

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CHARLES POPE,	:	
	:	
Appellant	:	No. 1424 EDA 2011

Appeal from the PCRA Order Entered May 24, 2011,
In the Court of Common Pleas of Philadelphia County,
Criminal Division at No. CP-51-CR-1110171-2004.

BEFORE: PANELLA, SHOGAN and COLVILLE*, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED FEBRUARY 28, 2014

Appellant, Charles Pope, appeals the order entered on May 24, 2011, that denied his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On November 10, 2006, Appellant was sentenced to an aggregate term of four to eight years of incarceration followed by five years of probation. This sentence followed Appellant's conviction of multiple crimes in connection with sexually assaulting minors. No direct appeal was filed.

On May 21, 2008, Appellant filed a *pro se* PCRA petition. On May 24, 2008, the PCRA court appointed Attorney David Glanzberg to represent Appellant. After numerous continuances, Attorney Glanzberg filed a

*Judge Colville did not participate in the consideration or decision of this case.

Turner/Finley¹ letter and motion to withdraw on February 23, 2011, claiming that Appellant's PCRA petition was untimely, and an appeal would be frivolous. The PCRA court dismissed Appellant's PCRA petition on May 24, 2011, and on May 25, 2011, Appellant, *pro se*, filed a timely notice of appeal.

In a memorandum filed on August 17, 2012, this Court concluded that Attorney Glanzberg was not granted leave to withdraw. **Commonwealth v. Pope**, 1424 EDA 2011, 60 A.3d 573 (Pa. Super. filed August 17, 2012) (unpublished memorandum). Accordingly, this Court remanded the matter for counsel to file either an advocate's brief or a brief and petition to withdraw that satisfies the requirements of **Turner/Finley**. Subsequently, on November 14, 2012, after finding that Attorney Glanzberg had not been served with the August 17, 2012 memorandum, this Court filed an order directing counsel to immediately enter his appearance and comply with the August 17, 2012 memorandum. On December 19, 2012, after discerning that counsel had not yet entered his appearance, this Court entered a subsequent order directing counsel to comply with the earlier order and memorandum within five days. On January 25, 2013, this Court filed a second memorandum in this matter. **Commonwealth v. Pope**, 1424 EDA

¹ **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988) and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*) (setting forth the requirements for counsel to withdraw in collateral proceedings under the PCRA).

2011, 64 A.3d 287 (Pa. Super. filed January 25, 2013) (unpublished memorandum). In that memorandum, this Court explained that while counsel filed a **Turner/Finley** letter with this Court, counsel did not comply with the requirements set forth in those cases. **Id.** Accordingly, this Court directed counsel to file either an advocate's brief or a brief and petition that comply with the dictates of **Turner/Finley**. **Id.** Attorney Glanzberg failed to comply. On March 25, 2013, this Court directed the PCRA court to remove Attorney Glanzberg from this case, withhold all legal fees, and appoint new counsel to represent Appellant. On March 27, 2013, current counsel, Attorney Raymond Roberts, was appointed.

On October 16, 2013, Attorney Roberts filed a motion for remand for the filing of a Pa.R.A.P. 1925(b) statement and Pa.R.A.P. 1925(a) opinion, and a motion for extension of time to file Appellant's brief. In an order filed on October 23, 2013, this Court directed as follows:

Appellant is granted fourteen days from the entry of this order to file in the PCRA court a Statement of Errors Complained of on Appeal. The PCRA court has fourteen days after the receipt of Appellant's statement to issue an opinion in response to the statement.

Within 30 days of the date the court files its opinion, Appellant's counsel must file in this Court either an advocate's brief or a brief and petition that comply with the dictates of **Turner/Finley**. The Commonwealth may file a responsive brief not more than 30 days after counsel files his brief. The PCRA court shall ensure that the certified record is returned to this Court within 90 days of the date of this order.

Order, 10/23/13.

On November 2, 2013, Appellant filed a Pa.R.A.P. 1925(b) statement, and on November 20, 2013, the PCRA court filed its opinion. Thereafter, Appellant filed a counseled advocate's brief in this Court.

Despite all of the filings in this matter and the tortured procedural history, we must now address the jurisdictional issue related to the timing of Appellant's PCRA petition. It is well settled that the timing requirements of the PCRA are jurisdictional, and the court may not ignore those requirements in order to reach the merits of the underlying PCRA petition. ***Commonwealth v. Hernandez***, 79 A.3d 649, 651 (Pa. Super. 2013).

A PCRA petition must be filed within one year of the date that the judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1). This time requirement is mandatory and jurisdictional in nature and the court may not ignore it in order to reach the merits of the petition. ***Commonwealth v. Murray***, 753 A.2d 201, 203 (Pa. 2000). 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." 42 Pa.C.S.A. § 9545(b)(3).

However, an untimely petition may be received when the petition alleges, and the petitioner proves, that any of the three limited exceptions to the time for filing the petition, set forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii),

and (iii), is met.² A petition invoking one of these exceptions must be filed within sixty days of the date the claim could first have been presented. 42 Pa.C.S.A. § 9545(b)(2). In order to be entitled to the exceptions to the PCRA's one-year filing deadline, "the petitioner must plead and prove specific facts that demonstrate his claim was raised within the sixty-day time frame" under section 9545(b)(2). ***Commonwealth v. Carr***, 768 A.2d 1164, 1167 (Pa. Super. 2001).

Our review of the record reflects that Appellant's judgment of sentence became final on December 11, 2006, thirty days after the trial court imposed the judgment of sentence and Appellant failed to file a direct appeal with this Court. 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P. 903(a). Appellant did not file

² The exceptions to the timeliness requirement are:

(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), (ii), and (iii).

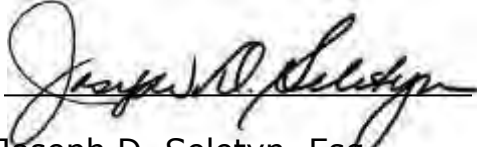
the instant PCRA petition until May 21, 2008. Thus, Appellant's PCRA petition underlying the instant appeal is patently untimely.

We point out that in the numerous orders and memoranda that this Court filed in this matter, we did not alter the timing requirements of the PCRA; we merely insured that Appellant had his right to a counseled appeal from the dismissal of that initial petition. While current counsel dutifully entered his appearance and filed a brief on Appellant's behalf, he never addressed why Appellant's PCRA petition, which was filed on May 21, 2008, was filed more than five months after the time in which to file a timely PCRA petition expired. Because Appellant did not plead and prove any exception to the PCRA time bar, his petition is untimely. Accordingly, the PCRA court was without jurisdiction to address the appeal in the first instance, and we are constrained to affirm. ***See Commonwealth v. Fairiror***, 809 A.2d 396, 398 (Pa. Super. 2002) (holding that PCRA court lacks jurisdiction to hear untimely petition); ***see also Commonwealth v. Johnson***, 803 A.2d 1291, 1294 (Pa. Super. 2002) (holding that Superior Court lacks jurisdiction to reach merits of appeal from untimely PCRA petition).³

³ Were we to conclude that Appellant's PCRA petition was timely filed and reach the merits of the issues raised in Appellant's November 2, 2013 1925(b) statement, we would affirm the dismissal of his petition on the basis of the PCRA court's November 20, 2013 opinion that responds to these issues.

Order affirmed.⁴

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/28/2014

⁴ On January 21, 2014, the Commonwealth filed a motion for an extension of time to file its brief. The Commonwealth's motion is denied as moot.