NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JULIUS WALTER DODSON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1530 EDA 2012

Appeal from the Order Entered May 8, 2012
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-CR-0002640-1993

BEFORE: GANTMAN, OLSON and PLATT,* JJ.

MEMORANDUM BY OLSON, J.: **FILED MAY 14, 2013**

Appellant, Julius Walter Dodson, appeals *pro se* from the order entered on May 8, 2012, dismissing his fourth petition filed under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On March 23, 1993, Appellant shot and wounded a state parole supervisor. Appellant was arrested for this crime and, in 1994, a jury found Appellant guilty of attempted murder, possessing instruments of crime, and firearms not to be carried without a license, as well as two counts each of aggravated assault and recklessly endangering another person.[1] On September 12, 1994, the trial court sentenced Appellant to an aggregate term of 23 ½ to 47 years in prison for these convictions. We affirmed

---

[1] 18 Pa.C.S.A. §§ 901(a), 907(a), 6106(a), 2702(a)(1) and (a)(2), and 2705, respectively.

*Retired Senior Judge assigned to the Superior Court.

Appellant's judgment of sentence on October 31, 1995 and our Supreme Court denied Appellant's petition for allowance of appeal on November 15, 1996. ***Commonwealth v. Dodson***, 673 A.2d 400 (Pa. Super. 1995) (unpublished memorandum), *appeal denied*, 694 A.2d 620 (Pa. 1996).

On July 27, 2000, Appellant filed a PCRA petition and the PCRA court appointed counsel to represent Appellant. After reviewing the case, however, appointed counsel filed a "no merit" letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*), and declared that, in his professional judgment, Appellant's attempt at post-conviction collateral relief was meritless. By order entered April 2, 2001, the PCRA court dismissed Appellant's PCRA petition without a hearing. Further, although Appellant filed a notice of appeal from the PCRA court's order, we dismissed Appellant's appeal on December 6, 2001, because Appellant failed to file a brief. ***Commonwealth v. Dodson***, 1473 EDA 2001 (Pa. Super. 2001) (*per curiam* order).

Appellant filed a second PCRA petition on May 28, 2002. The PCRA court dismissed this PCRA petition on July 2, 2002 and, on January 17, 2003, we again dismissed Appellant's appeal because Appellant failed to file a brief in this Court. ***Commonwealth v. Dodson***, 2617 EDA 2002 (Pa. Super. 2003) (*per curiam* order).

In October 2003, Appellant filed a third PCRA petition. The PCRA court dismissed this petition on November 25, 2003 and, on August 5, 2004, we

affirmed the PCRA court's order *via* unpublished memorandum. ***Commonwealth v. Dodson***, 860 A.2d 1126 (Pa. Super. 2004) (unpublished memorandum).

On March 21, 2011, Appellant filed a *pro se* Petition for Writ of Habeas Corpus *Ad Subjiciendum*. Within this petition, Appellant claimed that he was unlawfully convicted of aggravated assault under 18 Pa.C.S.A. § 2702(a)(2), because the crime "had been deleted or repealed by the [Pennsylvania] Legislature [eight] years prior to [Appellant's] conviction." Petition for Writ of Habeas Corpus *Ad Subjiciendum*, 3/21/11, at 2. On May 4, 2011, the PCRA court entered an order notifying Appellant that the Petition for Writ of Habeas Corpus *Ad Subjiciendum* would be construed under the PCRA and that, in accordance with Pennsylvania Rule of Criminal Procedure 907, the PCRA court intended to dismiss Appellant's untimely, fourth PCRA petition, without a hearing, in 20 days. PCRA Court Order, 5/4/11, at 1; Pa.R.Crim.P. 907(1) (disposition of PCRA petition without a hearing).

The May 4, 2011 order did not actually dismiss Appellant's petition. Nevertheless, on September 30, 2011 – and believing that the May 4, 2011 order had finally dismissed his Petition for Writ of Habeas Corpus *Ad Subjiciendum* – Appellant filed a self-styled, *pro se* Petition for Appeal Rights Reinstated *Nunc Pro Tunc*.[2] Within this petition, Appellant claimed that he

---

[2] Although the docket states that the May 4, 2011 order "denied" Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum*, the PCRA court's actual
(Footnote Continued Next Page)

did not receive notice that, on May 4, 2011, the PCRA court had dismissed his PCRA petition. Therefore, Appellant requested that the PCRA court grant him leave to file a *nunc pro tunc* appeal from the "dismissal" of his Petition for Writ of Habeas Corpus *Ad Subjiciendum*. Petition for Appeal Rights Reinstated *Nunc Pro Tunc*, 9/30/11, at 1. Further, and even though the PCRA court had not actually dismissed Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum*, Appellant re-filed the petition on November 30, 2011. Again, Appellant's petition was titled Petition for Writ of Habeas Corpus *Ad Subjiciendum* and, again, the petition claimed that Appellant's aggravated assault conviction was unlawful, as 18 Pa.C.S.A. § 2702(a)(2) "had been deleted or repealed by the [Pennsylvania] Legislature [eight] years prior to [Appellant's] conviction."[3] Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum*, 11/30/11, at 2.

(Footnote Continued) ———————————

order declared only that the PCRA court "intend[ed] to dismiss the 'Petition for Writ of Habeas Corpus [*Ad Subjiciendum*]' without a hearing . . . [in 20] days." PCRA Court Order, 5/4/11, at 1. The May 4, 2011 order, thus, did not finally dismiss Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum*.

[3] Since Appellant's original Petition for Writ of Habeas Corpus *Ad Subjiciendum* was pending when Appellant re-filed the petition, the re-filed petition must be considered an "amendment" to the original petition. ***See*** Pa.R.Crim.P. 905(A) (amendment of PCRA petition). Obviously, since the re-filed petition was identical to the original, the re-filed petition did not substantively amend anything. Nevertheless, as the re-filed petition amended the original, we consider the filings to constitute a single PCRA petition – not two.

On December 2, 2011, the PCRA court appointed counsel to represent Appellant. Following his appointment, appointed counsel filed an amended Petition for Reinstatement of Appeal Rights *Nunc Pro Tunc* on behalf of Appellant. Within this petition, counsel repeated Appellant's claim that – in May 2011 – the PCRA court had finally dismissed Appellant's original Petition for Writ of Habeas Corpus *Ad Subjiciendum*, but had failed to notify Appellant of the dismissal. Counsel thus requested that the PCRA court reinstate Appellant's appeal rights as to this order. Petition for Reinstatement of Appeal Rights *Nunc Pro Tunc*, 3/2/12, at 1. Moreover, on March 2, 2012, appointed counsel also filed a Petition for Leave to Withdraw Appearance in the PCRA court. Appointed counsel claimed that, since all of Appellant's issues were meritless, counsel should be permitted to withdraw his appearance in the case. Petition for Leave to Withdraw Appearance, 3/2/12, at 1.

By order entered March 13, 2012, the PCRA court granted counsel's petition for leave to withdraw and notified Appellant that it intended to dismiss Appellant's "Petition to Amend Petition for Appeal Rights Reinstated *Nunc Pro Tunc*" in 20 days. PCRA Court Order, 3/13/12, at 1-2. Further, on May 4, 2012, the PCRA court provided Appellant with notice that, in 20 days, the court intended to dismiss Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum*. PCRA Court Order, 5/4/12, at 1-2.

Four days later – on May 8, 2012 – the PCRA court entered an order declaring that Appellant's Petition for Writ of Habeas Corpus *Ad*

Subjiciendum was "dismissed as moot." PCRA Court Order, 5/8/12, at 1. As the Commonwealth explains, this final dismissal order was (apparently) entered because of some confusion in the PCRA court. According to the Commonwealth:

> on May 4, 2012 [the Honorable Arthur R. Tilson] issued a notice of intent to dismiss [Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum*]. Before the expiration of the notice period, however, [Appellant's] case ended up on a miscellaneous criminal list in front of the Honorable S. Gerald Corso. On May 8, 2012, Judge Corso dismissed the habeas petition as moot.

Commonwealth's Brief at 3.

Appellant filed a timely notice of appeal from the May 8, 2012 order. Notice of Appeal, 6/4/12, at 1. The appeal from the order of May 8, 2012, docketed at 1530 EDA 2012, is the appeal that is currently before this Court.[4]

On August 21, 2012, Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum* again came before Judge Tilson of the PCRA court. Unaware that Judge Corso had previously dismissed this petition (or that Appellant had filed a notice of appeal from Judge Corso's order) Judge Tilson entered an order "dismissing" Appellant's Petition for Writ of Habeas Corpus *Ad*

---

[4] We note that, on April 17, 2012, the PCRA court finally dismissed Appellant's Petition to Amend Petition for Appeal Rights Reinstated *Nunc Pro Tunc*. PCRA Court Order, 4/17/12, at 1-2. Appellant has not filed an appeal from the April 17, 2012 order.

Subjiciendum. PCRA Court Order, 8/21/12, at 1-2. On September 17, 2012, Appellant filed a notice of appeal from Judge Tilson's August 21, 2012 order and our prothonotary docketed this appeal at 2599 EDA 2012.[5]

Now on appeal, Appellant primarily claims that the PCRA court erred in considering his Petition for Writ of Habeas Corpus *Ad Subjiciendum* to be a fourth PCRA petition. According to Appellant, the PCRA does not encompass his claim and, therefore, the timeliness requirements of the PCRA do not apply to his petition. Appellant's contention fails and the PCRA court properly dismissed Appellant's patently untimely, serial PCRA petition.[6, 7]

---

[5] Since Judge Corso had already dismissed Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum* on May 8, 2012, Judge Tilson's August 21, 2012 order had no legal effect. Indeed, since Appellant did not have a petition pending before Judge Tilson on August 21, 2012, there was no petition that Judge Tilson could have "dismissed." Regardless, since Appellant has filed two notices of appeal from the dismissal of his single Petition for Writ of Habeas Corpus *Ad Subjiciendum*, we dismissed Appellant's appeal at 2599 EDA 2012 (from Judge Tilson's August 21, 2012 order) pursuant to a Judgment Order as it is duplicative of Appellant's appeal at 1530 EDA 2012 (from Judge Corso's May 8, 2012 order). ***See Commonwealth v. Dodson***, ___ A.3d ___, 2599 EDA 2012 (Pa. Super. 2013) (unpublished judgment order).

[6] Given our disposition, we will not recite the remainder of Appellant's claims.

[7] On appeal, Appellant does not claim that the PCRA court erred when it dismissed his petition a mere four days after issuing the Rule 907 notice. As such, Appellant has waived any potential claim of error on this issue. ***See Wiegand v. Wiegand***, 337 A.2d 256, 257 (Pa. 1975) (holding that the Superior Court may not *sua sponte* decide an issue that was not raised by the appellant, as doing so would "exceed[the Superior Court's] proper appellate function of deciding controversies presented to it"). Further, we
(Footnote Continued Next Page)

As our Supreme Court has held, we "review an order granting or denying PCRA relief to determine whether the PCRA court's decision is supported by evidence of record and whether its decision is free from legal error." ***Commonwealth v. Liebel***, 825 A.2d 630, 632 (Pa. 2003). Questions of statutory interpretation are issues of law, to which this Court's standard of review is *de novo*. ***Commonwealth v. Chester***, 895 A.2d 520, 522 n.1 (Pa. 2006). Further, "[w]e may affirm a PCRA court's decision on any grounds if [the decision] is supported by the record." ***Commonwealth v. Rivera***, 10 A.3d 1276, 1279 (Pa. Super. 2010).

The PCRA "provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief." 42 Pa.C.S.A. § 9542. As the statute declares, the PCRA "is the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies . . . including *habeas corpus* and *coram nobis*." ***Id.***; ***see also Commonwealth v. Ahlborn***, 699 A.2d 718, 721 (Pa. 1997). Thus, under the plain terms of the PCRA, "if the underlying substantive claim is one that could potentially be remedied under the PCRA, that claim is **exclusive to** the PCRA." ***Commonwealth v. Pagan***, 864 A.2d 1231, 1233 (Pa. Super. 2004) (emphasis in original).

(Footnote Continued) ———————————

note that "our Supreme Court has held that where a PCRA petition is untimely, the failure to provide [a Rule 907] notice is not reversible error." ***Commonwealth v. Davis***, 916 A.2d 1206, 1208 (Pa. Super. 2007), *citing* ***Commonwealth v. Pursell***, 749 A.2d 911 (Pa. 2000).

Within Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum*, Appellant claims that he was convicted of a "nonexistent" aggravated assault offense. Initially, Appellant concedes that he was charged with and convicted of aggravated assault under 18 Pa.C.S.A. § 2702(a)(2). Yet, Appellant claims that – during his 1994 jury trial – the trial court instructed the jury on a prior version of Section 2702(a)(2). Specifically, Appellant claims, the trial court instructed the jury that – to find Appellant guilty of aggravated assault under Section 2702(a)(2) – the jury was required to find that Appellant "attempte[d] to or intentionally, knowingly, or recklessly cause[d] serious bodily injury to a [parole officer while the parole officer was] **making or attempting to make a lawful arrest**." ***See*** Appellant's Brief at 24 (emphasis added).[8] According to Appellant, however, at the time he shot the parole officer, the above aggravated assault statute had been amended to read: "[a] person is guilty of aggravated assault if he attempts to cause or intentionally, knowingly, or recklessly causes serious bodily injury to a [parole officer] . . . **in the performance of duty**." ***See*** Appellant's Brief at 24-25.

---

[8] The notes of testimony from Appellant's 1994 trial have not been included in the certified record and it appears as if the original file has been destroyed. Moreover, since we conclude that Appellant's Petition for Writ of Habeas Corpus *Ad Subjiciendum* constitutes an untimely, fourth PCRA petition – and that we do not have subject matter jurisdiction over this petition – we need not remand this matter for a hearing to determine why the notes of testimony were not included in the certified record.

Appellant claims that, when the jury found him guilty of aggravated assault – as incorrectly defined by the trial court – the jury found him guilty of a "nonexistent" crime. Further, Appellant claims that the PCRA does not provide relief for his specific claim and, as a result, Appellant is entitled to relief outside of the PCRA's strictures. This claim fails.

First, the PCRA undoubtedly encompasses Appellant's claim, as the claim concerns a "matter[] affecting [Appellant's] conviction [or] sentence." ***Commonwealth v. Judge***, 916 A.2d 511, 520 (Pa. 2007), *quoting* ***Coady v. Vaughn***, 770 A.2d 287, 293 (Pa. 2001) (Castille, J., concurring). Certainly, Appellant's claim potentially falls under three of the seven enumerated avenues for PCRA relief, as Appellant's claim alleges that his "conviction or sentence resulted from": 1) "[a] violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place" (as Appellant claims that his conviction for an uncharged crime violated his due process rights); 2) "[i]neffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place" (as Appellant's claim arises from counsel's failure to object to the faulty jury instruction); and, 3) "[a] proceeding in a tribunal without jurisdiction" (as a conviction for an uncharged crime potentially

implicates the subject matter jurisdiction of the criminal courts, ***see Commonwealth v. Little***, 314 A.2d 270, 272-273 (Pa. 1974)).[9] 42 Pa.C.S.A § 9543(a)(2)(i), (ii), and (viii). Appellant's claim thus falls under the rubric of the PCRA and, since the PCRA encompasses Appellant's claim, Appellant "can only find relief under the PCRA's strictures." ***Pagan***, 864 A.2d at 1233; ***see also Commonwealth v. Jackson***, 30 A.3d 516, 521 (Pa. Super. 2011) ("[petitioner's legality of sentence] claim is cognizable under the PCRA . . . . [Thus, petitioner's] 'motion to correct illegal sentence' is a PCRA petition and cannot be considered under any other common law remedy").

The PCRA contains a jurisdictional time-bar, which is subject to limited statutory exceptions. This time-bar demands that "any PCRA petition, including a second or subsequent petition, [] be filed within one year of the date that the petitioner's judgment of sentence becomes final, unless [the] petitioner pleads [and] proves that one of the [three] exceptions to the

---

[9] We note that the trial court's alleged error benefitted Appellant, as it **narrowed** the basis for Appellant's conviction and **lessened** the possibility that Appellant would be convicted of aggravated assault under 18 Pa.C.S.A. § 2702(a)(2). Indeed, by finding Appellant guilty of causing serious bodily injury to a parole officer while the parole officer was "making or attempting to make a lawful arrest," the jury **necessarily** found Appellant guilty of causing serious bodily injury to the parole officer while the parole officer was "in the performance of duty." Stated another way, since a parole officer who is "making or attempting to make a lawful arrest" is **necessarily** "in the performance of duty," Appellant was **necessarily** convicted of the proper version of aggravated assault.

timeliness requirement . . . is applicable." ***Commonwealth v. McKeever***, 947 A.2d 782, 785 (Pa. Super. 2008); 42 Pa.C.S.A. § 9545(b). Further, since the time-bar implicates the subject matter jurisdiction of our courts, we are required to first determine the timeliness of a petition before we are able to consider any of the underlying claims. ***Commonwealth v. Yarris***, 731 A.2d 581, 586 (Pa. 1999). Our Supreme Court has explained:

> the PCRA timeliness requirements are jurisdictional in nature and, accordingly, a PCRA court is precluded from considering untimely PCRA petitions. ***See***, ***e.g.***, ***Commonwealth v. Murray***, 753 A.2d 201, 203 (Pa. 2000) (stating that "given the fact that the PCRA's timeliness requirements are mandatory and jurisdictional in nature, no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner"); ***Commonwealth v. Fahy***, 737 A.2d 214, 220 (Pa. 1999) (holding that where a petitioner fails to satisfy the PCRA time requirements, this Court has no jurisdiction to entertain the petition). [The Pennsylvania Supreme Court has] also held that even where the PCRA court does not address the applicability of the PCRA timing mandate, th[e court would] consider the issue *sua sponte*, as it is a threshold question implicating our subject matter jurisdiction and ability to grant the requested relief.

Commonwealth v. Whitney, 817 A.2d 473, 475-476 (Pa. 2003).

In the case at bar, Appellant's judgment of sentence became final on February 14, 1997 – which was 91 days after the Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal and Appellant's time for filing a petition for a writ of *certiorari* with the United States Supreme Court expired. ***See*** U.S. Sup. Ct. R. 13 (allowing 90 days to file a petition for writ of *certiorari* with the United States Supreme Court); 42

Pa.C.S.A. § 9545(b)(3). Appellant then had until February 14, 1998 to file a timely PCRA petition. 42 Pa.C.S.A. § 9545(b). As Appellant did not file his current petition until March 21, 2011, the current petition is manifestly untimely and the burden thus fell upon Appellant to plead and prove that one of the enumerated exceptions to the one-year time-bar applied to his case. ***See*** 42 Pa.C.S.A. § 9545(b)(1); ***Commonwealth v. Perrin***, 947 A.2d 1284, 1286 (Pa. Super. 2008) (to properly invoke a statutory exception to the one-year time-bar, the PCRA demands that the petitioner properly plead and prove all required elements of the relied-upon exception).

Here, Appellant has not attempted to plead a valid statutory exception to the PCRA's one-year time-bar. Thus, since Appellant's PCRA petition is manifestly untimely and Appellant did not plead any of the statutory exceptions to the one-year time-bar, our "courts are without jurisdiction to offer [Appellant] any form of relief." ***Commonwealth v. Jackson***, 30 A.3d 516, 523 (Pa. Super. 2011). We, therefore, affirm the PCRA court's May 8, 2012 order dismissing Appellant's fourth PCRA petition without a hearing.[10]

Order affirmed.

---

[10] Within the PCRA court's May 8, 2012 order, the court noted that it dismissed Appellant's petition because the petition was "moot." ***See*** PCRA Court Order, 5/4/12, at 1. Although we do not agree with the underlying reasoning of the PCRA court, we conclude that dismissal was proper because Appellant's petition was time-barred under the PCRA. Therefore, we affirm the PCRA court's May 8, 2012 order. ***See Commonwealth v. Williams***, 977 A.2d 1174, 1177 (Pa. Super. 2009) ("[i]t is well-settled . . . that we may affirm the PCRA court's decision on any basis").

Judgment Entered.

Prothonotary

Date: 5/14/2013