

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LARRY LEGGITT,	:	
	:	
Appellant	:	No. 1325 EDA 2012

Appeal from the PCRA Order Entered April 17, 2012,
In the Court of Common Pleas of Philadelphia County,
Criminal Division, at No. CP-51-CR-0428601-1994.

BEFORE: FORD ELLIOTT, P.J.E., BENDER and SHOGAN, JJ.

MEMORANDUM BY SHOGAN, J.:

Filed: January 29, 2013

Appellant, Larry Leggitt, appeals *pro se* from the dismissal of his fifth petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The PCRA court stated the factual and procedural history as follows:

On April 27, 1995, following a jury trial, Petitioner was convicted of first degree murder, aggravated assault, criminal conspiracy, recklessly endangering another person, carrying a firearm on public streets and possession of an instrument of crime. [The victim was Appellant's former paramour.] Following a penalty hearing, the jury returned a verdict of life imprisonment. Petitioner also received a consecutive aggregate term of fifteen to thirty-seven years for the remaining convictions, on January 23, 1996.

Petitioner appealed and on December 3, 1996, our Superior Court affirmed the judgment of sentence. On June 2, 1997 the Pennsylvania Supreme Court denied appellant's petition for allowance of appeal.

On August 17, 1999, Petitioner filed his first *pro se* PCRA petition. Counsel was appointed and an amended petition was ultimately filed on Petitioner[']s behalf. On June 1, 2000, the PCRA court denied Petitioner[']s amended PCRA petition. Denial of Petitioner's PCRA [petition] was affirmed by our Superior Court on November 16, 2001. Petitioner subsequently filed several unsuccessful PCRA petitions.

On January 15, 2010, Petitioner filed a civil complaint in the Court of Common Pleas naming numerous judges, judicial staffers, and court employees as defendants. Petitioner's civil complaint was dismissed as frivolous, by order of the Honorable William J. Manfredi, on March 3, 2010. In addition, Judge Manfredi ordered that the matter be transferred to the Criminal Trial Division for processing as a PCRA petition.

Notice of this Court's intention to dismiss the [PCRA] petition pursuant to Pennsylvania Rule of Criminal Procedure 907, was sent on February 22, 2012.

PCRA Court Opinion, 4/17/12, at 1-2. The PCRA court denied Appellant's PCRA petition as untimely on April 17, 2012. This appeal followed.

Appellant raises the following issues on appeal:

1. Whether the Post-Conviction court committed an error of Law in it Failure to accept and/or address Petitioner's request For Reconsideration/Reopening of a Previous Order, and in turn, Converting the said Request into a Post-Conviction Petition?
2. Whether the Post-Conviction court committed an error of Law in finding the PCRA Petition to be untimely where the Petition was a properly filed Request For Reconsideration/Reopening of a Previous Order?
3. Whether in light of MARTINEZ v. RYAN, Post-Conviction Counsels failure to raise claims of trial counsels ineffectiveness, which lead to appellant suffering a procedural default, denied

appellant of his 6th Amendment right to effective counsel?

4. Whether Appellant was denied his right to Appeal the ruling over his Civil Action where the Court erroneously transferred the matter to the Post-Conviction Court where no jurisdiction existed to resolve a Civil Complaint?

Appellant's Brief at 4 (verbatim).

In reviewing the propriety of the PCRA court's dismissal of Appellant's petition, we are limited to determining whether the court's findings are supported by the record and whether the order in question is free of legal error. ***Commonwealth v. Ragan***, 592 Pa. 217, 220, 923 A.2d 1169, 1170 (2007). "Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record." ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007), *appeal denied*, 593 Pa. 754, 923 A.2d 74 (2007). "Moreover, a PCRA court may decline to hold a hearing on the petition if the PCRA court determines that the petitioner's claim is patently frivolous and is without a trace of support in either the record or from other evidence." ***Commonwealth v. Hart***, 911 A.2d 939, 941 (Pa. Super. 2006). "It is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without

conducting an evidentiary hearing.” *Commonwealth v. Turetsky*, 925 A.2d 876, 882 (Pa. Super. 2007), *appeal denied*, 596 Pa. 707, 940 A.2d 365 (2007) (citation omitted).

Before reaching the merits of Appellant’s arguments, we must first determine whether Appellant’s petition is timely, as the timeliness of a PCRA petition is a jurisdictional requisite. *Commonwealth v. Burton*, 936 A.2d 521, 527 (Pa. Super. 2007), *appeal denied*, 598 Pa. 786, 959 A.2d 927 (2008). Where a petitioner fails to satisfy the timeliness requirements of the PCRA, the PCRA court and this Court have no jurisdiction to review the petition by fashioning an equitable exception to timeliness. *Commonwealth v. Robinson*, 575 Pa. 500, 510, 837 A.2d 1157, 1163 (2003).

The petition at issue was filed on January 15, 2010 as a civil action and transferred to the PCRA court, to be treated as a PCRA petition, on March 3, 2010. Thus, it is governed by the 1995 amendments to the PCRA, which were enacted on November 17, 1995, and became effective 60 days later. Pa.R.A.P. 903(a); 42 Pa.C.S.A. § 9545(b)(3). Under those revisions to the PCRA, “Section 9545(b)(1) of the PCRA requires that any PCRA petition, including second or subsequent petitions, must be filed within **one year** of the date the judgment becomes final.” *Commonwealth v.*

Fairiror, 809 A.2d 396, 398 (Pa. Super. 2002), *appeal denied*, 573 Pa. 703, 827 A.2d 429 (2003) (emphasis added).

Here, Appellant was tried by a jury on April 19-27, 1995, and sentenced on January 23, 1996. This Court affirmed Appellant's judgment of sentence on December 3, 1996. Our Supreme Court denied Appellant's *allocatur* petition on direct appeal on June 2, 1997. Insofar as Appellant filed the present PCRA petition in 2010, there can be no dispute that his present petition is untimely.

We note, however, that pursuant to section 9545(b) there are three exceptions to the timeliness 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.A. § 9545(b)(1)(i-iii). A PCRA petition invoking one of these statutory exceptions must be filed "within 60 days of the date the claim could have first been brought." **Commonwealth v. Carr**, 768 A.2d 1164, 1167-1168 (Pa. Super. 2001); 42 Pa.C.S.A. § 9545(b)(2). "[I]t is the

burden of a petitioner to plead in the PCRA petition exceptions to the time bar and that burden necessarily entails an acknowledgement by the petitioner that the PCRA petition under review is untimely but that one or more of the exceptions apply." *Commonwealth v. Wharton*, 886 A.2d 1120, 1126 (Pa. 2005) (citations omitted). Here, none of the exceptions to the time bar apply to Appellant's petition.

Appellant contends that the time bar does not apply to him because he did not file a PCRA petition but that the civil action filed by him was erroneously treated as a PCRA [petition]. Appellant's Brief at 12, 15. However, the PCRA provides the sole means for attacking a criminal conviction. The scope of the PCRA is explicitly defined as follows:

This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. **The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including *habeas corpus* and *coram nobis*.** This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide a means for raising issues waived in prior proceedings or to provide relief from collateral consequences of a criminal conviction.

42 Pa.C.S.A. § 9542 (emphasis added).

"The plain language of the statute above demonstrates that the General Assembly intended that claims that **could** be brought under the PCRA **must** be brought under that Act." *Commonwealth v. Hall*, 565 Pa.

92, 96-97, 771 A.2d 1232, 1235 (2001) (emphasis in original). Where a defendant's claims "are cognizable under the PCRA, the common law and statutory remedies now subsumed by the PCRA are not separately available to the defendant." *Id.* (citations omitted). By its own language, and by judicial decisions interpreting such language, the PCRA provides the sole means for obtaining state collateral relief. ***Commonwealth v. Yarris***, 557 Pa. 12, 22, 731 A.2d 581, 586 (1999) (citations omitted). Thus, it is well settled that any collateral petition raising issues with respect to remedies offered under the PCRA will be considered a PCRA petition. ***Commonwealth v. Deaner***, 779 A.2d 578, 580 (Pa. Super. 2001), *appeal denied*, 583 Pa. 675, 876 A.2d 397 (2005). Appellant's filing was properly deemed a PCRA petition.

Accordingly, the PCRA court did not abuse its discretion in treating Appellant's petition as an untimely PCRA petition. Discerning no error, we affirm the dismissal of Appellant's petition.

Order affirmed.

BENDER, J., Concur in the Result.