

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

JOEL DONALD CARL

Appellant

No. 1472 EDA 2012

Appeal from the PCRA Order May 15, 2008
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0004381-2002

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

MEMORANDUM BY LAZARUS, J.

Filed: February 26, 2013

Joel Donald Carl appeals from the order of the Court of Common Pleas of Lehigh County dismissing his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46. After careful review, we affirm.

In 2004, Carl was convicted of first-degree murder¹ and possession of instruments of crime ("PIC")² in connection with the stabbing death of his wife. Carl was sentenced to life imprisonment without possibility of parole.

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 2502(a).

² 18 Pa.C.S.A. § 907(a).

His judgment of sentence was affirmed by this Court on November 16, 2005 and our Supreme Court denied allowance of appeal on June 12, 2006.

Carl filed a counseled timely first PCRA petition on June 7, 2007 in which he alleged numerous claims of ineffectiveness of trial counsel. Following an evidentiary hearing, the PCRA court dismissed Carl's petition by order dated May 15, 2008. Carl appealed to this Court. By memorandum decision issued February 19, 2009, this Court affirmed the PCRA court's order, finding that the issues Carl raised on appeal were all waived by virtue of his failure to ensure that the record certified to this Court contained the transcripts from the PCRA hearing. Carl filed a petition for allowance of appeal to our Supreme Court.

While Carl's petition for allowance of appeal was pending, the trial court issued an order stating that the PCRA hearing transcript had been misplaced and, therefore, not transmitted to this Court. The court further ordered that the transcript be forwarded by the Clerk of Courts to the Superior Court. However, by this time the matter was pending before the Supreme Court, which ultimately denied allowance of appeal by order dated June 10, 2010.

Over a year later, on August 16, 2011, Carl filed a "Petition to Reopen and Reconsider PCRA Petition," in which he asserted that he had forfeited his PCRA appellate rights due to "an extraordinary breakdown of the administrative and judicial process and not due to the fault of the petitioner." Petition to Reopen, 8/16/11, at ¶ 13. The Commonwealth did

not oppose the reinstatement of Carl's PCRA appellate rights and, by order dated April 25, 2012, the PCRA court granted him leave to file a *nunc pro tunc* appeal of the dismissal of his PCRA petition.

Before reaching the merits of Carl's appeal, we must consider whether the PCRA court possessed jurisdiction to grant relief based on Carl's petition to reopen.³ Although not styled as a PCRA petition, Carl's petition is properly treated as such. The PCRA is "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*." 42 Pa.C.S.A. § 9542. Here, Carl's claim, that he was denied PCRA appellate review because of an administrative breakdown in the lower court, is essentially one of governmental interference. Such a claim is cognizable under the PCRA. **See** 42 Pa.C.S.A. § 9545(b)(1)(i) (exception to time bar where petitioner pleads and proves that failure to raise claim previously was result of interference by government officials with presentation of claim). Accordingly, Carl's petition was subject to the jurisdictional constraints of the PCRA.

³ Although the Commonwealth did not oppose the reinstatement of Carl's PCRA appellate rights *nunc pro tunc*, it noted in its brief that, technically, his petition may have been time barred for failure to "diligently present[] the facts underlying his claim." Brief of Appellee, at 8 n. 1. An appellate court may consider the issue of jurisdiction in a PCRA appeal *sua sponte*. ***Commonwealth v. Harris***, 972 A.2d 1196, 1199 (Pa. Super. 2009).

Generally, a petition for PCRA relief, including a second or subsequent petition, must be filed within one year of the date the judgment is final. **See** 42 Pa.C.S.A. § 9545(b)(3); **see also Commonwealth v. Alcorn**, 703 A.2d 1054 (Pa. Super. 1997). There are, however, three exceptions to the time requirement, set forth at 42 Pa.C.S.A. § 9545(b)(1). Where the petitioner alleges and proves that an exception to the time for filing the petition is met, the petition will be considered timely. These exceptions include: (1) interference by government officials in the presentation of the claim; (2) after-discovered facts or evidence; and (3) an after-recognized constitutional right. **See Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000). However, a PCRA petition invoking one of these exceptions must “be filed within 60 days of the date the claims could have been presented.” **Id.**; **see also** 42 Pa.C.S.A. § 9545(b)(2). The timeliness requirements of the PCRA are jurisdictional in nature and, accordingly, a PCRA court cannot hear untimely petitions. **Commonwealth v. Robinson**, 837 A.2d 1157 (Pa. 2003).

Here, Carl’s judgment of sentence became final on September 11, 2006, when his time to file an appeal to the United States Supreme Court expired. **See** U.S. Supreme Court Rule 13; 42 Pa.C.S.A. § 9545(b)(3) (“For purposes of [the PCRA], a judgment 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.”). Thereafter, Carl had one year, or until September 11, 2007, in which to file a PCRA petition. Carl’s petition to reopen was filed on August 16, 2011, nearly 5 years after his judgment of sentence became final. As such, his petition is untimely unless he timely pleads and proves one of the exceptions to the time bar under section 9545(b).

In support of his petition to reopen, Carl cited the decision of our Supreme Court in *Commonwealth v. Almodorar*, 20 A.3d 466 (Pa. 2011). In that case, the defendant appealed his conviction to this Court. However, due to a misfiling by the court reporter, a necessary hearing transcript was not transmitted to this Court’s prothonotary. As a result, this Court affirmed Almodorar’s conviction, finding his appellate issue waived for failure to ensure that the transmitted record was complete. On allowance of appeal to the Supreme Court, this Court’s order was reversed. The Supreme Court found that:

while the duty is on the appellant to initiate the action necessary to provide the appellate court with all the documents necessary to allow a complete and effective appellate review, once the appellant has discharged that duty, court personnel are charged with assembling and transmitting the official record to the appellate court.

Almodorar, 20 A.3d at 467. Because Almodorar had properly requested that the hearing in question be transcribed and filed, but the court reporter had filed it under an incorrect case number, the Court concluded that “an

extraordinary breakdown in the judicial process” had occurred and remanded the case to this Court for a decision on the merits. *Id.*

Similarly, Carl asserted that that he was entitled to a reinstatement of his PCRA appeal rights due to a “breakdown of the administrative and judicial process[.]” Petition to Reopen, 8/16/11, at ¶ 12. While at first blush, the facts of *Almodorar* would seem to support Carl’s position, upon closer examination we conclude that the case garners him no relief. In *Almodorar*, which was decided in the context of a direct appeal, the defendant immediately raised the issue of the missing transcripts in his petition for allowance of appeal to the Supreme Court. Here, Carl waited until over a year after his petition for allowance of appeal was denied to file a petition to reopen his previous PCRA proceeding. Moreover, in his petition to reopen, Carl did not plead any of the exceptions to the PCRA’s time bar. Even had he done so, his petition would have been untimely, as he was required to file it within 60 days of the date the facts upon which his claim was based became known to him. In this case, that would have meant filing, at the latest, within 60 days of the date of the order of this Court denying his petition based upon the waiver resulting from the absence of PCRA transcripts from the record. Carl’s instant petition was filed approximately one and one-half years after this Court affirmed his judgment of sentence. Accordingly, the trial court lacked jurisdiction to entertain the merits of Carl’s petition and erred in reinstating his PCRA appellate rights

nunc pro tunc. We therefore affirm the PCRA court's order dismissing Carl's petition.

Order affirmed.