

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

TYRONE SWAN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1225 WDA 2014

Appeal from the PCRA Order July 8, 2014
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0016262-2010

BEFORE: GANTMAN, P.J., JENKINS, J., and MUSMANN, J.

JUDGMENT ORDER BY GANTMAN, P.J.:

FILED DECEMBER 23, 2014

Appellant, Tyrone Swan, appeals *pro se* from the order entered in the Allegheny County Court of Common Pleas, which denied his petition for collateral relief (labeled a motion for credit for time served), per the Post Conviction Relief Act ("PCRA"), at 42 Pa.C.S.A. §§ 9541-9546. On September 19, 2012, the court convicted Appellant of voluntary manslaughter, aggravated assault, firearms not to be carried without a license, and recklessly endangering another person. The court sentenced Appellant on February 1, 2013, to an aggregate term of five to ten years' imprisonment, with 105 days' credit for time served. Appellant did not appeal. On July 25, 2013, Appellant filed a motion for credit for time served, alleging he was entitled to 799 days' credit. The court denied the motion on August 2, 2013. On April 16, 2014, Appellant filed the current motion for

credit for time served, making the same claim he raised in his earlier filing. The court treated Appellant's current motion as a PCRA petition and appointed counsel, who filed a no-merit letter and request to withdraw. The court granted counsel's request on June 16, 2014, and issued Pa.R.Crim.P. 907 notice that day. Appellant responded, after which the court denied the petition on July 8, 2014. On July 29, 2014, Appellant timely filed a *pro se* notice of appeal. On July 31, 2014, the court ordered Appellant to file a Pa.R.A.P. 1925(b) statement; and Appellant timely complied.

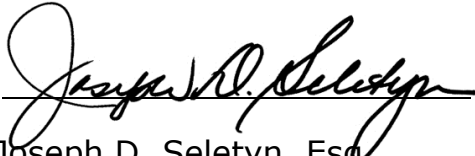
Any petition for post-conviction collateral relief generally is considered a PCRA petition, regardless of how an appellant captions the petition, if the petition raises issues for which the relief sought is the kind available under the PCRA. 42 Pa.C.S.A. § 9542 (stating PCRA is sole means of obtaining collateral relief); ***Commonwealth v. Menezes***, 871 A.2d 204 (Pa.Super. 2005) (explaining claim alleging failure to award credit for time served involves legality of sentence and is cognizable under PCRA). The timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Robinson***, 12 A.3d 477 (Pa.Super. 2011). A petitioner must file a PCRA petition within one year of the date the underlying judgment becomes final, unless he pleads and proves the application of an exception to the timeliness requirements. 42 Pa.C.S.A. § 9545(b)(1), (2). A judgment is final at the conclusion of direct review or at the expiration of time for seeking review. 42 Pa.C.S.A. § 9545(b)(3). Also, to be eligible for PCRA relief, a petitioner

must plead and prove, *inter alia*, that he did not previously litigate his claim. 42 Pa.C.S.A. § 9543(a)(3). Instantly, the court properly treated Appellant's current motion for credit for time served as a PCRA petition.¹ **See *Menezes, supra***. Appellant's sentence, however, became final on March 3, 2013 (**see** Pa.R.A.P. 903(a)); so Appellant had until March 3, 2014 to file a timely PCRA petition, which makes his April 16, 2014 petition patently untimely. 42 Pa.C.S.A. § 9545(b)(1). Appellant did not plead or prove in his petition any of the timeliness exceptions. Moreover, Appellant already litigated this claim in his July 25, 2013 motion. **See** 42 Pa.C.S.A. § 9543(a)(3). Thus, the PCRA court properly denied relief. Accordingly, we affirm.

Order affirmed.

¹ The court should have treated Appellant's July 25, 2013 motion as a PCRA petition. **See *Menezes, supra***. In his reply brief, Appellant claims for the first time that the court's failure to do so constituted "governmental interference" to warrant application of a timeliness exception to his current filing. Appellant failed to raise this claim before the PCRA court, so it is waived. **See *Commonwealth v. Williams***, 909 A.2d 383, 386 (Pa.Super. 2006) (holding issues not raised in PCRA petition are waived on appeal); ***Commonwealth v. Brown***, 767 A.2d 576, 585 (Pa.Super. 2001) (stating same).

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2014