

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DEMETRIUS JAY GRANT,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1646 WDA 2012

Appeal from the PCRA Order September 28, 2012  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0005774-1995, CP-02-CR-0008669-  
1993, CP-02-CR-0009450-1993

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY BOWES, J.:

**FILED DECEMBER 4, 2013**

Demetrius Jay Grant appeals *pro se* from the September 28, 2012 order dismissing as untimely PCRA petitions filed at three lower court docket numbers. We affirm.

The following facts are pertinent to lower court docket number CP-02-CR-0008669-1993. Appellant was charged with two counts of aggravated assault and one count of carrying an unlicensed firearm after he shot two men, Marvin Paul and Duncan Plowden, on May 3, 1993. Both victims identified Appellant as their shooter. Appellant fled the jurisdiction, and, after being apprehended in Georgia on July 12, 1993, was returned to Pennsylvania and found guilty of the offenses. Appellant was sentenced to twenty to forty-two and one-half years imprisonment. On September 10, 1999, we affirmed Appellant's judgment of sentence, ***Commonwealth v.***

**Grant**, 747 A.2d 412 (Pa.Super. 1999) (unpublished memorandum). Further review was denied on December 17, 2001. **Commonwealth v. Grant**, 793 A.2d 905 (Pa. 2001) (unpublished memorandum). Appellant filed a timely PCRA petition, relief was denied, and we affirmed that denial. **Commonwealth v. Grant**, 844 A.2d 1280 (Pa.Super. 2003) (unpublished memorandum), *appeal denied*, 848 A.2d 928 (Pa. 2004). Appellant filed a second PCRA petition on December 22, 2008, and that petition was dismissed as untimely by the order presently on appeal.

The following facts are involved at lower court docket number CP-02-CR-0009450-1993. On June 24, 1993, Appellant shot James Mioduski in the back. After his return from Georgia, Appellant was convicted of aggravated assault, reckless endangerment, and a Uniform Firearms Act violation in connection with that incident. He was sentenced to ten to twenty years imprisonment and, on appeal, we affirmed. **Commonwealth v. Grant**, 758 A.2d 720 (Pa.Super. 2000) (unpublished memorandum). On October 13, 2000, the Supreme Court denied review. **Commonwealth v. Grant**, 764 A.2d 1065 (Pa. 2000). Appellant filed a timely PCRA petition, and we affirmed the ensuing denial of relief. **Commonwealth v. Grant**, 924 A.2d 691 (Pa.Super. 2007) (unpublished memorandum). Appellant filed his second PCRA petition on December 22, 2008, and that petition was dismissed as untimely by the order presently on appeal.

With respect to lower court docket number CP-02-CR-0005774-1995, Appellant was convicted of two counts each of robbery, theft, terroristic

threats, and receiving stolen property, and one count each of robbery of a motor vehicle and unlawful restraint. These offenses occurred after Appellant escaped from prison and robbed a father and son at gunpoint. Appellant was sentenced to twenty to forty years imprisonment, and, after remanding for a proper explanation for the sentence imposed, we affirmed on January 14, 1999. **Commonwealth v. Grant**, 736 A.2d 681 (Pa.Super. 1999) (unpublished memorandum). Appellant's ensuing request for PCRA relief as to those convictions was denied, and on appeal, we affirmed. **Commonwealth v. Grant**, 790 A.2d 338 (Pa.Super. 2001) (unpublished memorandum), *appeal denied*, 800 A.2d 931 (Pa. 2002). After a second petition was denied without appeal, Appellant filed a third PCRA petition on December 22, 2008, and that petition was dismissed as untimely by the order presently on appeal. Appellant raises these contentions:

[1.] Whether the lower court erred and denied appellant due process of law by dismissing the PCRA petition without a hearing premised on the contention the petition was patently untimely because appellant was unable to plead and prove one of the statutory exceptions to the time bar under 42 Pa.C.S.A. Section 9545(b)[?]

[2.] Whether the lower court[']s opinion comports with the statutory requirements of Pennsylvania Rules of Appellate Procedure 1925(a) and due process[?]

[3.] Whether an order filed pursuant to Criminal Procedure 907(1) constitutes a final appealable order[?]

Appellant's brief at 4.

“On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court's findings are supported by the record and without legal error. Our review of questions of law is *de novo*.” ***Commonwealth v. Edmiston***, 65 A.3d 339, 345 (Pa. 2013) (citations omitted). As a preliminary matter, we must determine whether the petitions at issue are timely. All PCRA petitions must be filed within one year of when a defendant’s judgment of sentence becomes final, as defined in the PCRA. 42 Pa.C.S. § 9545(b)(1) (“A PCRA petition . . . must be filed within one year of a final judgment, unless the petitioner alleges and proves that he is entitled to one of three exceptions to this general rule, and that the petition was filed within 60 days of the date the claim could have been presented[.]). 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 the review.” 42 Pa.C.S. § 9545(b)(3).

At CP-02-CR-0008669-1993, Appellant’s judgment of sentence became final on March 17, 2002, ninety days after our Supreme Court denied allowance of appeal on December 16, 2001. In that case, he had until March 17, 2003 to file a timely petition, and his 2008 petition is patently untimely. As to CP-02-CR-0009450-1993, Appellant’s judgment of sentence became final on January 11, 2001, ninety days after the October 13, 2000 denial of allowance of appeal by our Supreme Court. He thus had to file a

timely petition in 2002, and the 2008 petition is also untimely in that proceeding.

In the 1995 criminal matter, Appellant's judgment of sentence became final thirty days after our January 14, 1999 direct-appeal affirmance, or on February 13, 1999. He had until February 13, 2000 to file a timely petition therein, and his 2008 petition is out of time.

"The time requirements established by the PCRA are jurisdictional in nature; consequently, Pennsylvania courts may not entertain untimely PCRA petitions." ***Edmiston, supra*** at 346. Appellant relies upon the exception to the one-year filing deadline outlined § 9545(b)(1)(ii), which states that a PCRA petition will be considered timely if the PCRA petitioner pleads and proves that "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[.]"

As plainly outlined in the language itself, this exception has two distinct components that must be satisfied by the PCRA petitioner. The fact upon which a new trial is sought must have been unknown to the defendant, and the defendant must establish that the fact could not have been ascertained before trial through the application of due diligence. ***Edmiston, supra; Commonwealth v. Abu-Jamal***, 941 A.2d 1263 (Pa. 2008) (a petitioner must assert that the facts upon which the claim is premised were not previously known to the petitioner and that they could not have been ascertained through due diligence).

Appellant invokes ***Commonwealth v. Cruz***, 852 A.2d 287 (Pa. 2004), where our Supreme Court held that a PCRA petitioner's mental incompetence during which the statutory period for filing a PCRA petition expires can trigger the after-discovered facts exception to the PCRA time-bar where the incapacity affects the petitioner's ability to communicate and raise his PCRA claims. In such a scenario, the defendant's incompetence will, once established, permit him to satisfy the requirements of the after-discovered facts exception as to the claims that the petitioner was unable to raise as a result of the mental infirmity.

As we noted in ***Commonwealth v. Monaco***, 996 A.2d 1076 (Pa.Super. 2010), ***Cruz*** does not apply if the petitioner is aware of his mental infirmity during the pertinent timeframe. In ***Cruz***, the defendant pled guilty to killing a police officer in 1979. He thereafter litigated a direct appeal and two PCRA petitions as well as a request for federal *habeas corpus* relief. Thereafter, the defendant filed a third, untimely PCRA petition averring that his diagnosis of Post-Traumatic Stress Disorder ("PTSD") was a newly-discovered fact permitting review of the petition. During the ensuing evidentiary hearing, it was established that Appellant was aware of this diagnosis several years before filing his third petition for collateral relief. He filed his PCRA petition after the Veteran's Administration accepted that diagnosis and granted him benefits.

In ***Monaco***, we first concluded that Appellant could not avail himself of a newly-discovered facts exception to the PCRA because he knew about the

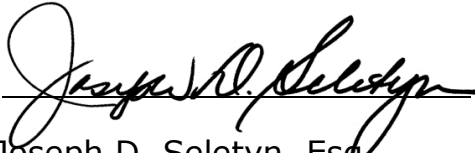
diagnosis years before he filed his petition. Additionally, we noted that the mere existence of a mental defect does not fall within the parameters of **Cruz**. We observed that the infirmity in question must impact upon the petitioner's ability to communicate and raise his PCRA claim. We stated, "Only under a very limited circumstance has the Supreme Court ever allowed a form of mental illness or incompetence to excuse an otherwise untimely PCRA petition. . . . Thus, the general rule remains that mental illness or psychological condition, absent more, will not serve as an exception to the PCRA's jurisdictional time requirements." **Monaco, supra** at 1080-81. We additionally held that the defendant's diagnosis did not fall within the **Cruz** holding in that it did not prevent him from communicating and raising his PCRA claims.

In this case, **Monaco** applies. First, it is evident from Appellant's brief that he has known about his mental infirmity for years. He avers that, when he was ten years old, "he suffered several traumatic head injuries which altered his cognitive function to the point where he was put on psych-meds, and hypnosis was used to control his behavior." Appellant's brief at 32. He indicates that thereafter, he suffered from seizures and blackouts. In addition, Appellant fails to indicate that his mental condition impacted his ability to communicate and raise any PCRA claims. Indeed, his history of litigating direct appeals and myriad prior PCRA petitions belies any finding that his mental condition was tantamount to incompetence. Hence, we

conclude that the PCRA court did not abuse its discretion in concluding that Appellant's three 2008 PCRA petitions were untimely.

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