motion pursuant to Pa.R.A.P. 2543(2) at [Appellant]’s behest guaranteed by Pennsylvania Constitution Articles I §§§ [sic] 1, 9, 26, V §§§ [sic] 3, 9, 24, [and] the First, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments of the United States Constitution?
- [6.] Whether [the PCRA court] perpetrated a fraud on the court and ineffective [sic] a second time on remand while performing [its] judicial duties and obligations by abandoning and failing to completely address or issue a complete opinion a second time regarding [Appellant]’s raised and preserved **Bruton**

mistrial claim on remand amount to government interference a second time of complete appellate review guaranteed by Pennsylvania Constitution Articles I §§§ [sic] 1, 9, 26, V §§§ [sic] 3, 9, 24, [and] the First, Fifth, Sixth, Ninth, and Fourteenth Amendments of the United States Constitution?

- [7.] Whether remand appellate counsel abandoned [Appellant]’s **Bruton** mistrial claim a second time by failing to submit a reargument motion *en banc* pursuant to Pennsylvania Rules of Court 1123(e) during remand at [Appellant]’s behest guaranteed by Pennsylvania Constitution Articles I §§§ [sic] 1, 9, 26, V §§§ [sic] 3, 9, 24, [and] the First, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments of the United States Constitution?
- [8.] Whether [the] State Supreme Court of Pennsylvania perpetrated a fraud on the court and ineffective [sic] a second time on remand while performing their judiciary [sic] duties and obligations by abandoning and failing to completely address or issue a complete opinion a second time regarding [Appellant]’s raised and preserved **Bruton** mistrial claim on remand amount to government interference a second time of complete appellate review guaranteed by Pennsylvania Constitution Articles I §§§ [sic] 1, 9, 26, V §§§ [sic] 3, 9, 24, [and] the First, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments of the United States Constitution?
- [9.] Whether the [Commonwealth] and [the] PCRA court waived their time-bar argument when they failed without considering whether [Appellant]’s successive [PCRA] petition was timely filed?

Appellant’s Brief at iv-v.

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.<sup>2</sup> ***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[.]”

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<sup>2</sup> Contrary to Appellant’s assertion, the timeliness requirements of the PCRA cannot be waived by the Commonwealth or the PCRA court. ***See Commonwealth v. Harris***, 972 A.2d 1196, 1199 (Pa. Super. 2009) (stating that the PCRA’s “[s]tatutory time restrictions may not be altered or disregarded to reach the merits of the claims raised in the petition[.]”), *appeal denied*, 982 A.2d 1227 (Pa. 2009).

***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 April 12, 1978. Our Supreme Court affirmed Appellant's judgment of sentence on March 10, 1982, and the United States Supreme Court denied Appellant's petition for a writ of *certiorari* on October 4, 1982. As a result, Appellant's judgment of sentence became final on October 4, 1982. **See id.** § 9545(b)(3) (stating, "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[.]"). Appellant filed the instant petition on June 5, 2012, almost 30 years after his judgment of sentence became final and more than 15 years after the PCRA's grace period ended, so it was therefore patently untimely.<sup>3</sup>

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<sup>3</sup> 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 (Footnote Continued Next Page)



However, Appellant argues that the government interference exception applies in this case. Appellant's Brief at 14-15, 26, 28, 30.

In order to meet the statutory requirements of the government interference exception, "Appellant was required to plead and prove that his failure to raise the claim *previously* was the result of interference by government officials with the presentation of the claim [or claims] in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States...." ***Commonwealth v. Chester***, 895 A.2d 520, 523 (Pa. 2006) (internal quotation marks and citation omitted; emphasis in original). Additionally, as this Court has often explained, all of the 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.

***Williams, supra*** at 53 (some citations omitted).

(Footnote Continued) \_\_\_\_\_

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*). However, 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).

After careful review, we conclude that Appellant's alleged exception fails to meet the requirements of section 9545(b)(2). Appellant alleges that the trial court and our Supreme Court's failure to provide complete analysis and disposition of his claim under **Bruton** amounted to government interference. Appellant's Brief at 14-15, 26, 28, 30. Appellant does not, however, allege when he first learned of the alleged government interference. Even if we were to look at the record in the light most favorable to Appellant, the latest Appellant could have learned about the lack of disposition of his **Bruton** claim was around March 10, 1982 when our Supreme Court affirmed Appellant's judgment of sentence. As a result, Appellant did not file the instant PCRA petition within 60 days of discovering the alleged interference. **Williams, supra**. Therefore, the PCRA court lacked jurisdiction to consider Appellant's instant PCRA petition.

Based on the foregoing, we conclude that the PCRA court properly dismissed Appellant's 12th PCRA petition. Accordingly, the PCRA court's June 12, 2012 order dismissing said petition is affirmed.

Order affirmed.