

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RAYNARD GREEN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1158 WDA 2013

Appeal from the PCRA Order June 19, 2013
In the Court of Common Pleas of Erie County
Criminal Division at No(s): 880 & 881 of 1978

BEFORE: GANTMAN, P.J., ALLEN, J., and STABILE, J.

JUDGMENT ORDER BY GANTMAN, P.J.:

FILED JUNE 24, 2014

Appellant, Raynard Green, appeals from the order entered in the Erie County Court of Common Pleas, dismissing his fourth petition filed under the Post Conviction Relief Act ("PCRA").¹ We affirm.

On April 25, 1978, seventeen-year-old Appellant killed the victim. Following trial, a jury found Appellant guilty of first degree murder and burglary. On April 10, 1979, the court sentenced Appellant to life imprisonment for the murder conviction, plus a consecutive term of five (5) to ten (10) years' imprisonment for the burglary conviction. Our Supreme Court affirmed the judgment of sentence on April 25, 1980. On November 10, 1980, Appellant timely filed a petition for collateral relief, which the

¹ 42 Pa.C.S.A. §§ 9541-9546.

court dismissed on June 3, 1981. This Court affirmed the order on June 17, 1983, and Appellant did not seek further review. On July 25, 2012, Appellant filed the current *pro se* PCRA petition. The court appointed counsel, who filed an amended petition. The court denied PCRA relief on June 19, 2013. On July 12, 2013, Appellant timely filed a notice of appeal. The court did not order Appellant to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

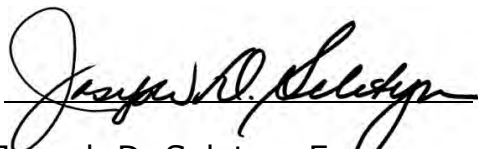
The timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Hackett***, 598 Pa. 350, 956 A.2d 978 (2008), *cert. denied*, 556 U.S. 1285, 129 S.Ct. 2772, 174 L.Ed.2d 277 (2009). A PCRA petition must be filed within one year of the date the underlying judgment becomes final. 42 Pa.C.S.A. § 9545(b)(1). A judgment is deemed final at the conclusion of direct review or at the expiration of time for seeking review. 42 Pa.C.S.A. § 9545(b)(3). The three statutory exceptions to the timeliness provisions in the PCRA allow for very limited circumstances under which the late filing of a petition will be excused. 42 Pa.C.S.A. § 9545(b)(1). A petitioner asserting a timeliness exception must file a petition within sixty days of the date the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2). When asserting the newly created constitutional right exception under Section 9545(b)(1)(iii), "a petitioner must prove that there is a 'new' constitutional right and that the right 'has been held' by that court to apply retroactively." ***Commonwealth v. Chambers***, 35 A.3d 34, 41 (Pa.Super.

2011), *appeal denied*, 616 Pa. 625, 46 A.3d 715 (2012).

Instantly, Appellant's judgment of sentence became final in 1980. Appellant filed his current petition on July 25, 2012, more than three decades after the judgment became final; thus, the petition is patently untimely. **See** 42 Pa.C.S.A. § 9545(b)(1). Appellant attempts to invoke the newly created constitutional right exception, contending that his sentence of life imprisonment is unconstitutional pursuant to ***Miller v. Alabama***, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). Nevertheless, our Supreme Court has ruled that ***Miller*** does not apply retroactively to judgments of sentence which became final before the filing date of ***Miller*** (June 25, 2012). ***See Commonwealth v. Cunningham***, ___ Pa. ___, 81 A.3d 1 (2013). Thus, the court properly dismissed Appellant's petition.

Order affirmed.

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: 6/24/2014