

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIAM G. WHEELER,	:	
	:	
Appellant	:	No. 1969 EDA 2012

Appeal from the PCRA Order Entered June 18, 2012,
In the Court of Common Pleas of Philadelphia County,
Criminal Division, at No. CP-51-CR-1029571-1981.

BEFORE: FORD ELLIOTT, P.J.E., BENDER and SHOGAN, JJ.

MEMORANDUM BY SHOGAN, J.:

Filed: January 29, 2013

Appellant, William G. Wheeler, appeals *pro se* from the order denying his petition for relief, which he titled a petition for writ of *habeas corpus*, but which the trial court dismissed as an untimely petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

A previous panel of this Court reiterated the facts of this case as follows:

The defendant was charged with shooting and killing Harry Johnson, age 24, by a bullet wound through the heart on the evening of September 18, 1981, on the sidewalk in front of [the] premises [at] 5113 Pine Street, Philadelphia, Pennsylvania, when Johnson tried to apprehend the defendant in the act of stealing tape cassettes from Johnson's automobile.

Commonwealth v. Wheeler, 667 A.2d 425, unpublished memorandum at 1 (Pa. Super. filed July 21, 1995) (citing Trial Court Opinion, 3/14/83,

at 1-2). The PCRA court summarized the procedural history of this case as follows:

[Appellant] was sentenced to a term of life imprisonment on January 25, 1983 following a jury trial and conviction for second-degree murder. The Pennsylvania Superior Court affirmed this conviction on September 18, 1985.

[Appellant] filed his first [post-conviction relief petition] on March 26, 1986, which was denied on January 17, 1989. The Superior Court affirmed the denial on September 7, 1990. [Appellant] filed his second PCRA petition on October 14, 1994. This petition was denied on February 10, 1995, and the Superior Court affirmed the denial on July 21, 1995.

Petitioner filed the current PCRA petition, his third, on July 29, 2009.

PCRA Court Opinion, 6/18/12, at 1. After conducting “an extensive and exhaustive review of the record and applicable case law,” the PCRA court concluded that Appellant’s third petition was untimely under the PCRA and that no exceptions applied. *Id.* at 3. Therefore, the PCRA Court ruled that it did “not have jurisdiction to consider [Appellant’s] third PCRA petition;” it then dismissed the petition. *Id.* at 1-2; Order of Court, 6/18/12. Appellant filed a timely appeal, and both he and the PCRA court have complied with the requirements of Pennsylvania Rule of Appellate Procedure (“Pa.R.A.P.”) 1925.

On appeal, we note that Appellant filed three pleadings with this Court: “APPELLANT’S BRIEF IN SUPPORT OF HABEAS CORPUS,” “Supplemental Brief for Appellant,” and “PETITIONER’S REPLY TO

RESPONDENT'S LETTER BRIEF." None of these complies with the requirements of Pa.R.A.P. Chapter 21 (Briefs and Reproduced Records).

Nevertheless, we glean two complaints from Appellant's *pro se* filings:

1. Habeas Corpus Petition
 - a. The trial court erred in changing appellant's *habeas corpus* into a PCRA petition, "thereby placing appellant's habeas corpus claims under gatekeeping restrictions of PCRA." Appellant's Brief in Support of Habeas Corpus at 1.
 - b. "[Appellant's] habeas corpus was erroneously changed into a Post Conviction Relief Act Petition which cannot reach the standards of challenging repealed and/or unconstitutional statutes." Petitioner's Reply to Respondent's Letter Brief at 2.
2. Sentencing
 - a. "Pennsylvania's Sentencing Courts are using repealed statutes in relation to appellant's sentence," and, therefore, his sentence is illegal. Appellant's Brief in Support of Habeas Corpus at 1.
 - b. "The repeal of 18 Pa.C.S. § 1102 by Act 1982, June 15, P.L. 512, No. 141, section 6, likewise repeals 18 Pa.C.S. § 1311 due to its inconsistency when in consideration of the controlling 42 Pa.C.S. § 9715, Life imprisonment for homicide." Supplemental Brief for Appellant at 13.

We note Appellant's earnestness in claiming that his arguments are meritorious and that he is entitled to relief. However, Appellant's arguments are a random collection of words, thoughts, and concepts erroneously analyzing the interplay of two procedural vehicles, *i.e.*, the writ of *habeas corpus* and a PCRA petition, and the illegality of a sentence based on

repealed statutes. Upon review of Appellant's amorphous claims, we cannot agree that he is entitled to relief.

The standard of review applied in an appeal from the denial of PCRA relief is whether the findings of the PCRA court are supported by the record and free of legal error. ***Commonwealth v. Johnson***, 27 A.3d 244, 247 (Pa. Super. 2011). "Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record." ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007), *appeal denied*, 593 Pa. 754, 923 A.2d 74 (2007). It is the PCRA petitioner's burden to prove, by a preponderance of the evidence, that his conviction or sentence resulted from one or more of the enumerated circumstances found in 42 Pa.C.S.A. § 9543(a)(2). ***Johnson***, 27 A.3d at 247. "It is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing." ***Commonwealth v. Turetsky***, 925 A.2d 876, 882 (Pa. Super. 2007), *appeal denied*, 596 Pa. 707, 940 A.2d 365 (2007) (citation omitted).

We will begin with a general discussion of the untimeliness of Appellant's petition for collateral relief. Thereafter, we will discuss the particular arguments he presents on appeal.

The PCRA petition at issue, Appellant's third, was filed on July 29, 2009. Thus, it is governed by the 1995 amendments to the PCRA, which were enacted on November 17, 1995, and became effective 60 days later. 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P. 903(a). We have instructed that, under those revisions to the PCRA, "[s]ection 9545(b)(1) of the PCRA requires that any PCRA petition, including second or subsequent petitions, must be filed within **one year** of the date the judgment becomes final." *Commonwealth v. Fairiror*, 809 A.2d 396, 398 (Pa. Super. 2002), *appeal denied*, 573 Pa. 703, 827 A.2d 429 (2003) (emphasis added).¹ In addition, we reiterate that the PCRA's timeliness requirements are jurisdictional in nature and must be strictly construed, and courts may not address the merits of the issues raised in a petition if it is not timely filed. *Commonwealth v. Abu-Jamal*, 596 Pa. 219, 227, 941 A.2d 1263, 1267–1268 (2008), *cert. denied*, 555 U.S. 916 (2008) (citation omitted), and *see*

¹ The 1995 amendments provide a grace period for petitioners whose judgments of sentence became final on or before the November 17, 1995 effective date of the amendments. However, this grace period only applies to petitions that were filed by January 16, 1997. *Commonwealth v. Thomas*, 718 A.2d 326, 329 (Pa. Super. 1998) (*en banc*). Additionally, this proviso only applies to first PCRA petitions. *Id.* Clearly, Appellant is not entitled to the relief provided by the proviso.

Commonwealth v. Monaco, 996 A.2d 1076, 1079 (Pa. Super. 2010), *appeal denied*, 610 Pa. 607, 20 A.3d 1210 (2011) (holding that no court has jurisdiction to hear an untimely PCRA petition).

Here, Appellant's judgment of sentence became final on or about October 18, 1985, thirty days after a panel of this Court affirmed his judgment of sentence and the time for filing a petition for allowance of appeal with the Pennsylvania Supreme Court expired. **See** 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P. 903(a). Appellant did not file the instant petition until July 29, 2009, almost twenty-four years later. On its face, then, Appellant's instant petition is untimely.

However, if a petitioner does not file a timely PCRA petition, his petition may be received, nevertheless, under any of the three limited exceptions to the timeliness requirements of the PCRA:

(b) Time for filing petition.-

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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-iii). A PCRA petition invoking one of these statutory exceptions must “be filed within 60 days of the date the claim could have first been presented.” 42 Pa.C.S.A. § 9545(b)(2); ***Commonwealth v. Carr***, 768 A.2d 1164, 1167-1168 (Pa. Super. 2001). “[I]t is the burden of a petitioner to plead in the PCRA petition exceptions to the time bar and that burden necessarily entails an acknowledgement by the petitioner that the PCRA petition under review is untimely but that one or more of the exceptions apply.” ***Commonwealth v. Wharton***, 584 Pa. 576, 586, 886 A.2d 1120, 1126 (2005) (citation omitted). Here, Appellant does not plead or prove any of the time bar exceptions. Thus, the record supports the PCRA court’s determination that Appellant’s petition is untimely, and its decision to dismiss the petition is without error.

Turning to Appellant’s specific arguments, he contends that the time bar does not apply to him because he filed a petition for a writ of *habeas corpus*, which the trial court erroneously changed into a PCRA petition. Appellant’s Brief in Support of Habeas Corpus at 1. Contrary to Appellant’s assertions, the PCRA provides the sole means for attacking a criminal conviction. The scope of the PCRA is explicitly defined as follows:

This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. **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*.** This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide a means for raising issues waived in prior proceedings or to provide relief from collateral consequences of a criminal conviction.

42 Pa.C.S.A. § 9542 (emphasis added).

“The plain language of the statute above demonstrates that the General Assembly intended that claims that **could** be brought under the PCRA **must** be brought under that Act.” *Commonwealth v. Hall*, 565 Pa. 92, 96-97, 771 A.2d 1232, 1235 (2001) (emphasis in original). Where a defendant’s claims “are cognizable under the PCRA, the common law and statutory remedies now subsumed by the PCRA are not separately available to the defendant.” *Id.* (citations omitted). By its own language, and by judicial decisions interpreting such language, the PCRA provides the sole means for obtaining state collateral relief. *Commonwealth v. Yarris*, 557 Pa. 12, 22, 731 A.2d 581, 586 (1999) (citations omitted). Thus, the law is well settled that any collateral petition raising issues with respect to remedies offered under the PCRA will be considered a PCRA petition. *Commonwealth v. Deaner*, 779 A.2d 578, 580 (Pa. Super. 2001).

A generous reading of Appellant's petition reveals allegations of constitutional violations that undermine the truth-determining process and an illegal sentence. Such claims are cognizable under the PCRA. 42 Pa.C.S.A. § 9543(2)(i, vii). Pennsylvania's statutory writ of *habeas corpus*, therefore, was not available as to these claims, for Appellant has a remedy under the PCRA. Thus, his claim that the PCRA improperly disposed of his petition under the PCRA is without merit.

Additionally, Appellant argues that *habeas corpus* was improperly limited as to him because he was required to file his petition within the time constraints of the PCRA. Petitioner's Reply to Respondent's Letter Brief at 2. Our Pennsylvania Supreme Court analyzed and disposed of a similar argument in ***Commonwealth v. Peterkin***, 554 Pa. 547, 722 A.2d 638 (1998):

Next, Peterkin claims that the PCRA improperly suspended his right to file for a writ of habeas corpus. We note that this is Peterkin's second PCRA petition, not his first. Since Peterkin availed himself of a PCRA filing, which was tantamount to a habeas filing, he can hardly prevail on the assertion that habeas corpus was suspended as to him, for he had access to habeas corpus relief through his first PCRA petition. This claim, therefore, is without merit.

He [Peterkin] also contends, however, that habeas corpus was improperly limited as to him. The limitation in this case was that Peterkin was required to file his first PCRA petition within one year of the effective date of the act, or, in the alternative, he was required to qualify for the act's exceptions to the one year filing period.

* * *

With the 1995 amendments to the PCRA, the General Assembly has established a scheme in which PCRA petitions are to be accorded finality. With certain exceptions, challenges to a conviction must be raised either within one year of final judgment or within one year of the effective date of the act. Because the one-year period within which petitions normally must be filed is sufficiently generous to prepare even the most difficult case, and because the exceptions to this filing period encompass government misconduct, after-discovered evidence, and constitutional changes, we have no difficulty in concluding that the PCRA's time limitation upon the filing of PCRA petitions does not unreasonably or unconstitutionally limit Peterkin's constitutional right to habeas corpus relief. At some point litigation must come to an end. The purpose of law is not to provide convicted criminals with the means to escape well-deserved sanctions, but to provide a reasonable opportunity for those who have been wrongly convicted to demonstrate the injustice of their conviction. The current PCRA places time limitations on such claims of error, and in so doing, strikes a reasonable balance between society's need for finality in criminal cases and the convicted person's need to demonstrate that there has been an error in the proceedings that resulted in his conviction.

Peterkin, 554 Pa. at 553-554, 557-558, 722 A.2d at 641, 642-643 (footnote omitted).

The logic of ***Peterkin*** applies equally to a third-time petitioner such as Appellant. When the amendments to the PCRA took effect on January 16, 1996, Appellant was put on notice that he could file a petition for collateral relief within one year, or, beyond that year, he could plead and prove one of the time bar exceptions. This one-year period, coupled with the excepted situations, is sufficiently generous to meet constitutional concerns regarding *habeas corpus*. ***Peterkin***; accord ***Commonwealth v. Zuniga***, 772 A.2d 1028 (Pa. Super. 2001) (applying logic of ***Peterkin*** to first-time petitioner).

Appellant had the opportunity to exercise his right to petition for writ of *habeas corpus*, but simply failed to do so in a timely fashion. The time limitations of the PCRA do not cause any suspension of the right of *habeas corpus*; therefore, Appellant has demonstrated no error.

Accordingly, we affirm the order dismissing Appellant's petition. Given this disposition, we shall not address Appellant's sentencing issue.

Order affirmed. Jurisdiction relinquished.