

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DENNIS STEPNEY,	:	
	:	
Appellant	:	No. 124 MDA 2014

Appeal from the PCRA Order entered on December 12, 2013
in the Court of Common Pleas of Lackawanna County,
Criminal Division, No(s): CP-35-CR-0000747-2005;
CP-35-CR-0001139-2005

BEFORE: LAZARUS, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JUNE 25, 2014

Dennis Stepney (“Stepney”) appeals, *pro se*, from the Order dismissing his first Petition for relief pursuant to the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On May 20, 2005, Stepney pled guilty to fleeing or attempting to elude a police officer.¹ On August 24, 2005, Stepney was sentenced to 9 to 23 months in prison. Subsequently, on February 2, 2006, Stepney pled guilty to drug-related charges of corrupt organizations, criminal conspiracy to commit possession with intent to deliver, and possession with intent to deliver.² On June 27, 2006, he was sentenced to 7½ to 15 years in prison, to be served concurrently to the August 24, 2005 sentence. With regard to

¹ **See** 75 Pa.C.S.A. § 3733(a).

² **See** 18 Pa.C.S.A. §§ 911(b)(3), 903; 35 P.S. § 780-113(a)(30).

the June 27, 2006 sentence, Stepney filed a Motion for Reconsideration to reduce fines, which the trial court granted on July 13, 2006. Stepney did not file a direct appeal from either sentence.

On August 13, 2012, Stepney filed the instant PCRA Petition, claiming ineffectiveness of counsel and seeking credit for time served. The PCRA court dismissed the Petition as untimely. Stepney filed a timely Notice of Appeal.

On appeal, Stepney raises the following questions for review:

I. Did the [Pennsylvania Board of Probation and Parole ("PBPP") and Department of Corrections ("DOC")] err in misapprehending/disregarding the Orders dictated by the Commonwealth on 8-24-05 and 6-27-06 respectively, in that the former entities failed to credit [Stepney] with all time served while not at liberty, to both concurrently ran cases [*sic*] as they were an original and subsequent charge for the same act?

II. Is this conduct of the PBPP/DOC in direct violation of [a] governing and applicable statute, significantly and accordingly; 42 Pa.C.S.A. § 9760(8)(e)(2)?

Brief for Appellant at 4.

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error.

Commonwealth v. Ford, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

Under the PCRA, a petition must be filed within one year from the date the judgment of sentence becomes final. **See** 42 Pa.C.S.A. § 9545(b)(1). A

judgment of sentence becomes final at the conclusion of direct review or at the expiration of time for seeking review. **Id.** § 9545(b)(3). An appellate court cannot reach the merits of an appeal if the PCRA petition is untimely. **Commonwealth v. Fisher**, 870 A.2d 864, 869 n.10 (Pa. 2005).

Because Stepney did not seek direct review of either judgment of sentence, the sentences became final when the period of time in which to seek review expired. Thus, Stepney's sentences became final on September 25, 2005, and August 14, 2006, respectively. Stepney had one year from those dates to file the instant PCRA Petition. Because he did not file his PCRA Petition until August 13, 2012, the Petition was untimely.³

However, we may consider an untimely PCRA petition if the petitioner can plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1)(i-iii). Any petition invoking one of these exceptions "shall be filed within 60 days of the date the claim could have been presented." **Id.** § 9545(b)(2); **Commonwealth v. Albrecht**, 994 A.2d 1091, 1093 (Pa. 2010).

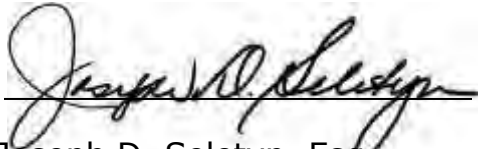
Here, Stepney did not plead or prove any exception and, instead, claims that some of the time he served was not properly credited to both sentences, resulting in an additional 14½ months in prison. **See** Brief for

³ It appears that Stepney is no longer serving the first sentence. Under 42 Pa.C.S.A. § 9543(a)(1)(i), to be eligible for PCRA relief, a PCRA petitioner must be currently serving a prison sentence or be on probation or parole for the crime. Thus, even if his PCRA Petition had been timely filed, he would not have been eligible for relief.

Appellant at 7. Because Stepney did not successfully invoke any of the three exceptions necessary to circumvent the PCRA's timeliness requirement, we cannot address the merits of his claims on appeal. Accordingly, the PCRA court did not err in dismissing Stepney's Petition as untimely.⁴

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: 6/25/2014

⁴ To the extent Stepney was harmed by actions of the Department of Corrections and the Board of Probation and Parole, his remedy was to seek administrative review, and in the event of an adverse determination, an appeal to the Commonwealth Court.