

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
RALPH BOLDEN,		
Appellant		No. 1378 WDA 2013

Appeal from the PCRA Order Entered August 2, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s):
CP-02-CR-0000097-1995
CP-02-CR-0000193-1995

BEFORE: GANTMAN, P.J., BENDER, P.J.E., and OTT, J.

MEMORANDUM BY BENDER, P.J.E.:

FILED July 1, 2014

Appellant, Ralph Bolden, appeals *pro se* from the September 16, 2013 order denying as untimely his third petition for relief filed under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm.

On February 29, 1996, the jury found Appellant guilty of first degree murder, aggravated assault, two counts of robbery, theft by unlawful taking, and recklessly endangering another person. On April 8, 1996, the jury unanimously voted to impose a sentence of death on Appellant. The trial court also sentenced Appellant to three additional terms of imprisonment of ten to twenty years for his aggravated assault and robbery convictions. On direct appeal, our Supreme Court vacated the death sentence and remanded the case for resentencing on June 20, 2000, after determining that the trial

court erred in instructing the jury that it could find an aggravating circumstance based on the evidence. ***Commonwealth v. Bolden***, 753 A.2d 793, 798-99 (Pa. 2000). On March 9, 2001, the trial court resentenced Appellant to life in prison without the possibility of parole. He did not appeal his sentence.

Appellant filed a timely *pro se* PCRA petition on November 15, 2001, raising numerous claims of ineffective assistance of counsel. The PCRA court ultimately concluded that all of the issues raised by Appellant were meritless. This Court affirmed the PCRA court's denial of relief on October 29, 2004. ***Commonwealth v. Bolden***, 864 A.2d 575 (Pa. Super. 2004) (unpublished memorandum).

On December 28, 2007, Appellant filed a second *pro se* PCRA petition, asserting that if the jury had been presented with his diagnosis of multiple sclerosis — which he claimed to have been formally diagnosed with in December 2007 — it may have reached a different verdict. After the PCRA court dismissed his petition because it was untimely, this Court vacated the order and remanded the case to the PCRA court to determine whether Appellant sufficiently pled the applicability of the exception for “newly-discovered facts” under section 9545(b)(1)(ii). Following an evidentiary hearing, the PCRA court denied the petition. After this Court affirmed the order denying relief on August 17, 2010, our Supreme Court denied Appellant's petition for allowance of appeal on March 9, 2011.

Commonwealth v. Bolden, 11 A.3d 1030 (Pa. Super. 2010) (unpublished memorandum), *appeal denied*, 20 A.3d 483 (Pa. 2011).

Then, on June 6, 2013, Appellant filed a third *pro se* PCRA petition, this time challenging the legality of his sentence. On August 8, 2013, the PCRA court dismissed the petition as untimely, and Appellant filed a *pro se* notice of appeal. On August 13, 2013, the PCRA court ordered Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. He complied and filed his Rule 1925(b) statement on September 4, 2013. In his brief, he presents the following questions for our review:

- A. Did Appellant use due diligence in a manner commensurate to his present circumstances to bring forth his claims?
- B. Is the Appellant's Life sentence "legal" in regards to the laws of the Commonwealth of Pennsylvania?
- C. Did the trial court use double jeopardy and abuse its discretion when it sentenced the Appellant to Life plus 30 to 60 years to be done consecutively?
- D. Can Appellant's sentence be disturbed/corrected through post-collateral relief?

Appellant's Brief at 6.

This Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of the record and is free of legal error. **Commonwealth v. Pitts**, 981 A.2d 875, 878 (Pa. 2009) (internal citation omitted). This Court gives great deference to "the findings of the PCRA court if the record

contains any support for those findings.” ***Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa. Super. 2001) (internal citations omitted).

First, we address the timeliness of Appellant’s PCRA petition. “Jurisdictional time limits go to a court’s right or competency to adjudicate a controversy. These limitations are mandatory and interpreted literally; thus, a court has no authority to extend filing periods except as the statute permits.” ***Commonwealth v. Fahy***, 737 A.2d 214, 222 (Pa. 1999). Any petition for post-conviction relief under the PCRA must be filed within one year of the date the judgment of sentence becomes final, unless a statutory exception set forth in 42 Pa.C.S. § 9545(b)(1)(i)-(iii) applies.

Here, Appellant did not appeal from his judgment of sentence of life imprisonment. Consequently, that sentence became final on April 9, 2001, thirty days after its imposition. **See** 42 Pa.C.S. § 9545(b)(3) (“[A] judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.”); Pa.R.A.P. 903(a) (“[T]he notice of appeal...shall be filed within 30 days after the entry of the order from which the appeal is taken.”). Accordingly, as discerned by the PCRA court, Appellant needed to file his PCRA petition by April 9, 2002, for it to be timely. However, he filed the petition on June 6, 2013, making it facially untimely.

As a result, for this Court to have jurisdiction to reach the merits of his petition, Appellant must prove that he meets one of the exceptions to the

timeliness requirements pursuant to 42 Pa.C.S. § 9545(b). That section states:

(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. § 9545(b)(1)(i)-(iii). Any petition seeking to invoke an exception “shall be filed within 60 days of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2).

Appellant asserts that his petition satisfies the “newly discovered facts” exception under section 9545(b)(1)(ii). Specifically, Appellant alleges that his life sentence is illegal because the trial judge did not reference a statute on the sentencing order that authorizes his incarceration term. Appellant’s Brief at 8. Further, he contends that the doctrine of merger should have

applied to his sentence. *Id.* at 8-9. Appellant claims that he just discovered these alleged errors after requesting a copy of his sentencing order, which he received on January 11, 2013. *Id.* at 8, 10-11.

Before reaching the issue of whether Appellant's allegations satisfy the "newly-discovered facts" exception of section 9545(b)(1)(ii), we must address the sixty-day timeliness requirement mandated by section 9545(b)(2). Here, Appellant received the sentencing order on which he bases his claims on January 11, 2013. Therefore, Appellant had until March 11, 2013, to file his petition. Yet, he did not file his petition until June 6, 2013. Because Appellant missed the sixty-day filing deadline by nearly three months, we must deny his petition.

Moreover, even if Appellant had met the sixty-day filing deadline, this Court would nevertheless dismiss his petition because he did not show due diligence in ascertaining the facts upon which his claims are based. Our Supreme Court has explained, "[T]he 60-day rule requires a petitioner to plead and prove that the information on which he relies could not have been obtained earlier, despite the exercise of due diligence." *Commonwealth v. Albrecht*, 994 A.2d 1091, 1094 (Pa. 2010) (quoting *Commonwealth v. Stokes*, 959 A.2d 306, 310 (Pa. 2008) (internal citations omitted)). Further, this Court has stated, "Due diligence demands that the petitioner take reasonable steps to protect his own interests. A petitioner must explain why he could not have obtained the new fact(s) earlier with the exercise of

due diligence. This rule is strictly enforced.” ***Commonwealth v. Monaco***, 996 A.2d 1076, 1080 (Pa. Super. 2010) (internal citations omitted).

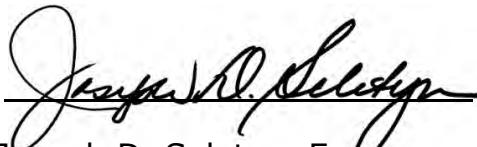
Here, Appellant has failed to establish that he could not have discovered the sentencing order prior to January of 2013 had he exercised due diligence. Appellant’s sentencing order became a matter of public record in 2001, and he could have obtained a copy of it shortly after his resentencing. ***See Commonwealth v. Lopez***, 51 A.3d 195, 196 (Pa. 2012) (declaring a PCRA petition time-barred under section 9545(b)(1)(ii) where the information was publicly available for years and easily discoverable). Appellant also does not proffer an explanation for why he could not have obtained his sentencing order until nearly twelve years after he received his sentence. Moreover, Appellant’s argument that his claims are not subject to the sixty-day filing deadline because they are based on “not just the presence of facts but the illegality in how such records were prepared” is meritless. Appellant’s Brief at 11. ***See Commonwealth v. Fowler***, 930 A.2d 586, 592 (Pa. Super. 2007) (“[A] court may entertain a challenge to the legality of the sentence so long as the court has jurisdiction to hear the claim. In the PCRA context, jurisdiction is tied to the filing of a timely PCRA petition.”) (quoting ***Commonwealth v. Berry***, 877 A.2d 479, 482 (Pa. Super. 2005)). Therefore, even if Appellant met the sixty-day filing deadline, we would conclude that he did not satisfy his burden of proving that the sentencing order could not have been ascertained earlier by the

exercise of due diligence. Thus, the exception under 9545(b)(1)(ii) does not apply.

As Appellant's petition is untimely and does not fulfill the "newly-discovered facts" exception to the PCRA timeliness requirement, we are without jurisdiction to assess his claim. Accordingly, the PCRA court did not err in denying Appellant's petition.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/1/2014