

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
DENNIS GATELEY,		
Appellant		No. 1401 WDA 2012

Appeal from the PCRA Order August 13, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No.: CP-02-CR-0009422-2009

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

MEMORANDUM BY PLATT, J.

Filed: March 12, 2013

Appellant, Dennis Gateley, appeals *pro se* from the order dismissing his first petition pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546, as untimely. We affirm.

Appellant pleaded guilty to aggravated assault, disarming a law enforcement officer without lawful authorization, and resisting arrest. On November 24, 2009, he was sentenced to not less than six nor more than twelve months' incarceration with credit for time served, with immediate parole, followed by three years' probation effective November 24, 2009. Appellant did not file a post-sentence motion or a direct appeal.

* Retired Senior Judge assigned to the Superior Court.

Appellant filed the instant, underlying PCRA petition *pro se* on January 12, 2012. The court appointed counsel, who filed a “no merit” letter and a petition to withdraw. The court granted the petition and filed notice of its intent to dismiss the PCRA petition on July 27, 2012. **See** Pa.R.A.P. 907. The court dismissed the petition by order of August 13, 2012.

Appellant filed a timely *pro se* notice of appeal on September 11, 2012, and the court ordered him to file a concise statement pursuant to Pennsylvania Rule of Appellate Procedure 1925 on September 12, 2012. Appellant did not comply, however, and the PCRA court entered a Rule 1925(a) opinion noting this failure and the untimeliness of Appellant’s PCRA petition on October 22, 2012. Appellant filed a brief with this Court on December 4, 2012.¹

Our standard of review of a PCRA court’s dismissal of a PCRA petition is limited to examining whether the PCRA court’s determination is supported by the evidence of record and free of legal error. 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.

¹ We note that Appellant’s brief contains several substantial defects; specifically, Appellant has failed to provide a statement of jurisdiction, the order in question, a statement of the scope and standard of review, a statement of the questions involved, a statement of the case, or a summary of his argument. **See** Pa.R.A.P. 2111(a)(1)-(7). Furthermore, the argument in his brief is cursory and fails to cite to the record or to relevant authority. **See** Pa.R.A.P. 2119(a)-(c). We note that “[i]t is within this Court’s power to quash an appeal for violations of the Rules of Appellate Procedure.” **Commonwealth v. Lutes**, 793 A.2d 949, 955 n.1 (Pa. Super. 2002) (citations omitted).

Commonwealth v. Wilson, 824 A.2d 331, 333 (Pa. Super. 2003) (*en banc*), *appeal denied*, 839 A.2d 352 (Pa. 2003) (citations omitted).

The time limits imposed by the PCRA are jurisdictional and must be strictly construed. ***See Commonwealth v. Fahy***, 959 A.2d 312, 315 (Pa. 2008). A PCRA petition “shall be filed within one year of the date the judgment [of sentence] becomes final[.]” 42 Pa.C.S.A. § 9545(b)(1).

Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition. Statutory time restrictions are mandatory and jurisdictional in nature, and may not be altered or disregarded to reach the merits of the claims raised in the petition. . . .

The three statutory exceptions to the timeliness provisions in the PCRA allow for very limited circumstances under which the late filing of a petition will be excused. 42 Pa.C.S.A. § 9545(b)(1). To invoke an exception, a petition must allege and the petitioner must prove:

- (i) the failure to raise a 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 by this section and has been held by that court to apply retroactively.

42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). The PCRA specifically provides that a petitioner raising one of the statutory exceptions to the timeliness requirements must affirmatively plead and prove the exception. ***Id.*** The statutory exceptions to the

timeliness requirements of the PCRA are also subject to a separate time limitation and must be asserted within sixty (60) days of the date the claim could have been first presented. 42 Pa.C.S.A. § 9545(b)(2). As such, when a PCRA [petition] 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 60 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.

Commonwealth v. Taylor, 933 A.2d 1035, 1038-39 (Pa. Super. 2007), *appeal denied*, 951 A.2d 1163 (Pa. 2008) (footnote, quotation marks and case citations omitted). Accordingly, when a petition is filed outside the one-year time limitation, "our review focuses on whether Appellant has pled and proven that one of the three limited exceptions to the timeliness requirements of the PCRA apply." *Wilson, supra* at 335.

Here, Appellant's judgment of sentence became final on December 24, 2009, when the time for Appellant to file a notice of appeal expired. *See* 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P. 903(a) ("Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken."). Hence, in order to comply with the filing requirements of the PCRA, Appellant's petition had to be filed by December 24, 2010. Because Appellant's petition was filed on January 12, 2012, it is patently untimely, and the court lacked jurisdiction to review it unless he pleaded and proved one of the statutory exceptions to the time bar under 42 Pa.C.S.A. § 9545(b)(1).

Appellant neither pleads nor proves any exceptions to the time bar. (**See** Appellant's Brief, at unnumbered pages 1-2). Therefore, Appellant has failed to demonstrate that any exception to the timeliness requirements of the PCRA applies. **See *Wilson, supra*** at 335. Accordingly, the PCRA court did not err or abuse its discretion in dismissing Appellant's petition when it was patently untimely, and we are without jurisdiction to address the merits of his claim.

Order affirmed.