

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ALTON DANIEL BROWN,	:	
	:	
Appellant	:	No. 132 EDA 2011

Appeal from the PCRA Order December 9, 2010
In the Court of Common Pleas of Delaware County
Criminal Division No(s): CP-23-CR-0000296-1997

BEFORE: GANTMAN, OLSON, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

Filed: February 19, 2013

Appellant, Alton Daniel Brown, appeals *pro se* from the order entered in the Delaware County Court of Common Pleas dismissing his fourth Post Conviction Relief Act¹("PCRA") petition as untimely. He argues the court erred in denying him a hearing on whether he was incompetent at relevant times, satisfying a timeliness exception under the PCRA. We deny Appellant's request for leave to supplement the appeal² and affirm the order dismissing his PCRA petition as untimely.

The PCRA court summarized the procedural history of this case:

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² Appellant's request was made pursuant to Pa.R.A.P. 2601.

On September 17, 1997, [Appellant] was tried before a jury and convicted of Robbery of a Motor Vehicle; Robbery; Aggravated Assault; Possessing Instruments of a Crime; and Theft by Unlawful Taking. Thereafter, on October 30, 1997, [Appellant] was sentenced to serve an aggregate prison term of confinement of thirty-five (35) years to [s]eventy (70) years in a State Correctional Institute for the aforesaid crimes. [Appellant] did not file post-sentence motions[,], nor did he initially appeal the Judgment of Sentence to the Superior Court.

However, [Appellant] had his appeal rights restored^[3] and for the past thirteen (13) years, has filed a plethora of appeals to the Superior Court, Petitions seeking Allowance of Appeal by the Pennsylvania Supreme Court; Applications to the Pennsylvania Supreme Court seeking Special Relief; approximately four (4) PCRA Petitions; Amended PCRA Petitions; appeals of the denials of the PCRA Petitions; Petitions for Supplemental Relief; Petitions for Modifications of the Sentence;^[4] Motions for Reconsideration of various Court Orders; Motions for Recusal; Petitions seeking the Production of Audiotapes of Hearings; Petitions Seeking to Listen to Tape Recorded Proceedings; Petitions for Court Orders Requiring the Sheriff to Produce Him for a Hearing; etc.^[5]

³ ***Commonwealth v. Brown***, 3323 EDA 2000 (unpublished memorandum at 1) (Pa. Super. Oct. 16, 2003).

⁴ ***See Commonwealth v. Brown***, 3056 EDA 2004 (unpublished memorandum) (Pa. Super. Sept. 21, 2005) (affirming denial of *pro se* petition for modification of sentence pursuant to 61 P.S. § 81, "Illness of prisoner; removal for treatment").

⁵ We note that Appellant filed appeals in another case involving his convictions for two convenience store robberies which occurred in January 1997. ***Commonwealth v. Brown***, 2289 EDA 2009 (unpublished memorandum) (Pa. Super. Nov. 24, 2010); ***Commonwealth v. Brown***, 329 EDA 2010 (unpublished memorandum) (Pa. Super. Oct. 7, 2010). Appellant has also filed numerous petitions which were eventually heard by the Commonwealth Court. ***Brown v. Beard***, 11 A.3d 578, 580-81 (Pa. Commw. 2010 (stating "Brown's status as an abusive litigator is well-established"); ***Brown v. Levy***, 993 A.2d 364, 366 (Pa. Commw. 2010)

On March 10, 2010, [Appellant] filed what is believed to be his fourth [PCRA petition] on the grounds that he suffered physical and psychological abuse at the hands of the Pennsylvania State Police, local prison staff, state correctional institute staff and his own trial counsel, all of which caused him to suffer from Post-Traumatic Stress Disorder, General Anxiety Disorders and that he was otherwise incompetent during the period within which he had to file his PCRA Petition. [He] alleged in his PCRA Petition and the Affidavit attached thereto, that at various times, he was (1) subjected to water-boarding by the Pennsylvania State Police; (2) chained and beaten with a rolled-up newspaper; (3) partially suffocated; (4) repeatedly beaten again by prison guards; (5) repeatedly deprived of food; (6) repeatedly abused and beaten at SCI-Graterford; (7) repeatedly placed in solitary confinement; (8) threatened with death; (9) repeatedly attacked and beaten when transferred to SCI-Camp Hill; (10) abused, beaten and tortured at SCI-Greene; (11) abused, beaten and tortured at SCI-Pittsburgh; and (12) tortured again at SCI-Graterford.

PCRA Ct. Op., 2/7/11, at 1-2. The PCRA court sent Appellant a Pa.R.Crim.P. 907 notice of intent to dismiss without a hearing and thereafter dismissed the instant PCRA petition as untimely. This timely appeal followed. Appellant was not ordered to file a Pa.R.A.P. 1925(b) statement of matters complained of on appeal.

Appellant raises the following issues for our review:

I. Whether PCRA court erred in denying Appellant an [opportunity] to attempt to prove he was incompetent at relevant times and that he is entitled to proceed with this PCRA matter under the timeliness exception pursuant to

(Appellant had accumulated at least eight strikes pursuant to the Pennsylvania Prison Litigation reform Act, 42 Pa.C.S. § 6602(f)); *Brown v. James*, 822 A.2d 128 (Pa. Commw. 2003).

42 Pa.C.S. § 9545(b)(i)(ii) which resulted in violations of his fourteenth amendment rights to the United States Constitution and Pennsylvania Law?

II. Whether PCRA court erred in failing to conduct a hearing on Appellant's recusal motion and by refusing to recuse from these proceedings?

Appellant's Brief at 3. Appellant argues his conviction cannot stand because he was incompetent at the time of trial and sentencing. *Id.* at 4. He claims he "was rendered incompetent during trial, pretrial and post-trial proceedings as a result of physical and psychological abuse by police and prison staff, causing him to contract Post-traumatic stress disorder." *Id.* at 5. He argues that he "is entitled to an [opportunity] to attempt to prove that he was incompetent during the period for seeking relief under [the] PCRA and his competency qualified under after discovered evidence exception to the PCRA time bar because it prevented him from seeking/discovering factual basis of collateral claims."⁶ *Id.* Appellant contends that his PCRA petition "contained genuine issues concerning material facts" and "that he is entitled to relief as a matter of law" *Id.* He states that he "was made aware of [his] illness by [fellow inmate] Ronald

⁶ Appellant cites *Commonwealth v. Cruz*, 852 A.2d 287 (Pa. Super. 2004) in support of this claim. *See Commonwealth v. Monaco*, 996 A.2d 1076, 1080-81 (Pa. Super. 2010), *appeal denied*, 20 A.3d 1210 (Pa. 2011) (citing *Cruz* and concluding: "the general rule remains that mental illness or psychological condition, absent more, will not serve as an exception to the PCRA's jurisdictional time requirements.")

Jackson;⁷ U.S. Dept. of Health and Human Services; Dept. Of Veteran Affairs; The Journal of the American Medical Association; Diagnostic and Statistical Manual of Mental disorders, 4th Edition; Synopsis of Psychiatry; Supermax Prison: Psychological effects-Inside Prison, and, Some Effects of Long-Term Lock-down Facilities, inter alia.” PCRA Pet., 3/10/10, at 7. Appellant claims he “only became aware of [his] disorders during or about the final week of July, 2009, after [he] received material and diagnosis from persons and organizations mentioned in the Petition, including Ronald Jackson, who has extensive knowledge in this field.” *Id.* at Exh.”A” at 5.⁸

This Court has stated, “In PCRA appeals, the scope of review is limited by the Act. 42 Pa.C.S. §§ 9541 *et seq.* Our standard of review is whether the findings of the PCRA court are supported by the record and are free of legal error.” *Commonwealth v. Smith*, 17 A.3d 873, 882 (Pa. 2011), *cert. denied*, 2012 WL 2368705 (Jun. 25, 2012).

First, we determine whether Appellant’s PCRA petition is timely.

Our Supreme Court has stressed that “[t]he 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

⁷ Appellant claims Mr. Jackson would testify as to Appellant’s abuse and torture during confinement and their effect upon him. Appellant’s Brief at 8.

⁸ Appellant averred that this was his “second attempt at filing this instant Petition, the first one was mailed to the Court on 9/2/09, however, it was apparently sabotaged by the Office of Judicial Support, and the Court Administrator and President Judge Cronin, refused to intervene to correct the matter[.]” Appellant’s PCRA Pet., 3/10/10, at 2.

filed.” *Commonwealth v. Abu–Jamal*, 596 Pa. 219, 227, 941 A.2d 1263, 1267–68 (2008) (citation omitted). *See Commonwealth v. Monaco*, 996 A.2d 1076, 1079 (Pa. Super. 2010) (holding no court has jurisdiction to hear an untimely PCRA petition). 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.” *Commonwealth v. Perrin*, 947 A.2d 1284, 1285 (Pa. Super. 2008) (citations, quotations, and quotation marks omitted). “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), *appeal denied*, 38 A.3d 823 (Pa. 2012).

There are three exceptions to the PCRA’s one-year filing requirement:

(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). A PCRA petition raising one of these exceptions “shall be filed within [sixty] days of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2). “The PCRA specifically provides

that a petitioner raising one of the statutory exceptions to the timeliness requirements must affirmatively plead and prove the exception.” *Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. 2007); *see also* 42 Pa.C.S. § 9545(b)(1).

As such, when a PCRA is not filed within one year of the expiration of direct review, or not eligible for one of the exceptions, or entitled to one of the exceptions, but not filed within [sixty] days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner’s PCRA claims.

Taylor, 933 A.2d at 1039 (citation omitted).

Appellant was sentenced on October 30, 1997. Appellant did not seek review in the Superior Court. Hence, his sentence became final on November 30, 1997, thirty days after it was imposed. *See* 42 Pa.C.S. § 9545(b)(3); *Commonwealth v. Pollard*, 911 A.2d 1005, 1006-07 (Pa. Super. 2006) (finding that where defendant did not file direct appeal, his judgment of sentence became final thirty days after he was sentenced *in absentia*). Therefore, Appellant was required to file his PCRA petition by November 30, 1998. *See* 42 Pa.C.S. § 9545(b)(1). Appellant filed the instant PCRA petition on March 10, 2010. Therefore, it is patently untimely.

By Appellant’s own averment, he became aware of his diagnosis of post-traumatic stress disorder in July of 2009. However, the instant petition was not filed within sixty days. *See Taylor, supra*; 42 Pa.C.S. §

J. S64007/12

9545(b)(2). Therefore, it is untimely and the PCRA court lack jurisdiction to address his claim that the court should have held a hearing.

Appellant's second claim on appeal is that the PCRA court erred in denying a hearing on his recusal motion. We note that an order was entered on November 19, 2010, denying Appellant's motion for recusal and a request for a hearing. Appellant filed a notice of appeal on January 7, 2011, more than thirty days later. Nevertheless, the order is not the subject of the instant appeal, and we therefore do not address it.

Order affirmed. Appellant's request for leave to supplement appeal denied.