

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CHRISTOPHER WILLIAMS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1488 EDA 2012

Appeal from the PCRA Order April 20, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0513111-1991

BEFORE: BOWES, PANELLA, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.:

FILED DECEMBER 04, 2013

Christopher Williams appeals from the order dismissing as untimely his fourth PCRA petition. We affirm.

The facts of this matter involve the brutal slaying of Michael Haynesworth, a nineteen-year-old, on November 20, 1989.¹ Appellant along with co-defendants Troy Coulston, James White, and Rasheeda Salaam, were involved in the murder. Salaam was a juvenile at the time of the crime and was adjudicated delinquent for third-degree murder prior to Appellant's trial. She testified at Appellant's trial for the Commonwealth. Salaam

* Former Justice specially assigned to the Superior Court.

¹ We note that the certified record in this matter is not complete. We have gleaned the factual and procedural history from this case from the transcripts available, our prior unpublished memorandum decisions, the briefs of the parties, and federal *habeas* decisions relating to this case.

indicated that the group agreed the night before the killing that she would call the victim and invite him to meet her at an apartment so that they could rob him of money and drugs.

When the victim arrived, Coulston placed a shotgun to the victim's head and ordered him to the floor. Salaam claimed that she went upstairs at this point but could hear the remaining conspirators speaking to the victim. The men bound the victim's hands and feet with a telephone cord, blindfolded him, demanded he inform them of where he kept his money and drugs. Coulston also attacked him with a hammer and took the victim's jewelry and a beeper. Salaam testified that she was aware that the men intended to kill the victim and watched them place him in his own vehicle. She was instructed not to touch the car to prevent leaving any fingerprints. According to Salaam, White told her to clean up the blood in the residence, which she did.

The male conspirators placed a sheet over the victim's body and transported him to Fairmount Park in Philadelphia. Coulston then killed the victim with four shotgun blasts. Police discovered the victim with a fatal gunshot wound to his head. Four shotgun shells were located next to the victim, who also had a necktie tied around his head, and a cord binding his feet.

After pleading guilty to murder and robbery in this matter, and to five other murders, White testified on behalf of the Commonwealth. He was

serving six concurrent life sentences at the time of Appellant's trial.² White confirmed Salaam's testimony about the agreement to rob the victim, and related that Coulston struck the victim with the hammer and Appellant hit the victim with a shotgun. According to White, before utilizing the shotgun on the victim, Coulston told Appellant that they should not use Appellant's .9 mm handgun to kill the victim. In addition, White testified that he agreed to cooperate in exchange for the Commonwealth not seeking the death penalty. He also testified that he believed his sentence could be commuted to fifteen years. White admitted that the prosecutor promised to inform the Board of Pardons of his cooperation.

A jury found Appellant guilty of first-degree murder, kidnapping, robbery, criminal conspiracy, and possession of an instrument of crime on January 22, 1992. However, it declined to impose the death penalty. The court sentenced Appellant on September 12, 1994, to life imprisonment as well as consecutive sentences of five to ten years incarceration for robbery, kidnapping, and conspiracy. Prior to sentencing, Appellant filed post-verdict motions and asked for new counsel. On September 21, 1992, new counsel entered his appearance and requested additional time to review the notes of testimony. The court continued the case five times before Appellant

² Appellant also was charged with three other murders involving the killing of other drug dealers, and is currently on death row for those slayings. ***Commonwealth v. Williams***, 720 A.2d 679 (Pa. 1999).

requested new counsel again. The court appointed substitute counsel. Ultimately, the trial court held a hearing on July 11, 1994, as to trial counsel's ineffectiveness. Substitute counsel did not file a direct appeal.

Appellant filed his first *pro se* PCRA petition within the grace *proviso* for convictions occurring prior to the 1995 amendments to the PCRA statute. The court appointed counsel, who filed an amended petition. The court denied the petition without a hearing on April 30, 1998. Appellant filed an appeal to this Court, and we affirmed. ***Commonwealth v. Williams***, 748 A.2d 1256 (Pa.Super. 1999) (unpublished memorandum). The Pennsylvania Supreme Court denied Appellant's discretionary appeal on June 29, 2000. ***Commonwealth v. Williams***, 759 A.2d 923 (Pa. 2000). Shortly thereafter, on August 28, 2000, Appellant filed a counseled serial PCRA petition.³ After counsel filed an amended petition and supplement thereto, the court dismissed Appellant's petition as untimely. This Court again affirmed. ***Commonwealth v. Williams***, 821 A.2d 138 (Pa.Super. 2003) (unpublished memorandum). The Pennsylvania Supreme Court denied allowance of appeal. ***Commonwealth v. Williams***, 830 A.2d 975 (Pa. 2003).

Appellant filed a third PCRA petition on January 27, 2006. The PCRA court denied that petition as untimely on April 26, 2007. A panel of this Court affirmed and the Pennsylvania Supreme Court denied review.

³ Current counsel represented Appellant in his second PCRA proceeding, but they did not enter an appearance in this matter at the PCRA level.

Commonwealth v. Williams, 968 A.2d 798 (Pa.Super. 2009), *appeal denied*, 981 A.2d 219 (Pa. 2009). Appellant filed his underlying *pro se* petition in this matter, his fourth petition, on March 24, 2011. Therein, he asserted that his petition was timely based on both the newly-discovered fact and governmental interference exceptions. He argued that, on February 7, 2011, he discovered a serial PCRA petition filed by his co-conspirator White in April of 2010. Therein, White asserted that the prosecutor in this case assured him that his sentence would be commuted in fifteen years.

The court issued a notice of dismissal on March 20, 2012. Appellant responded, and the court formally denied Appellant's petition as untimely on April 20, 2012. This timely appeal ensued. The court did not direct Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. However, the court did file an opinion explaining its reasoning for its dismissal on November 14, 2012. Present counsel entered their appearance after the filing of the appeal. Appellant presents the following issues for this Court's review.

[1] Did the lower court err in finding that the petition for post conviction relief did not meet the exceptions to the time bar?

[2] Did the lower court err in dismissing Appellant's PCRA petition as untimely?

[3] Did the lower court err in failing to grant relief or an evidentiary hearing on Appellant's claims of constitutional violations?

[4] Is Appellant entitled to a remand, to amend his Petition, and an evidentiary hearing?

Appellant's brief at 2.

Appellant's first two issues are repetitive, and involve the preliminary jurisdictional question of whether his petition was timely filed. "An untimely petition renders this Court without jurisdiction to afford relief." ***Commonwealth v. Taylor***, 65 A.3d 462, 468 (Pa.Super. 2013). Importantly, the filing requirements are strictly construed. ***Id.*** Further, "[t]he question of whether a petition is timely raises a question of law." ***Id.*** Accordingly, "our standard of review is *de novo* and our scope of review plenary." ***Id.***

Since Appellant's conviction occurred before the 1995 amendments to the PCRA statute, Appellant had one year from the effective date of the 1995 amendments to timely file his first PCRA petition. ***See Commonwealth v. Thomas***, 718 A.2d 326 (Pa.Super. 1998) (*en banc*); ***Commonwealth v. Sneed***, 45 A.3d 1096, 1102 n.5 (Pa. 2012).⁴ Appellant timely filed his first petition on January 7, 1997. However, the present petition filed by Appellant is facially untimely. Therefore, in order for

⁴ The effective date of the 1995 amendments was January 16, 1996. The relevant *proviso* stated, "a petitioner whose judgment has become final on or before the effective date of this act shall be deemed to have filed a timely petition under 42 Pa.C.S. Ch. 95 Subch. B if the petitioner's first petition is filed within one year of the effective date of this act." Act of November 17, 1995, P.L. 1118, No. 32 (Spec.Sess. No. 1), § 3(1).

Appellant's serial PCRA petition in this matter to be considered timely, he must allege and prove a timeliness exception. **See** 42 Pa.C.S. § 9545.

Appellant contends that he timely filed his fourth petition within sixty days of his discovery of the White serial PCRA petition. He argues that White was a critical witness at his trial and testified that he agreed to be a Commonwealth witness in exchange for six concurrent life sentences. According to Appellant, White's recent assertion that he was guaranteed a commutation in exchange for his testimony deprived Appellant of his constitutional right to due process. In this regard, Appellant asserts that White provided false and misleading testimony at trial and that the Commonwealth engaged in misconduct by successfully hiding potential **Brady** impeachment evidence.

Appellant also maintains that because he is a death row prisoner, he did not have access to White's petition, a public record. He submits that he received a copy of White's April 2010 PCRA petition on February 7, 2011. Within sixty days of February 7, 2011, Appellant filed the instant petition. In sum, Appellant asserts that the facts in White's serial PCRA petition were unknown to him and could not have been ascertained by due diligence, thereby satisfying the newly-discovered fact exception. Additionally, Appellant concedes that the merits of his **Brady** claim "are determinative of the timeliness of the [p]etition under the governmental interference exception." Appellant's brief at 12. According to Appellant, evidence that

the prosecution guaranteed White commutation in exchange for his testimony is material impeachment evidence.

In support of his newly-discovered fact claim, Appellant relies on ***Commonwealth v. Lambert***, 884 A.2d 848 (Pa. 2005), and challenges the PCRA court's reliance on ***Commonwealth v. Hawkins***, 953 A.2d 1248 (Pa. 2006) (OAJC). In ***Lambert***, the defendant argued, similarly to Appellant, that he timely filed his serial petition based on the governmental interference and newly-discovered fact timeliness exceptions. He premised his position on violations of ***Brady v. Maryland***, 373 U.S. 83 (1963). The exceptions provide that a petition is timely where,

(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;

42 Pa.C.S. § 9545(b)(1)(i),(ii). In addition, the petitioner must file his petition within sixty days of the date that the claim could have been presented. 42 Pa.C.S. § 9545(b)(2). The defendant in ***Lambert*** argued that information discovered in a police homicide file showed that key witnesses lied at trial. The Commonwealth argued that where the ***Brady*** claims were meritless, the defendant's petition could not be considered timely.

The Supreme Court rejected the Commonwealth's timeliness position, reasoning that the newly-discovered fact exception does not require merits review of the claim to determine the timeliness of the petition. Instead, "[t]he exception merely requires that the "facts" upon which such a claim is predicated must not have been known to appellant, nor could they have been ascertained by due diligence." **Lambert, supra** at 852. The **Lambert** Court continued that, "so long as the facts set forth in the police file were not otherwise known to appellant, the **Brady** claims he asserts are 'timely' under the newly discovered evidence exception." **Id.** The Court then concluded that six of the seven **Brady** claims the defendant leveled were timely, but that, because the claims lacked merit, the defendant was not entitled to relief.

In **Hawkins, supra**, Justice Eakin, with two justices joining, found that the defendant's positions that he satisfied the newly-discovered fact and governmental interference timeliness exceptions were without merit.⁵ The defendant, similar to Appellant, averred that the Commonwealth committed a **Brady** violation. Specifically, the defendant alleged that the Commonwealth failed to disclose that the prosecutor agreed to testify on behalf of a witness at that witness's sentencing hearing. The defendant

⁵ Justice Todd disagreed with the lead opinion's determination of what the factual predicate triggering the timeliness exceptions was, but agreed that the defendant did not show due diligence in forwarding his claim.

maintained that he only learned of the agreement after the prosecutor testified at a deposition in relation to the defendant's federal *habeas* litigation. The plurality reasoned that because the prosecutor testified at the witness's public sentencing, which was a public record, and the deposition showed the same information available from that record, the facts were not newly-discovered, and could have been learned "a decade earlier with the exercise of due diligence." ***Hawkins, supra*** at 1255.

With respect to ***Hawkins***, Appellant argues that it is factually distinguishable since the claim had been "brought out in open court years earlier." Appellant's brief at 14. In contrast, Appellant posits that the facts at issue "were not revealed until White ex[p]lained his deal and admitted his perjury in his PCRA petition." ***Id.*** Appellant maintains that upholding the PCRA court's decision would require death row prisoners to "regularly call or write to the clerks of various courts to moni[t]er any legal filings made by the witnesses who testified against them at trial." ***Id.***

The Commonwealth counters that White's serial PCRA petition cannot satisfy a timeliness exception because White's 2010 petition was a matter of public record for almost a year before Appellant filed the instant petition. It maintains that Appellant's claim could have been filed within sixty days of the filing of White's serial petition. In this respect, it posits that Appellant's argument that February 7, 2011 was the date the evidence became available, "begs the question of what it means for evidence to be 'available'

to a petitioner.” Commonwealth’s brief at 15. Relying on **Commonwealth v. Chester**, 895 A.2d 520 (Pa. 2006) and **Hawkins, supra**, the Commonwealth contends that White’s serial petition was available as a matter of law when it became a public record.

We agree that **Chester** controls. **See also Commonwealth v. Taylor**, 67 A.3d 1245 (Pa. 2013). In addition, we also hold that, even if Appellant could not have discovered White’s serial petition until the date he alleged, Appellant cannot establish due diligence in discovering the underlying facts contained therein. In **Chester**, the defendant alleged that his petition was timely based on his discovery that his trial attorney was arrested for driving under the influence days after entering an appearance in the case. The **Chester** Court held that the information could not be classified as unknown because it was a matter of public record.

The High Court slightly scaled back on the **Chester** holding in **Commonwealth v. Bennett**, 930 A.2d 1264 (Pa. 2007), where the public record was an unpublished Superior Court order supplied to counsel, who had abandoned his client. The **Bennett** Court reasoned that the order in question was not accessible to the defendant, except through his attorney. This case does not involve facts that were inaccessible to Appellant due to abandonment of counsel. Thus, both Appellant’s governmental interference and newly-discovered fact arguments fail as he did not raise the claim within sixty days of when the claim could have been presented.

Furthermore, assuming *arguendo* that Appellant diligently discovered the public document on February 7, 2011, we find that he cannot establish due diligence in discovering the underlying facts alleged therein. White specifically testified at trial that he believed his sentence might be commuted, and this issue was thoroughly discussed at trial. Any argument that Appellant exercised diligence in this matter is rendered more spurious by the fact that White's first PCRA petition, filed in April 2006, alleged that his guilty plea was unlawfully induced by a promise of commutation. Appellant offers no explanation as to why, between his 1992 conviction and the 2010 serial PCRA filing by White, he did not explore the possibility that White was allegedly promised commutation. **See *Commonwealth v. Breakiron***, 781 A.2d 94, 98 (Pa. 2001); ***Commonwealth v. Yarris***, 731 A.2d 581, 590 (Pa. 1999).

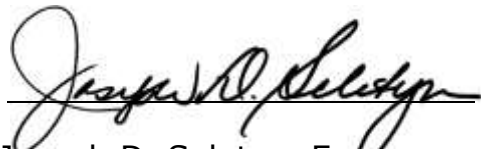
Appellant's explanation is that it was too difficult a task for him to uncover White's petition or the facts contained therein because he was unrepresented in this case. This position misrepresents Appellant's status. Although current counsel did not enter their appearance on behalf of Appellant to litigate Appellant's fourth petition, counsel represented Appellant in two prior PCRA cases, during federal *habeas* review, and represented him in separate capital PCRA proceedings. **See** Appellant's *pro se* PCRA petition, 3/24/11, at 5.

To suggest that Appellant has been unrepresented in the collateral proceedings in this case is disingenuous. Appellant's PCRA attorneys could have sought out White during the multiple prior collateral proceedings, especially in light of their claim that he was the essential witness. Certainly, Appellant's attorneys had the ability and means to conduct any necessary extra-record investigations into White and his testimony when they became involved in the case over a decade ago. Therefore, Appellant himself was not required to comb through or write to the clerks of various courts to discover the underlying factual predicate of his claim.

Having concluded that Appellant's fourth petition is untimely, we find that the PCRA court did not err in declining to conduct an evidentiary hearing. Nor is there any basis to order a remand to allow Appellant to amend his petition.

Order affirmed.

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: 12/4/2013