

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DAVID MANNING STODGHILL,	:	
	:	
Appellant	:	No. 184 MDA 2013

Appeal from the Order Entered December 28, 2012
In the Court of Common Pleas of Cumberland County
Criminal Division No(s).: CP-21-CR-0002465-2010

BEFORE: ALLEN, LAZARUS, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED JANUARY 24, 2014

Appellant, David Manning Stodghill, appeals from the order entered in the Cumberland County Court of Common Pleas denying his first, timely Post Conviction Relief Act¹ ("PCRA") petition filed at docket number CP-21-CR-2465-2010. Appellant contends the PCRA court erred in concluding that his pleas of guilty were not unlawfully induced and Appellant's trial counsel was not ineffective. Because we find that Appellant's claims are no longer cognizable, we dismiss.

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541–9546.

On November 10, 2010, Appellant pleaded guilty to aggravated indecent assault² in CR-0801-2010, indecent assault³ and corruption of minors⁴ in CR-2465-2010. On May 11, 2011, Appellant was sentenced in accordance with the plea agreement to four to eight years' imprisonment in CR-0801-2010 and an aggregate one to two years' imprisonment in CR-2465-2010 to be served concurrently with the sentence in CR-0801-2010. Appellant was also found to be a sexually violent predator ("SVP") and was directed to comply with the lifetime Megan's Law registration requirements. Appellant did not file a direct appeal following entry of judgment of sentence. Accordingly, Appellant's sentence became final on June 11, 2011.⁵

On May 21, 2012, Appellant timely filed the *pro se* PCRA petition giving rise to this appeal. Notably, Appellant only sought relief under the Act with respect to the convictions in CR-2465-2010. Counsel was subsequently appointed to represent Appellant. Following a hearing, the PCRA court

² 18 Pa.C.S. § 3125(a)(7).

³ 18 Pa.C.S. § 3126(a)(8).

⁴ 18 Pa.C.S. § 6301(a)(1).

⁵ 42 Pa.C.S. § 9545(b)(3); Pa.R.A.P. 341(b).

denied Appellant's petition on December 28, 2012, and this timely appeal followed.⁶

In his brief, Appellant raises three issues:

Whether [Appellant's] guilty plea was unlawfully induced because [Appellant] pled to charges barred from prosecution by the statute of limitations;

Whether [Appellant's] guilty plea was the result of ineffective counsel because counsel did not inform [Appellant] of the statute of limitations defense; and

Whether [Appellant's] guilty plea was not entered voluntarily, knowingly and intelligently because [Appellant's] decision to plea was not a voluntary and intelligent choice among the alternative courses of action available to him.

Appellant's Brief at 7.

Before we address the issues raised by Appellant, we must consider the Commonwealth's argument that this appeal should be dismissed because Appellant is not currently serving a sentence at CR-2465-2010 and is not, therefore, eligible for relief under the PCRA.⁷

⁶ After timely seeking an extension of time, Appellant complied with the PCRA court's order to file a Pa.R.A.P. 1925(b) statement.

⁷ We note that this issue was raised for the first time in the Commonwealth's brief and that the Commonwealth attached as an exhibit a Pennsylvania Department of Corrections sentence status summary form. The form confirmed that Appellant's sentence in CR-2465-2010 expired on May 11, 2013. We further note that Appellant did not seek to strike the exhibit or file a reply brief to rebut the Commonwealth's position that Appellant is no longer eligible for PRCA relief.

In order to be eligible for relief under the PCRA, a defendant must plead and prove by a preponderance of the evidence all of the following:

- (1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:
 - (i) Currently serving a sentence of imprisonment, probation or parole for the crime;
 - (ii) Awaiting execution of a sentence of death for the crime; or
 - (iii) Serving a sentence which must expire before the person may commence serving the disputed sentence

42 Pa.C.S. § 9543(a)(1).

A petitioner is ineligible for relief under the PCRA once the sentence for the challenged conviction is completed. **See Commonwealth v. Ahlborn**, 699 A.2d 718, 720 (Pa. 1997); **Commonwealth v. Williams**, 977 A.2d 1174, 1176 (Pa. Super. 2009); **Commonwealth v. Hart**, 911 A.2d 939, 941-42 (Pa. Super. 2006). Recently, in **Commonwealth v. Turner**, 2013 WL 6134576 (Pa. filed Nov. 22, 2013), our Supreme Court reaffirmed that Section 9543(a)(1) bars a defendant who is no longer serving a state sentence from collaterally challenging that sentence, even if the defendant's sentence is so short as to render a collateral challenge impossible. **Id.** at *10.

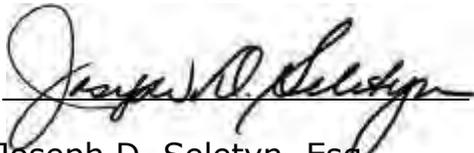
Here, Appellant was sentenced on May 11, 2011, to one to two years' imprisonment in CR-2465-2010. When Appellant filed his PCRA petition on

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May 21, 2012, and when the PCRA court denied Appellant's petition for relief on December 28, 2012, he was still serving the sentence on this docket number. However, during the pendency of this appeal, Appellant's sentence expired on May 11, 2013, nine days before the PCRA court authored its Pa.R.A.P. 1925(a) opinion. Accordingly, we are constrained to find that because Appellant is no longer serving a sentence on the conviction he seeks to challenge, he no longer meets the requirements of Section 9543(a)(1). **See Williams**, 977 A.2d at 1176. Therefore, we have no basis upon which to grant Appellant the relief he seeks. 42 Pa.C.S § 9543(a).

Appeal dismissed.

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: 1/24/2014