

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ALLIE SPEIGHTS,	:	
	:	
Appellant	:	No. 1560 EDA 2012

Appeal from the PCRA Order Entered April 30, 2012,
In the Court of Common Pleas of Delaware County,
Criminal Division, at No. CP-23-CR-0000767-1998.

BEFORE: FORD ELLIOTT, P.J.E., BENDER and SHOGAN, JJ.

MEMORANDUM BY SHOGAN, J.: Filed: February 21, 2013

Appellant, Allie Speights,¹ appeals *pro se* from the order dismissing as untimely his third petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Appellant was convicted of first-degree murder, and on February 17, 1999, he was sentenced to a term of life imprisonment. In his direct appeal, this Court affirmed Appellant's judgment of sentence, and the Supreme Court denied Appellant's petition for allowance of appeal. ***Commonwealth v. Speight***, 760 A.2d 434 (Pa. Super. 2000) (unpublished memorandum), *appeal denied*, 564 Pa. 695, 764 A.2d 50 (2000). On October 30, 2001,

¹ We note that, throughout the certified record and in prior appellate dispositions, Appellant is referred to as both "Allie Speight" and "Allie Speights." Here, we have used "Speights" as that is the predominant spelling and the spelling utilized by Appellant in his *pro se* brief.

Appellant filed a timely counseled PCRA petition, and on January 29, 2002, the PCRA court dismissed Appellant's petition without a hearing. Appellant filed an appeal to this Court, and this Court affirmed the order on June 3, 2003. ***Commonwealth v. Speight***, 830 A.2d 1053 (Pa. Super. 2003) (unpublished memorandum), *appeal denied*, 577 Pa. 696, 845 A.2d 818 (2004).

On July 14, 2010, Appellant filed his second PCRA petition alleging that his sentence was illegal pursuant to the United States Supreme Court's decision in ***Graham v. Florida***, 130 S.Ct. 2011 (2010), concerning sentences given to juveniles convicted of murder. The PCRA court dismissed the petition on November 22, 2010. Appellant appealed the dismissal to this Court, and on September 12, 2011, this Court affirmed the PCRA court's order. ***See Commonwealth v. Speights***, 34 A.3d 220 (Pa. Super. 2011) (unpublished memorandum) (stating that Appellant's petition was untimely and adding that ***Graham*** would afford Appellant no relief because he was not a juvenile at the time of the murder).

Thereafter, Appellant filed the instant PCRA petition, his third, on January 3, 2012. The PCRA court filed its notice of intent to dismiss on February 27, 2012, and dismissed the petition in an order dated April 30, 2012. Appellant then filed this appeal raising the following issues:

I. WHETHER THE DISCOVERY OF THE NEWLY DISCOVERED EVIDENCE OF PROSECUTORIAL MISCONDUCT SUBSTANTIATES

THE OCCURRENCE OF A MISCARRIAGE OF JUSTICE “WHICH NO CIVILIZED SOCIETY CAN TOLERATE” EXCUSING THE ISSUE OF TIMELINESS AND PROVIDING AN EXCEPTION THERETO?

II. WHETHER ALL PRIOR AND OR PREVIOUS LEGAL REPRESENTATIVES WHO SERVED AS COUNSEL FOR THE PETITIONER WERE INEFFECTIVE ASSISTANCE OF COUNSEL?

Appellant’s Brief at V (verbatim).

Crucial to the determination of a PCRA appeal is the timeliness of the underlying petition. Thus, we must first determine whether the instant PCRA petition was timely filed.

Our Supreme Court has stressed that “[t]he PCRA’s timeliness requirements are jurisdictional in nature and must be strictly construed; courts may not address the merits of the issues raised in a petition if it is not timely filed.” ***Commonwealth v. Abu–Jamal***, 596 Pa. 219, 227, 941 A.2d 1263, 1267–68 (2008) (citation omitted). ***See Commonwealth v. Monaco***, 996 A.2d 1076, 1079 (Pa.Super. 2010) (holding no court has jurisdiction to hear an untimely PCRA petition). It is well settled that “[a]ny and all PCRA petitions must be filed within one year of the date on which the petitioner’s judgment became final, unless one of three statutory exceptions applies.” ***Commonwealth v. Perrin***, 947 A.2d 1284, 1285 (Pa.Super.2008) (citations, quotations, and quotation marks omitted). “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.” 42 Pa.C.S.A. § 9545(b)(3).

Commonwealth v. Garcia, 23 A.3d 1059, 1061-1062 (Pa. Super. 2011) (internal footnote omitted). The exceptions to the PCRA’s timing requirements are set forth in 42 Pa.C.S.A. § 9545, as follows:

(b) Time for filing petition.--

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 Pa.C.S.A. § 9545(b)(1) and (2).

Appellant recognizes the underlying PCRA petition is facially untimely. Appellant's Brief at V. However, he argues that the untimely filing of this petition should be excused based on the governmental interference and after-discovered evidence exceptions pursuant to 42 Pa.C.S.A. § 9545(b)(1)(i) and (ii). *Id.* at 3. Appellant argues that the governmental interference consisted of the District Attorney's Office concealing a secret

immunity agreement with prosecution witness Damon Jordan. *Id.* at 5. Appellant alleges that he learned of this secret deal during the week ending on October 29, 2011, in an affidavit that Mr. Jordan executed thirteen years earlier. *Id.* at 2. Appellant claims that this document was found by his brother at his father's house. PCRA Petition (dated 12/29/11 and filed 1/3/12). Appellant then claims his PCRA petition was filed within 60 days of obtaining the affidavit, and thus, he argues the petition satisfies the 60-day threshold for newly-discovered evidence pursuant to 42 Pa.C.S.A. § 9545(b)(2). *Id.* at 5. We disagree.

While the PCRA petition was not filed until January 3, 2012, the petition is dated December 29, 2011. Under the prisoner mailbox rule, a document filed by a *pro se* inmate is considered filed upon deposit in the prison mail. *Commonwealth v. Brandon*, 51 A.3d 231, 234 (Pa. Super. 2012). While it is unclear whether Appellant's PCRA petition was actually deposited in the prison mail on December 29, 2011, or whether it was merely dated that day, giving Appellant every possible benefit of the doubt and deeming the petition filed on December 29, 2011, the petition was filed 61 days from October 29, 2011 and, therefore, untimely pursuant to 42 Pa.C.S.A. § 9545(b)(2).

Moreover, even if the petition had been filed within 60 days, Appellant failed to prove the application of any exception under 42 Pa.C.S.A.

§ 9545(b)(1). Therefore, Appellant's third PCRA petition is untimely. As the PCRA court explained:

In his *pro se* PCRA petition, filed with this Court on January 3, 2012, [Appellant] alleges that he is entitled to relief under the PCRA because of newly-discovered evidence, to wit, an affidavit allegedly signed by a key prosecution witness, Damon Jordan, on February 15, 1999. He alleges that his father, Allie Speights, "held onto the affidavit to use later," if [Appellant's] appeals were not successful. See Affidavit of Allie Speights. [Appellant's] brother, Antwaan Speights, came across this affidavit while cleaning the house and mailed it to the [Appellant]. See Affidavit of Antwaan Speights. Although Antwaan Speights does not identify the date that he mailed the alleged affidavit of Damon Jordan, [Appellant] alleges that his brother "mailed the Affidavit (Document) to me the week ending October 29, 2011." PCRA Petition, ¶ 5.

In addition, [Appellant] makes a boilerplate allegation that all prior counsel were ineffective for failing to argue that the Commonwealth did not prove every allegation of first-degree murder. *Id.*

Discussion

[Appellant's] claim for relief is premised upon recently-discovered evidence, 42 Pa.C.S. § 9543(a)(2)(vi). To be entitled to relief, a defendant must establish by a preponderance of the evidence that (1) the evidence was discovered after trial and could not have been obtained earlier through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict. *Commonwealth v. D'Amato*, 856 A.2d 806, 823 (Pa. 2004); *Commonwealth v. Abu-Jamal*, 720 A.2d 79, 94 (Pa. 1998). See also *Commonwealth v. Galloway*, 640 A.2d 454 (Pa.Super. 1994); *Commonwealth v. Cobbs*, 759 A.2d 932 (Pa.Super. 2000). A petition based upon a claim of newly-discovered evidence must be filed within 60 days of the date the claim could have been presented. 42 Pa.C.S. § 954[3](b)(2).

The first difficulty with the alleged affidavit is that it neither supports the proposition that the witness was granted

immunity, as [Appellant] suggests, nor that he testified untruthfully, as his father's affidavit alleges. Rather, it states merely that the Assistant District Attorney declined to charge the witness with conspiracy. Even if it does suggest an undisclosed immunity "deal" and/or lack of truthfulness, the evidence could have only been used by the defense to impeach the witness' credibility. Therefore, it does not entitle defendant to relief.

Finally, the evidence has not been presented in a timely manner. [Appellant] does not allege that he learned of the existence of this affidavit for the first time at the end of October 2011. Rather, he alleges only that his brother mailed it to him that week. His brother's affidavit does not identify the date of the alleged discovery of the document. It merely states that at some undisclosed date, he came across it. At another undisclosed date and time, he mailed it to [Appellant]. The affidavits are an obvious ploy to mislead the Court and to secure a hearing to which [Appellant] is not entitled.

[Appellant's] boilerplate allegation of ineffective assistance of counsel is similarly without merit and without any attempt to demonstrate the applicability of any exception to the time limitations of the PCRA.

Notice of Intent to Dismiss, 2/27/12, at 1-3.

Upon review, we agree with the PCRA court. Appellant fails to allege, let alone prove, why this affidavit and information could not have been obtained earlier through the exercise of due diligence. Moreover, as the PCRA court pointed out, the allegation regarding the District Attorney's immunity agreement is a mere accusation, unsupported by any evidence. Accordingly, we conclude that Appellant has failed to satisfy the requirements necessary to establish an exception to the PCRA's time bar, and we affirm the PCRA court's order dismissing the petition as untimely.

Order affirmed.