

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ROBERT E. ROBINSON,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1485 EDA 2012

Appeal from the PCRA Order of May 4, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0718101-1982

BEFORE: GANTMAN, OLSON and PLATT,\* JJ.

MEMORANDUM BY OLSON, J.:

**FILED JUNE 04, 2013**

Appellant, Robert E. Robinson, appeals *pro se* from the trial court's May 4, 2012 order dismissing his petition pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. § 9541-9546 ("PCRA"). We affirm.

The trial court summarized the relevant factual and procedural history of this matter as follows:

On July 1, 1983, [Appellant] pled guilty to second-degree murder and criminal conspiracy before the Honorable Edwin Malmed. On August 22, 1983, Judge Malmed sentenced [Appellant] to life imprisonment on the murder bill and a concurrent period of incarceration of ten (10) to twenty (20) years on the conspiracy bill.

[Appellant] made no attempt to withdraw his guilty plea. Instead, he filed a direct appeal to the Superior Court on September 7, 1983, challenging the validity of his guilty plea by claiming that trial counsel was ineffective. The Superior Court affirmed [Appellant's] judgment of sentence on March 1, 1985. ***Commonwealth v. Robinson***, No. 2384 PHL 1983.

\*Retired Senior Judge assigned to the Superior Court.

Between 1986 and 2007, [Appellant] filed six PCRA petitions. Each of these petitions was dismissed as either lacking merit or being untimely. On or about September 27, 2010, [Appellant], acting *pro se*, filed the instant PCRA petition – his seventh.

On May 14, 2012, after reviewing the record and [Appellant's] *pro se* filings, [the trial court] dismissed the instant PCRA petition as untimely.[.] This timely *pro se* appeal followed.

Trial Court Opinion, 6/8/2012, at 1-2.<sup>1</sup>

Appellant presents three issues for appeal:

Whether the PCRA court erred in its [sic] ruling dismissing Appellant's PCRA petition as untimely filed, notwithstanding [that] the certified record reflect[s] to the contrary [and] that Appellant has "plead [sic] and prove[n]" [that he filed his petition within 60 days of August 18, 2010, the date he received newly-discovered facts included within his high school records?]

Whether the PCRA court erred as a matter of law in failing to conduct an evidentiary hearing on Appellant's after-discovered evidence claim?

Whether the PCRA court erred as a matter of law and/or abused its [sic] discretion in failing to appoint counsel in assisting Appellant with properly litigating his PCRA claims?

Appellant's Brief at 3.

When "reviewing the propriety of an order granting or denying PCRA relief, this Court is limited to determining whether the evidence of record supports the determination of the PCRA court, and whether the ruling is free

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<sup>1</sup> The trial court did not order Appellant to submit a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). On June 8, 2012, the trial court submitted an opinion pursuant to Rule 1925(a). Therefore, the requirements of Rule 1925 have been satisfied in this matter.

of legal error.” **Commonwealth v. Boyd**, 923 A.2d 513, 515 (Pa. Super. 2007), *citing* **Commonwealth v. Liebel**, 825 A.2d 630, 632 (Pa. 2003). “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.” **Id.**, *citing* **Commonwealth v. Wilson**, 824 A.2d 331, 333 (Pa. Super. 2003).

As this Court has previously stated,

Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition. **Commonwealth v. Robinson**, 837 A.2d 1157, 1161 (Pa. 2003). 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. **Commonwealth v. Murray**, 753 A.2d 201, 203 (Pa. 2000) (holding court lacks jurisdiction to hear merits of PCRA claim where petition is filed in untimely manner and no exception to timeliness requirements is properly alleged and proved; timeliness requirements do not depend on nature of violations alleged).

**Commonwealth v. Taylor**, 933 A.2d 1035, 1038 (Pa. Super. 2007) (parallel citations omitted).

A PCRA petition, including a second or subsequent petition, must be filed within one year of the date the underlying judgment of sentence becomes final. **See** 42 Pa.C.S.A. § 9545(b)(1); **see also** **Commonwealth v. Bretz**, 830 A.2d 1273, 1275 (Pa. Super. 2003). A judgment is deemed 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 review.” 42 Pa.C.S.A. § 9545(b)(3);

**see also *Commonwealth v. Pollard***, 911 A.2d 1005, 1007 (Pa. Super. 2006).

If a PCRA petition is untimely, we may only reach the merits where at least one of three limited exceptions to the PCRA's timeliness requirements applies. 42 Pa.C.S.A. § 9545(b)(1). These exceptions apply when a PCRA petitioner pleads and proves that: 1) unlawful interference by government officials caused the failure to raise the claim previously; 2) the facts upon which the PCRA claim is predicated were unknown to the petitioner and could not have been ascertained through reasonable diligence; or, 3) the right asserted in the petition is a newly recognized constitutional right that has been given retroactive application. **See** 42 Pa.C.S.A. § 9545(b)(1)(i-iii). To properly invoke one of these exceptions, the petitioner must file his petition within 60 days of the date that the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2).

Within this matter, Appellant does not dispute that his PCRA petition is patently untimely; indeed, Appellant's judgment of sentence became final decades ago. Appellant, however, claims that newly-discovered evidence, in the form of his high school records, entitles him to the timeliness exception of the PCRA time-bar set forth at 42 Pa.C.S.A. § 9545(b)(1)(ii). Appellant's Brief at 11. According to Appellant, his school records show that his IQ score is 74 and that he was declared borderline mentally incompetent in 1981. **Id.** Appellant also explains that the records establish that he is "extremely deficient" in the areas of "intellectual skill, abstract reasoning,

social comprehension, short term auditory memory, arithmetic reasoning and fund of general information.” **Id.** Based upon these records, Appellant argues that he was not mentally competent enough to enter a valid guilty plea, entitling him to a new trial.

Appellant, however, fails to establish how his high school records were not available decades ago, when Appellant was tried and convicted of his crimes. Additionally, Appellant’s high school records are simply a new source of proving the known fact of Appellant’s intellectual deficiency. Consequently, Appellant’s claim does not fall within the newly-discovered facts exception to the PCRA time-bar. **See Commonwealth v. Lambert**, 884 A.2d 848, 856 (Pa. 2005) (where the facts underlying appellant’s claim were known or knowable to him prior to trial, the claim did not fall within the newly-discovered facts exception to the time-bar).

Appellant’s brief also makes the argument that his PCRA petition falls within the “governmental interference” exception to the PCRA time bar. Appellant’s Brief at 15-24. Appellant, however, failed to raise this issue within the questions presented section of his brief. Consequently, the issue is waived. **See** Pa.R.A.P. 2116(a) (“No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.”)

Moreover, even if Appellant had not waived his argument with respect to the governmental interference exception to the timeliness of his current PCRA, Appellant’s argument lacks merit. Specifically, Appellant bases his

argument in favor of application of the governmental interference exception upon the assertion that, according to Appellant, at his guilty plea hearing, the court informed him that he would have the possibility of parole after 12 to 15 years. Appellant's conviction for second-degree murder, however, carries a life sentence, without the possibility of parole. Appellant claims that the trial court's allegedly incorrect information amounts to governmental interference, entitling him to application of the timeliness exception.

Once again, however, Appellant fails to establish that he raised his timeliness exception claim within 60 days of the date that it could have been presented. Indeed, Appellant's guilty plea hearing was in 1983, yet he did not file the instant PCRA petition until 2010, 27 years later. Furthermore, even if the trial court had misinformed Appellant that he might be eligible for parole after 12 or 15 years, Appellant fails to demonstrate that he exercised due diligence in determining that he was ineligible for parole. We are quite confident in the trial court's determination that Appellant could have discovered that he was ineligible for parole sooner than 27 years after his judgment sentence. Consequently, Appellant's argument in favor of application of the governmental interference exception lacks merit.

In Appellant's second issue, he contends that the PCRA court erred by dismissing his petition without a hearing on his after-discovered evidence claim. Pursuant to the Rules of Criminal Procedure, however, a PCRA court must hold a hearing only when a PCRA petition raises any issues of material

fact. **Commonwealth v. Santiago**, 855 A.2d 682, 691 (Pa. 2004), *citing* Pa.R.Crim.P. 908(A)(2). As explained *supra*, we have concluded that Appellant's petition fails to raise any issue of material fact with regard to its timeliness (or lack thereof). Accordingly, we also conclude that the PCRA court did not err in dismissing Appellant's petition without a hearing.

Finally, Appellant claims that the PCRA court erred in failing to appoint counsel to assist Appellant with this, his seventh, PCRA petition. An appellant, however, is only entitled to appointment of counsel for his or her first PCRA. **See** Pa.R.Crim.P. 904(C). Otherwise, appointment of counsel is necessary only when an Appellant has established that an evidentiary hearing is required, or if such appointment is within the interests of justice. **See** Pa.R.Crim.P. 904(D) & (E). As set forth *supra*, Appellant fails to establish that an evidentiary hearing was necessary in this matter, and nothing within Appellant's arguments convinces us that appointment of counsel was necessary in the interest of justice. Consequently, Appellant's third and final claim lacks merit.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambetti", written over a horizontal line.

Prothonotary

Date: 6/4/2013

