

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JULIO ELIEZER ORTIZ, SR.,	:	
	:	
Appellant	:	No. 1376 EDA 2013

Appeal from the PCRA Order entered on March 27, 2013
in the Court of Common Pleas of Lehigh County,
Criminal Division, No. CP-39-CR-0000634-2002

BEFORE: GANTMAN, SHOGAN and MUSMANNNO, JJ.

MEMORANDUM BY MUSMANNNO, J.: **FILED DECEMBER 24, 2013**

Julio Eliezer Ortiz, Sr. ("Ortiz") appeals, *pro se*, from the Order dismissing his second Petition for relief pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On August 5, 2002, Ortiz was found guilty of first-degree murder and robbery. On September 6, 2002, the trial court sentenced Ortiz to an aggregate term of life in prison. On August 20, 2003, this Court affirmed the judgment of sentence. **See Commonwealth v. Ortiz**, 833 A.2d 1148 (Pa. Super. 2003) (unpublished memorandum).

Ortiz subsequently filed his first PCRA Petition on June 29, 2004. The PCRA court denied the Petition, and on January 7, 2008, this Court affirmed the PCRA Court's Order. **See Commonwealth v. Ortiz**, 947 A.2d 830 (Pa.

Super. 2008) (unpublished memorandum), **appeal denied**, 954 A.2d 576 (Pa. 2008).

Ortiz filed his second PCRA Petition on November 27, 2012. The PCRA Court sent a Pa.R.Crim.P. 907 Notice of intent to dismiss the Petition without a hearing, to which Ortiz filed a Response. Subsequently, the PCRA Court dismissed Ortiz' second PCRA Petition. Ortiz filed a timely Notice of Appeal.¹

Initially, under the PCRA, any PCRA petition "*including a second or subsequent petition*, shall be filed within one year of the date the judgment becomes final[.]" 42 Pa.C.S.A. § 9545(b)(1) (emphasis added). A judgment of sentence 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." **Id.** § 9545(b)(3). The PCRA's timeliness requirements are jurisdictional in nature, and a court may not address the merits of the issues raised if the PCRA petition was not timely filed. **Commonwealth v. Albrecht**, 994 A.2d 1091, 1093 (Pa. 2010).

Here, Ortiz' judgment of sentence became final on September 19, 2003, when the period of time to file an appeal with our Supreme Court expired. **See** 42 Pa.C.S.A. § 9545(b)(3); **Commonwealth v. Rojas**, 874 A.2d 638, 643 (Pa. Super. 2005). Ortiz had until September 19, 2004, to

¹ We note that Ortiz filed a Motion in this Court on December 2, 2013, seeking leave to conduct discovery related to the instant Petition.

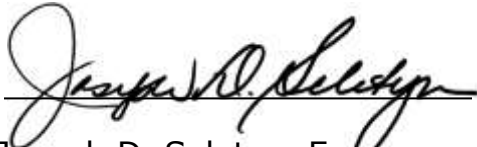
file the instant PCRA Petition, but did not do so until November 27, 2012. Thus, Ortiz' Petition is facially untimely under the PCRA.

However, Pennsylvania courts may consider an untimely PCRA petition if the appellant can explicitly plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1). Any PCRA petition invoking one of these exceptions "shall be filed within 60 days of the date the claim could have been presented." *Id.* § 9545(b)(2); **Albrecht**, 994 A.2d at 1094.

Here, Ortiz has failed to plead or prove the applicability of any of the exceptions to the PCRA timeliness requirements. **See** 42 Pa.C.S.A. § 9545(b)(1); **Albrecht**, 994 A.2d at 1094. Accordingly, Ortiz has failed to overcome the untimeliness of his Petition.

Order affirmed. Motion for Leave to Conduct Discovery denied.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above the printed name and title.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/24/2013

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