

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JULES JETTE,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1967 EDA 2012

Appeal from the PCRA Order of July 9, 2012,  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division at No. CP-51-CR-0111881-2001

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

MEMORANDUM BY COLVILLE, J.:

Filed: March 15, 2013

This case is an appeal from the order dismissing Appellant's petition under the Post Conviction Relief Act ("PCRA") as having been untimely filed. We affirm the order.

After being convicted of several offenses, Appellant was sentenced in 2002. On direct appeal, this Court affirmed his judgment of sentence. ***Commonwealth v. Jette***, 818 A.2d 533, 536 (Pa. Super. 2003). The Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal in September 2003. ***Commonwealth v. Jette***, 833 A.2d 141 (Pa. 2003).

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\*Retired Senior Judge assigned to the Superior Court.

In 2003 and 2004, Appellant filed *pro se* PCRA petitions. The PCRA court appointed counsel to represent him. Initially, counsel sought to withdraw pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988). Counsel later abandoned his efforts to withdraw and filed two amended petitions on Appellant's behalf. The amended petitions primarily alleged trial counsel was ineffective in numerous ways. In 2006, the PCRA court held an evidentiary hearing on Appellant's PCRA claims and denied relief.

Thereafter, still in 2006, Appellant appealed the PCRA court's ruling to this Court. PCRA counsel filed a brief alleging trial counsel's ineffectiveness for having failed to object to certain evidence. Appellant then filed a *pro se* petition for remand alleging PCRA counsel's ineffectiveness on the PCRA appeal. Pursuant to the procedure outlined in ***Commonwealth v. Battle***, 879 A.2d 266 (Pa. Super. 2005), *abrogated by* ***Commonwealth v. Jette***, 23 A.3d 1032, 1044-45 (Pa. 2011), this Court denied the *pro se* petition but directed PCRA counsel to file a remand petition responding to Appellant's claim that PCRA counsel was ineffective on appeal. PCRA counsel then filed such a petition. However, this Court determined the petition was deficient and, as such, we remanded the case with instructions that counsel file a proper and thorough petition. ***Commonwealth v. Jette***, 947 A.2d 202, 206 (Pa. Super. 2008).

Thereafter, PCRA counsel filed a new petition for remand and appointment of counsel. This Court granted the petition and remanded the

case so that new counsel could be appointed. *Commonwealth v. Jette*, 965 A.2d 296 (Pa. Super. 2008) (unpublished memorandum).

The Commonwealth secured allowance of appeal. *Commonwealth v. Jette*, 982 A.2d 1217 (Pa. 2009). On that appeal, the Supreme Court rejected the *Battle* procedure, finding it violated the prohibition against hybrid representation. *Jette*, 23 A.3d at 1044-45. The Supreme Court then vacated our decision in which we had allowed PCRA counsel to withdraw and had remanded for the appointment of new counsel. *Id.* at 1045. Additionally, the Supreme Court remanded the case to us to consider the claim of trial counsel's ineffectiveness as it was presented in PCRA counsel's appellate brief. *Id.*

On remand, in November 2011, we found trial counsel had not been ineffective and we affirmed the PCRA court's order denying PCRA relief. *Commonwealth v. Jette*, 38 A.3d 907 (Pa. Super. 2011) (unpublished memorandum). Appellant did not petition for allowance of appeal.

In December 2011, Appellant filed the *pro se* PCRA petition giving rise to this appeal. In that petition, he alleged numerous instances of trial counsel's ineffectiveness, trial/sentencing court error and interference with his constitutional rights, supposedly by the Pennsylvania Department of Corrections. In large measure, though not entirely, Appellant's PCRA claims resembled those he had raised during his 2006 PCRA efforts.

Proceeding under Pa.R.Crim.P. 907, the PCRA court issued a notice of its intent to dismiss the petition without further proceedings because the petition was untimely. Appellant filed a response. In July 2012, the court dismissed the petition without a hearing on the basis that the petition had been filed late. Appellant filed this appeal in which he contends the PCRA court erred in determining his instant PCRA petition was not timely.

Several legal principles are relevant to our resolution of this matter. To be timely, a PCRA petition must normally be filed within one year of when a petitioner's judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence becomes final, for PCRA purposes, at the end of direct review, including discretionary review in the Pennsylvania Court and the U.S. Supreme Court, or at the expiration of the time limit for seeking that review. *Id.* § 9545(b)(3). The time for seeking discretionary review in the U.S. Supreme Court expires ninety days after the Pennsylvania Supreme Court enters an order denying relief. SUP. CT. R. 13.

While the normal PCRA filing deadline is one year after the judgment of sentence becomes final, the PCRA provides three exceptions to that time limit at 42 Pa.C.S.A. § 9545 (b)(1). More particularly, a petitioner may be permitted to bring a claim in a PCRA petition filed beyond the normal deadline if the petitioner pleads and proves:

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

If a PCRA petition is untimely filed, the PCRA court lacks jurisdiction to entertain the merits thereof. ***Commonwealth v. Frey***, 41 A.3d 605, 610 (Pa. Super. 2012).

After giving proper notice of its intent to dismiss a PCRA petition, a court may dismiss the petition without a hearing if, based on the record and the petition, there are no genuine issues of material fact, no purpose would be served by further proceedings, and the petitioner is not entitled to PCRA relief. Pa.R.Crim.P. 907(1).

Our standard for reviewing PCRA orders is to determine whether the court's rulings are supported by the record and free of legal error. ***Commonwealth v. Cox***, 983 A.2d 666, 679 (Pa. 2009). It is an appellant's burden to persuade us that the PCRA court erred and that relief is due. ***Commonwealth v. Wrecks***, 931 A.2d 717, 722 (Pa. Super. 2007).

Appellant's judgment of sentence became final in December 2003 after he did not seek certiorari from the U.S. Supreme Court. As such, his 2011 PCRA petition was facially late. In his brief, Appellant acknowledges the facial untimeliness of his petition but, in an effort to persuade us the PCRA court erred in dismissing his petition on the grounds of untimeliness, Appellant purports to advance a claim of governmental-interference under 42 Pa.C.S.A. § 9545(b)(1)(i), a claim he included in his petition in the PCRA court. More specifically, Appellant essentially contends there were two ways in which the government prevented him from raising his current PCRA claims within the normal one-year PCRA deadline. First, he complains the 2006 PCRA court, during Appellant's 2006 PCRA hearing, interfered with the hearing—largely by answering questions that were being posed to trial counsel and/or by otherwise not allowing Appellant's trial counsel to answer various questions. On this latter point, Appellant seems to complain that the court sustained various Commonwealth objections and/or simply interrupted the examination being conducted by PCRA counsel. The questions with which the PCRA court allegedly interfered dealt mainly with trial counsel's apparent failure to call witness at trial and/or sentencing, as well as his pretrial/presentencing investigation of those witnesses (*e.g.*, whether counsel was given names of witnesses by Appellant, whether counsel investigated those witnesses, and whether counsel had any strategy in not calling them to testify). Appellant further appears to complain that the 2006 PCRA court failed to administer an oath to trial counsel. Appellant's position is that the PCRA court, acting in a governmental capacity, thus prevented

him from pursuing his PCRA claims at the 2006 PCRA hearing, those claims being largely the same as the ones he now seeks to present again.

Appellant's second assertion of governmental interference involves his trial counsel directly. Appellant claims trial counsel, who had been elected to the bench by the time of the 2006 PCRA hearing, lied while testifying at that hearing. Once again, Appellant's position relates mainly to counsel's testimony about his knowledge, investigation and strategy concerning witnesses. Primarily, Appellant contends that he gave counsel names of witnesses before trial and that counsel falsely denied that fact during the 2006 hearing. Appellant also contends counsel wrote pretrial notes revealing he knew of certain witnesses. It appears Appellant possessed those notes at the time of the PCRA hearing but did not present them at that hearing. It is Appellant's position that, because trial counsel was a member of the bench by the time of the 2006 PCRA hearing, counsel's supposedly false testimony constituted governmental interference with Appellant's presentation of his PCRA claims. Once again, some or all of those claims are essentially similar to the underlying PCRA claims that Appellant wishes to pursue now.

Appellant's foregoing contentions do not demonstrate a governmental-interference exception to the one-year filing deadline. He is arguing about the evidentiary rulings and the conduct of the PCRA court during the 2006 hearing. He is also challenging the credibility of trial counsel's testimony at that hearing. The time to object to the court's rulings/conduct and the time

to impeach trial counsel was during the 2006 hearing. Also, Appellant certainly had a right to appeal from the PCRA court's 2006 decision on his petition because that decision was a final, appealable order. ***Commonwealth v. Scarborough***, 9 A.3d 206, 210 (Pa. Super. 2010); Pa.R.Crim.P. 910. Indeed, as we explained *supra*, Appellant took such an appeal.

To whatever extent Appellant did or did not avail himself of his right to object and/or impeach counsel during the 2006 PCRA hearing, and to whatever extent Appellant did or did not avail himself of his right to raise issues on appeal, the 2006 hearing and his corresponding appeal were his opportunities to complain about the court's evidentiary rulings/conduct, about trial counsel's testimony and about the PCRA court's ultimate denial of PCRA relief. Nothing he has written in his brief demonstrates that the government prevented him from filing a PCRA petition raising his instant underlying PCRA claims within the one-year deadline.

In fact, Appellant largely did present his current underlying claims (*e.g.*, his claims about trial counsel's ineffectiveness) in his timely 2006 pleadings. Appellant simply does not like the way the 2006 proceedings unfolded. His remedy was to lodge objections, to impeach his former



counsel and to appeal. His remedy is not now to claim, wrongly, that the government prevented him from proceeding within the one-year time limit.<sup>1</sup>

Furthermore, to the extent Appellant's current PCRA petition sought to raise any grounds for relief different from those alleged in Appellant's 2006 pleadings, Appellant has presented no serious argument as to why such new claims should be excepted from the one-year deadline.

Lastly, Appellant also claims, to some extent, that the rulings/conduct of the 2006 PCRA court and/or trial counsel's 2006 testimony constitute previously unknown facts warranting a time-of-filing exception under 42 Pa.C.S.A. § 9545(b)(1)(ii). He points to no place where he asserted such an exception in the present PCRA court. As such, he is not entitled to have us review any such alleged exception now. Pa.R.A.P. 2117(c), 2119(e), 302(a).

Based on our foregoing discussion, Appellant has failed to persuade us the PCRA court erred in finding his PCRA petition untimely. Moreover, he has not shown that there existed any genuine issue of material fact regarding the PCRA court's lack of jurisdiction to entertain the merits of the

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<sup>1</sup> Additionally, we note the PCRA provides that trial counsel is not a government official for purposes of the governmental-interference exception to the one-year filing deadline. 42 Pa.C.S.A. § 9545(b)(4). Despite Appellant's argument that counsel had become a judge by the time of the 2006 hearing, counsel was not testifying in a judicial capacity at that hearing and, as such, we are not convinced he was a government official for purposes of Section 9545(b)(1)(i).

petition, that any purpose would have been served by further proceedings or that he was otherwise entitled to relief. Accordingly, he has not demonstrated the court was wrong to dismiss his petition without a hearing. As Appellant has not convinced us there was factual or legal error by the court, we will not disturb the court's order.

Order affirmed.