

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

DAVID PATRICK GRIBSCHAW,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1721 WDA 2011

Appeal from the PCRA Order September 15, 2011,
in the Court of Common Pleas of Allegheny County,
Criminal Division, at No(s): CP-02-CR-0002746-2000

BEFORE: BENDER, ALLEN, and MUSMANNO, JJ.
MEMORANDUM BY BENDER, J.:

Filed: March 12, 2013

David Patrick Gribschaw (Appellant) appeals *pro se* from the order entered September 15, 2011, that dismissed his petition entitled "Motion for Modification of Sentence Nunc Pro Tunc," ("Motion") that was treated by the court as an untimely petition for relief under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm.

The facts and procedural history of the underlying case that resulted in Appellant's conviction for first-degree murder and his sentence to life imprisonment are set forth in the two prior memorandums issued by this Court. ***See Commonwealth v. Gribschaw***, 847 A.2d 756 (Pa. Super. 2004) (unpublished memorandum), *appeal denied*, 858 A.2d 108 (Pa. 2004); ***Commonwealth v. Gribschaw***, 972 A.2d 552 (Pa. Super. 2009) (unpublished memorandum), *appeal denied*, 998 A.2d 959 (Pa. 2010). The

information contained in those decisions is not essential to the resolution of the instant appeal. Rather, as a result of Appellant's filing of his *pro se* "Motion," the trial court reviewed Appellant's files and discovered that it had miscited the section of the statute with respect to the mandatory life sentence without the possibility of parole in the original sentencing order. As a result, the trial court issued two orders on July 26, 2011. One of the orders provided notice of the court's intent to dismiss without a hearing Appellant's "Motion" pursuant to Pa.R.Crim.P. 907. The other order stated:

AND NOW, to-wit, this 26th day of July, 2011, it is hereby ORDERED, ADJUDGED and DECREED that the order entered in the above-captioned case dated the 11th day of December, 2001, referring to 42 Pa.C.S.A. § 9715 be and hereby shall be corrected to reflect the proper Statute, that being, 42 Pa.C.S.A. § 9711.

Trial Court Order, 7/26/11. On August 17, 2011, Appellant responded by filing a document entitled "Defendant's Reasons for a Sentencing Hearing" in which he appears to be asserting that he is entitled to a hearing because the court "altered and/or amended" the original sentencing order without a hearing. He also claims that his "Motion" should not be dismissed as an untimely PCRA petition.

On September 15, 2011, the trial court entered the order dismissing Appellant's "Motion" on the basis that it was an untimely and that a court has the "ability to correct a clerical error in its orders even after the expiration of the 30 day time limit," citing ***Commonwealth v. Borrin***, 12 A.3d 466, 471-72 (Pa. Super. 2011), *appeal granted*, 22 A.3d 1020 (Pa.

2011). Trial Court Opinion, 1/12/12, at 3. From that order, Appellant has filed this appeal, raising numerous issues for review. Essentially, Appellant appears to be claiming that he had been resentenced and, therefore, is entitled to a sentence modification hearing. He also contends that his “Motion” should not have been treated as a post-conviction petition. Under the circumstances here, we disagree with both of Appellant’s assertions.

To begin, we like the trial court rely on ***Borrin***, wherein this Court stated:

The issue in the case, whether the trial judge had the authority to correct an alleged sentencing error, poses a pure question of law. ***See Commonwealth v. Holmes***, 593 Pa. 601, 933 A.2d 57, 65 (Pa. 2007). Accordingly, our scope of review is plenary and our standard of review is *de novo*. ***See id.***

It is well-settled in Pennsylvania that a trial court has the inherent, common-law authority to correct “clear clerical errors” in its orders. ***Commonwealth v. Johnson***, 860 A.2d 146 (Pa. Super. 2004), *overruled in part on other grounds by Commonwealth v. Robinson*, 931 A.2d 15 (Pa. Super. 2007) (*en banc*); ***Commonwealth v. Quinlan***, 433 Pa. Super. 111, 639 A.2d 1235 (Pa. Super. 1994); ***Commonwealth v. Kubiak***, 379 Pa. Super. 402, 550 A.2d 219 (Pa. Super. 1988); ***Commonwealth v. Meyer***, 169 Pa. Super. 40, 82 A.2d 298 (Pa. Super. 1951). A trial court maintains this authority even after the expiration of the 30-day time limitation set forth in 42 Pa.C.S.A. § 5505 for the modification of orders. ***See*** 42 Pa.C.S.A. § 5505; ***Commonwealth v. Cole***, 437 Pa. 288, 263 A.2d 339 (Pa. 1970).

Borrin, 12 A.3d at 471-72 (footnote omitted).

The trial court’s correction was simply to change the citation in the sentencing order from section 9715, which provides for the imposition of a life sentence without the possibility of parole for any person convicted of

third degree murder, who had previously been convicted of murder, to section 9711, which provides for sentencing of a person convicted of *first degree murder*. Since Appellant was sentenced for a first-degree murder conviction, the appropriate citation should refer to section 9711, which governs sentencing in cases of first-degree murder. The court's correction did not result in an altered sentence, *i.e.*, the court did not correct an error that resulted in any change to Appellant's sentence. We conclude that the original sentencing order contained a "clear clerical error," which the court simply corrected. Accordingly, we conclude that Appellant is not entitled to any relief in regard to this claim.

We next turn to Appellant's argument that his "Motion" should not be treated as a post-conviction petition under the PCRA. We must disagree with his position, because

the PCRA is the exclusive vehicle for obtaining post-conviction collateral relief. ***Commonwealth v. Bronshtein***, 561 Pa. 611, 614 n.3, 752 A.2d 868, 869-70 n.3 (2000). This is true regardless of the manner in which the petition is titled. ***Commonwealth v. Hutchins***, 760 A.2d 50, 52 n.1 (Pa. Super. 2000). Indeed, the PCRA statute specifically provides for such treatment:

The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis.

42 Pa.C.S.A. § 9542. Simply because the merits of the PCRA petition cannot be considered due to previous litigation, waiver, or an untimely filing, there is no alternative basis for relief

outside the framework of the PCRA. **See generally *Commonwealth v Fahy***, 558 Pa. 313, 332, 737 A.2d 214, 223-224 (1999) (citing ***Commonwealth v Chester***, 557 Pa. 358, 733 A.2d 1242 (1999)).

Commonwealth v. Kutnyak, 781 A.2d 1259, 1261 (Pa. Super. 2001).

Moreover, “the scope of the PCRA eligibility requirements should not be narrowly confined to its specifically enumerated areas of review.”

Commonwealth v. Hackett, 956 A.2d 978, 986 (Pa. 2008) (citation

omitted). “Such narrow construction would be inconsistent with the

legislative intent to channel post-conviction claims into the PCRA's

framework ... and would instead create a bifurcated system of post-

conviction review where some post-conviction claims are cognizable under

the PCRA while others are not. ***Id.*** (citing ***Commonwealth v. Lantzy***, 736

A.2d 564, 569-70 (Pa. 1999)). The PCRA “provides the sole means for

obtaining relief for persons wrongly convicted or serving an illegal sentence.”

Commonwealth v. Mercado, 826 A.2d 897, 898 (Pa. Super. 2003). Thus,

we conclude that Appellant’s “Motion” must be treated as a PCRA petition.

We now must determine whether we have jurisdiction to entertain the

issues Appellant has presented in his “Motion.” This Court’s standard of

review regarding an order denying a petition under the PCRA is whether the

determination of the PCRA court is supported by the evidence of record and

is free of legal error. ***Commonwealth v. Ragan***, 923 A.2d 1169, 1170 (Pa.

2007). A petition for relief under the PCRA, including a second or

subsequent petition, must be filed within one year of the date the judgment

of sentence is final unless the petition alleges, and the petitioner proves, that an exception to the time for filing the petition, as set forth at 42 Pa.C.S. § 9545(b)(1)(i), (ii), and (iii), is met. **See *Commonwealth v. Gamboa-Taylor***, 753 A.2d 780, 783 (Pa. 2000); 42 Pa.C.S. § 9545. Further, a petition alleging an exception must be filed within 60 days of the time the claim could first have been presented. **See** 42 Pa.C.S. § 9545(b)(2). To invoke an exception, a petitioner must plead it explicitly and satisfy the appropriate burden of proof. **Commonwealth v. Beasley**, 741 A.2d 1258, 1261 (Pa. 1999). Additionally, the timeliness requirement is mandatory and jurisdictional in nature; a court may not ignore it to reach the merits of the petition. **Commonwealth v. Murray**, 753 A.2d 201, 203 (Pa. 2000).

Appellant's "Motion" was filed on November 18, 2010, and his judgment of sentence became final on December 8, 2004, upon the expiration of the 90-day period in which he could have requested *allocatur* in the United States Supreme Court. **See** U.S. Sup. Ct. Rule 13. Therefore, it is evident that Appellant's petition was filed significantly (six years) beyond the one-year time bar, making it patently untimely. Moreover, as noted above, section 9545 provides the following three exceptions that allow for review of an untimely PCRA petition: (1) petitioner's inability to raise a claim as a result of governmental interference; (2) the discovery of previously unknown facts or evidence that would have supported a claim;

and (3) a newly-recognized constitutional right. 42 Pa.C.S. § 9545(b)(1)(i)-(iii).

Our review reveals that Appellant has not pled any of the time of filing exceptions as is required to invoke them and to preserve an otherwise untimely petition. Accordingly, we are compelled to conclude that Appellant's "Motion" is untimely and that no exception applies. We, therefore, affirm the order dismissing the "Motion."

Order affirmed.