

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

HAROLD HOOKS,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1391 EDA 2012

Appeal from the Judgment of Sentence April 16, 2012  
In the Court of Common Pleas of Delaware County  
Criminal Division at No.: CP-23-CR-0003350-2005

BEFORE: BOWES, J., ALLEN, J., and PLATT, J.\*

MEMORANDUM BY PLATT, J.

Filed: January 11, 2013

Appellant, Harold Hooks, appeals from the order denying his second petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546, as untimely. We affirm.

The charges in this matter arose from Appellant's role in the kidnapping and false imprisonment of the victim because of a dispute over drugs. On August 31, 2005, a jury convicted Appellant of criminal conspiracy, kidnapping, unlawful restraint, false imprisonment, and recklessly endangering another person. On December 6, 2005, the court sentenced Appellant to consecutive sentences of no less than four nor more than eight years' incarceration for unlawful restraint, no less than six nor

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\* Retired Senior Judge assigned to the Superior Court.

more than twelve years' incarceration for criminal conspiracy to commit kidnapping, and five years' probation for false imprisonment.

On May 9, 2007, this Court affirmed Appellant's judgment of sentence, and our Supreme Court denied review on October 16, 2007. (**See *Commonwealth v. Hooks***, 929 A.2d 240 (Pa. Super. 2007) (unpublished memorandum), *appeal denied*, 934 A.2d 72 (Pa. 2007)).

On July 8, 2008, Appellant filed a *pro se* first PCRA petition and appointed counsel filed an amended petition, arguing that Appellant's sentence for false imprisonment should have merged with that for unlawful restraint. Appellant requested resentencing. The PCRA court granted Appellant's petition and resentedenced him on July 16, 2009 pursuant to his request for relief. The PCRA court imposed consecutive sentences of no less than four nor more than eight years' incarceration, plus one year of consecutive probation, for unlawful restraint, and no less than six nor more than twelve years' incarceration for criminal conspiracy to commit kidnapping. The court did not impose a sentence for false imprisonment on the basis of merger.<sup>1</sup>

On June 7, 2010, Appellant filed a *pro se* second PCRA petition. Appointed counsel filed an amended petition raising the issue of trial counsel's alleged ineffectiveness. On March 15, 2012, the court issued a

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<sup>1</sup> We note that the court did not reinstate Appellant's direct appeal rights.

Rule 907 notice of intent to dismiss the petition on the basis of untimeliness. The court dismissed the petition on April 16, 2012. Appellant timely appealed. The court did not order a Rule 1925(b) statement, but issued a Rule 1925(a) opinion on July 5, 2012.

Appellant raises one issue for our review: “Was the [PCRA c]ourt in error for denying Appellant’s [PCRA] Petition indicating that it was untimely filed?” (Appellant’s Brief, at 4).

Our standard of review of a PCRA court’s denial of a petition is well-settled:

On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court’s findings are supported by the record and without legal error. A second or subsequent request for PCRA relief will not be entertained unless the petitioner presents a strong *prima facie* showing that a miscarriage of justice may have occurred.

***Commonwealth v. Abu-Jamal***, 941 A.2d 1263, 1267 (Pa. 2008) (citations omitted), *cert. denied*, 555 U.S. 916 (2008).

Title 42 Pa.C.S.A. § 9545(b)(1) requires that any PCRA petition, including a second or subsequent petition, must be filed within one year of the date that the petitioner’s judgment of sentence becomes final, unless a petitioner pleads or proves that one of the exceptions to the timeliness requirement enumerated in 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii) is applicable. The timeliness requirement is mandatory and jurisdictional; therefore, no court may disregard, alter, or create equitable exceptions to the timeliness requirement in order to reach the substance of a petitioner’s arguments.

***Commonwealth v. McKeever***, 947 A.2d 782, 784-85 (Pa. Super. 2008) (citation omitted).

Appellant argues that the sentence imposed on him in 2005 was illegal and that, therefore, he had one-year from the resentencing in 2009 to file a second PCRA petition. (**See** Appellant's Brief, at 9-10). Appellant's argument lacks merit.

As this Court stated in *Commonwealth v. Anderson*, 788 A.2d 1019, 1022 (Pa. Super. 2001), *appeal denied*, 798 A.2d 1286 (Pa. 2002):

[T]he time for seeking PCRA relief following . . . the imposition of a new sentence runs for one year from the conclusion of direct review of that new sentencing order, **but only as to the issues of the validity of the revocation proceedings and the legality of the new sentence.**

*Anderson, supra* at 1022 (emphasis in original; citation omitted); **see also** *Commonwealth v. Lesko*, 15 A.3d 345, 366 (Pa. 2011) (concluding that "judgment of sentence is final for all purposes **except** for that part of the final judgment that was disturbed by the federal *habeas* proceedings, *i.e.*, [petitioner's] penalty phase proceeding.") (emphasis in original).

In this case, after the court granted Appellant's first PCRA petition and resentenced him on the basis that his sentence for false imprisonment should have merged with that for unlawful restraint, (**see** Commonwealth's Brief, at 3; PCRA Court Opinion, 7/05/12, at 4), Appellant filed a second petition in which he raised only the issue of trial counsel's ineffectiveness during the guilt phase of his case. (**See** Amended [PCRA] Petition, 7/18/11, at unnumbered page 2 ¶¶ 9, 10). Therefore, although resentencing resets the clock for the filing of a timely PCRA that challenges "the validity of the

revocation proceedings [or] the legality of the new sentence[,]” it did not do so for the PCRA claim leveled here. **Anderson, supra** at 1022; **see also Lesko, supra** at 366.<sup>2</sup>

Thus, Appellant’s judgment of sentence became final for purposes of his PCRA claim on January 14, 2008, when the time for seeking a writ of certiorari with the United States Supreme Court expired. **See** 42 Pa.C.S.A. § 9545(b)(3) (“[J]udgment [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.”); Sup. Ct. R. 13. Hence, he had one year from this date to file his petition for collateral relief unless he pleaded and proved that a timeliness exception applied. **See** 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii); **McKeever, supra** at 784. Accordingly, Appellant’s current petition, filed on June 7, 2010, is untimely on its face and, because Appellant has failed to plead and prove any of the statutory exceptions to the time-bar, we conclude that the trial court properly denied his petition as untimely. **See McKeever, supra** at 784-85.

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<sup>2</sup> We also note that Appellant’s reliance on **Commonwealth v. Lewis**, 718 A.2d 1262 (Pa. Super. 1998), *appeal denied*, 737 A.2d 1224 (Pa. 1999), in support of his argument that the 2010 PCRA petition was actually his first is misplaced. (**See** Appellant’s Brief, at 10). In **Lewis**, this Court concluded that a second PCRA petition was timely where the first PCRA merely restored the petitioner’s direct appeal rights. **See Lewis, supra** at 1263. Here, no such relief was either sought or granted by Appellant’s first PCRA petition and, therefore, **Lewis** is inapplicable.

J-S71036-12

Order affirmed.