

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ROBERT JAMES ECKERT,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1985 MDA 2012

Appeal from the PCRA Order October 15, 2012
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s): CP-54-CR-0000748-1989, CP-54-CR-0000787-
1989

BEFORE: BOWES, OTT, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.:

FILED JUNE 05, 2013

Robert James Eckert appeals from the October 15, 2012 order dismissing his serial PCRA petition as untimely filed. We affirm.

On May 10, 1990, Appellant was convicted of first degree murder and reckless endangerment after he stabbed his common law wife, Marlene Quercia, in the presence of her brother, Dale Klemer. At the time, the victim, who was pregnant, was in the process of leaving the home that she shared with Appellant. Appellant was sentenced to life imprisonment, we affirmed, ***Commonwealth v. Eckert***, 598 A.2d 1327 (Pa.Super. 1991) (unpublished memorandum), and our Supreme Court denied allowance of appeal on February 7, 1992. ***Commonwealth v. Eckert***, 602 A.2d 856 (Pa.

* Former Justice specially assigned to the Superior Court.

1992). Appellant filed a motion for post-conviction relief, which was litigated with the assistance of counsel. We affirmed and rejected various allegations of ineffective assistance of counsel. ***Commonwealth v. Eckert***, 731 A.2d 194 (Pa.Super. 1998) (unpublished memorandum). We affirmed the dismissal of Appellant's second PCRA petition as untimely filed, noting therein that Appellant's judgment of sentence became final on April 10, 1992, and that he had until April 10, 1993, to file a timely PCRA petition. ***Commonwealth v. Eckert***, 835 A.2d 829 (Pa.Super. 2003) (unpublished memorandum).

Appellant's next petition also was ruled untimely. On appeal, he raised the position that "all prior counsel ineffectively failed to discover the familial relationships between [the] trial judge, prosecutor, and Commonwealth witnesses," and he claimed that the petition was not untimely in that, "as a documented brain damage survivor he only just recently recalled the familial relationships described." ***Commonwealth v. Eckert***, 32 A.3d 280 (Pa.Super. 2011) (unpublished memorandum at 1). We rejected Appellant's invocation of the newly discovered facts exception to the one-year filing deadline under the PCRA and ruled that the petition was untimely filed.

Appellant filed yet another PCRA petition on August 27, 2012. It was dismissed as untimely on October 15, 2012, and this appeal followed. Appellant's brief is nearly undecipherable. His primary averment is markedly similar to that raised and rejected in Appellant's previous PCRA petition. He suggests that the district attorney and his trial judge conspired to

fraudulently convict him because they were biologically related to the witnesses against him. While, in his primary brief, Appellant does not explain why his PCRA petition is timely, he suggests in his reply brief that this evidence of the biological bonds in question is newly discovered.

“This Court's standard of review regarding an order dismissing a PCRA petition is whether the determination of the PCRA court is supported by evidence of record and is free of legal error. In evaluating a PCRA court's decision, our scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the trial level.” **Commonwealth v. Brandon**, 51 A.3d 231, 233 (Pa.Super. 2012) (citation and quotation marks omitted).

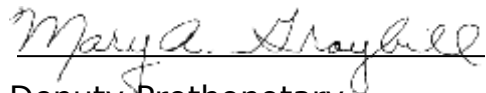
All PCRA petitions must be filed within one year after the defendant's judgment of sentence becomes final. 42 Pa.C.S. § 9545 (b)(1). In this case, as we observed during a prior post-conviction proceeding, Appellant's judgment of sentence became final on April 10, 1992, and he had until April 10, 1993, to file a timely PCRA petition. “There are three exceptions to this [one-year] time requirement: (1) interference by government officials in the presentation of the claim; (2) newly discovered facts; and (3) an after-recognized constitutional right.” **Brandon, supra** at 233-34; 42 Pa.C.S. § 9545(b)(1)(i-iii). “The PCRA's timeliness requirements are jurisdictional; therefore, a court may not address the merits of the issues raised if the petition was not timely filed.” **Commonwealth v. Jones**, 54 A.3d 14, 17 (Pa. 2012).

As noted, Appellant invokes the newly-discovered facts exception to the PCRA. A PCRA petitioner can invoke the newly-discovered facts exception outlined in § 9545(b)(1)(ii) if he can establish that the facts upon which his claim is predicated were unknown to him and could not have been discovered through the exercise of due diligence. ***Commonwealth v. Bennett***, 930 A.2d 1264 (Pa. 2007); ***see also Commonwealth v. Watts***, 23 A.3d 980 (Pa. 2011). Any petition invoking the newly-discovered facts exception must be filed within sixty days of when those facts were first made known to the petitioner. ***Jones, supra***; 42 Pa.C.S. § 9545(b)(2) (“Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.”).

Herein, the record establishes that in 2011, Appellant knew about the familial relationship among the witnesses, prosecutor, and the trial judge. Hence, his allegation of fraud is untimely because it was not raised until August 27, 2012, more than sixty days of his realization of the bonds in question.

Order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 6/5/2013