

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

BRAY MURRAY,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1943 EDA 2012

Appeal from the PCRA Order of June 25, 2012,  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division at No. CP-51-CR-0402931-1982

BEFORE: BENDER, LAZARUS and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: February 19, 2013

This is an appeal from an order that dismissed Appellant's petition filed pursuant to the Post Conviction Relief Act ("PCRA"). We affirm.

The relevant background underlying this matter can be summarized in the following manner. Appellant was convicted of, *inter alia*, first-degree murder. On April 23, 1985, the trial court sentenced Appellant to life in prison. Appellant did not file a direct appeal. On March 15, 2012, Appellant, acting *pro se*, filed his third PCRA petition. The PCRA court subsequently issued notice that it intended to dismiss the petition without holding an evidentiary hearing because Appellant untimely filed the petition. After Appellant responded to this notice, the court formally dismissed Appellant's petition. This *pro se* appeal followed.

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\*Retired Senior Judge assigned to the Superior Court.

The sole issue before this Court is whether the PCRA court correctly concluded that Appellant untimely filed his petition.<sup>1</sup>

Under the PCRA, all petitions must be filed within one year of the date that the petitioner's judgment became final, unless one of three statutory exceptions applies. 42 Pa.C.S.A. § 9545(b)(1); **Commonwealth v. Chester**, 895 A.2d 520, 522 (Pa. 2006). For purposes of the PCRA, a judgment becomes final at the conclusion of direct review. 42 Pa.C.S.A. § 9545(b)(3). "The PCRA's time restrictions are jurisdictional in nature." **Id.** "Thus, '[i]f a PCRA petition is untimely, neither this Court nor the trial court has jurisdiction over the petition. Without jurisdiction, we simply do not have the legal authority to address the substantive claims.'" **Id.** (quoting **Commonwealth v. Lambert**, 884 A.2d 848, 851 (Pa. 2005)).

Appellant's judgment became final on or around May 23, 1985, *i.e.*, when his time expired to file a direct appeal. 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P. 903(a). Appellant, therefore, had until May 23, 1986, in order to timely file a PCRA petition. Appellant filed his petition on March 15, 2012. Consequently, Appellant untimely filed his petition, unless his petition alleged and Appellant proved that:

- (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the

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<sup>1</sup> Generally speaking, "[o]n appeal from the denial of PCRA relief, an appellate court's standard of review is whether the ruling of the PCRA court is free of legal error and supported by the record." **Commonwealth v. Jones**, 932 A.2d 179, 181 (Pa. Super. 2007).

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.

42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). We further note that any petition invoking one of these exceptions must be filed within sixty days of the date the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2).

Appellant's petition did assert these exceptions. However, he failed to make clear how the exceptions apply to his claim. For that matter, Appellant's petition failed to make clear what his claim is. As best we can discern, Appellant claimed that his trial counsel was ineffective for abandoning him and not filing a direct appeal on his behalf. Even if we assume *arguendo* that Appellant pled and offered proof of the application of these exceptions, he knew or should have known that counsel failed to file a direct appeal on his behalf in May of 1985. Consequently, Appellant clearly did not file his petition within sixty days of the date his claim could have been presented, in violation of 42 Pa.C.S.A. § 9545(b)(2).

In his brief to this Court, Appellant offers various confused arguments in support of his position that his petition should be considered timely filed. These arguments are unavailing, as the above-cited legal principles are well established. We conclude that the PCRA court properly dismissed

Appellant's petition as untimely filed. Consequently, we affirm the court's order.

Order affirmed.