

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

OMAR POWELL

Appellant

No. 1706 EDA 2012

Appeal from the PCRA Order May 16, 2012  
In the Court of Common Pleas of Lehigh County  
Criminal Division at No(s): CP-39-CR-0000303-2000

BEFORE: STEVENS, P.J., GANTMAN, J., and LAZARUS, J.

JUDGMENT ORDER BY LAZARUS, J.

Filed: January 31, 2013

AND NOW, this --- day of January, 2013, the order of the Court of Common Pleas of Lehigh County dismissing Omar Powell's petition filed under the Post Conviction Relief Act, 42 Pa.C.S.A. § 9541-46 ("PCRA"), is hereby AFFIRMED. 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). Powell's judgment of sentence

became final on October 3, 2002, when his time for filing a direct appeal had expired. Thus, he had one year from that date, or until October 3, 2003, to file a timely PCRA petition. **See** 42 Pa.C.S.A. § 9545(b). He did not file the instant petition until January 17, 2012, more than eight years late. Accordingly, the PCRA court had no jurisdiction to entertain Powell's petition unless he pleaded and offered to prove one of the three statutory exceptions to the time bar. **See** 42 Pa.C.S.A. § 9545(b). Powell failed to do so. Additionally, Powell is no longer serving his sentence,<sup>1</sup> a requirement for eligibility for PCRA relief pursuant to 42 Pa.C.S.A. § 9543(a)(1)(i).

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<sup>1</sup> The court sentenced Powell on September 3, 2002, to time served to 24 months' incarceration, less one day, to be followed by a consecutive term of 24 months' probation.