

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JEFFREY T. HILL,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1691 WDA 2013

Appeal from the PCRA Order Entered September 10, 2013  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0009026-1983

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

MEMORANDUM BY BENDER, P.J.E.:

**FILED JUNE 25, 2014**

Appellant, Jeffrey T. Hill, appeals *pro se* from the September 10, 2013 order denying as untimely his second petition for relief pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm.

On March 23, 1984, a jury found Appellant guilty of third degree murder. He received a sentence of life imprisonment on May 9, 1985.<sup>1</sup> Appellant then filed a notice of appeal. **See** Trial Court Opinion,

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<sup>1</sup> Appellant was convicted of second degree murder in New Jersey on January 17, 1974. Consequently, the court sentenced Appellant under 42 Pa.C.S. § 9715 (“[A]ny person convicted of murder of the third degree in this Commonwealth who has previously been convicted at any time of murder or voluntary manslaughter in this Commonwealth or of the same or substantially equivalent crime in any other jurisdiction shall be sentenced to life imprisonment, notwithstanding any other provision of this title or other statute to the contrary.”).

10/22/1985, at 2.<sup>2</sup> This Court affirmed the judgment of sentence on April 30, 1986, and our Supreme Court denied Appellant's request for allowance of appeal on January 15, 1987. **Commonwealth v. Hill**, 512 A.2d 725 (Pa. Super. 1986) (unpublished memorandum), *appeal denied*, **Commonwealth v. Hill**, 520 A.2d 1384 (Pa. 1987).

On June 25, 2009, Appellant filed a *pro se* PCRA petition, claiming ineffective assistance of trial and appellate counsels. The PCRA court subsequently appointed counsel to represent Appellant in the proceedings. On December 30, 2010, Appellant's PCRA counsel filed a **Turner/Finley**<sup>3</sup> "no merit" letter and a motion for leave to withdraw, opining that Appellant was not entitled to post-conviction relief. On January 5, 2011, the PCRA court issued an order granting counsel's motion to withdraw and giving notice of its intent to dismiss the PCRA petition. The court then dismissed the PCRA petition on February 16, 2011.

On April 10, 2013, Appellant filed a *pro se* petition for writ of *habeas corpus*, which the court correctly construed as a PCRA petition. **See Commonwealth v. Taylor**, 65 A.3d 462, 465-66 (Pa. Super. 2013)

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<sup>2</sup> We note that this opinion was filed on October 22, 1985, but was not entered on the docket until November 18, 1985. The dates throughout this memorandum refer to the date the document was filed, rather than the date it was entered on the docket.

<sup>3</sup> **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988).

(“Unless the PCRA could not provide for a potential remedy, the PCRA statute subsumes the writ of *habeas corpus*.”) (internal citations omitted). The PCRA court gave notice of its intent to dismiss the PCRA petition, and Appellant filed a *pro se* response. The PCRA court then denied the petition as untimely on September 10, 2013.

On October 7, 2013, Appellant filed a *pro se* notice of appeal to this Court. Appellant also filed a Pa.R.A.P. 1925(b) statement on December 9, 2013, though the record does not indicate that the court ordered him to do so. In his brief, Appellant presents the following questions for our review:

1. Was the due process right of this Appellant violated?
2. Was this Appellant sentenced unlawfully?
3. Did Appellant have ineffective counsel during critical stages of case?

Appellant’s Brief at 6 (unnumbered pages) (unnecessary capitalization omitted).

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's judgment of sentence became final on April 15, 1987, ninety days after our Supreme Court denied review of Appellant's case. **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."); **Commonwealth v. Owens**, 718 A.2d 330, 331 (Pa. Super. 1998) (directing that under the PCRA, petitioner's judgment of sentence becomes final ninety days after our Supreme Court rejects his or her petition for allowance of appeal since petitioner had ninety additional days to seek review with the United States Supreme Court). However, as discerned by the PCRA court, subsequent amendments to the PCRA affected the deadline for Appellant to file his first PCRA petition. **See Commonwealth v. Voss**, 838 A.2d 795, 799-800 (Pa. Super. 2003) ("[A] petition where the judgment of sentence became final before the effective date of the [1995] amendments [to the PCRA] shall be

deemed timely if the petitioner's first petition was filed within one year of the effective date of the [1995] amendments [to the PCRA]. Because the effective date of the amendments is January 16, 1996, the operative deadline for first-time PCRA petitions is January 16, 1997.”) (internal citations omitted). Accordingly, Appellant needed to file a PCRA petition by January 16, 1997, for it to be timely. Appellant filed the petition presently at issue on April 10, 2013, making it untimely on its face.

Consequently, 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).

Here, Appellant does not specifically plead the applicability of any of the exceptions set forth in the statute. After careful review of Appellant’s brief, we are unable to ascertain any assertion that he meets an exception under section 9545. **See Commonwealth v. Beasley**, 741 A.2d 1258, 1261 (Pa. 1999) (“[W]here...the petition is untimely, it is the petitioner’s burden to plead in the petition and prove that one of the exceptions applies.”). Because Appellant does not plead an exception to the timeliness requirement, we lack jurisdiction to review his claims.

Nevertheless, even if Appellant’s assertions could be construed as an attempt to invoke an exception under section 9545, we would conclude that he has not met the burden of proving that the governmental interference exception applies to his case. While he seems to fault the government for his inability to obtain the entire record, Appellant did not prove that government officials interfered with his ability to assert his claims. According to the trial court’s docket, Appellant did not even attempt to obtain the record until 2009, well after his sentencing in 1985.

Further, Appellant’s argument would not satisfy the newly discovered fact exception under section 9545(b)(1)(ii). In support of his claims, Appellant relies on information that has been publicly available, such as his sentencing order and various Pennsylvania statutes. **See Commonwealth**

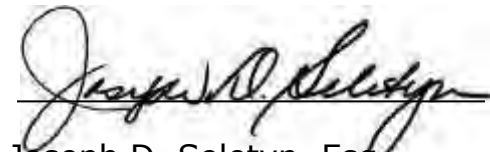
**v. Lopez**, 51 A.3d 195, 196 (Pa. 2012) (concluding a PCRA petition is time-barred under section 9545(b)(1)(ii) where the information was publicly available for years and easily discoverable). Thus, he could have ascertained this information earlier if he had exercised due diligence.

Finally, Appellant also would not satisfy the exception of section 9545(b)(1)(iii). Appellant challenges the constitutionality of 42 Pa.C.S. § 9715, which sets forth a mandatory sentence of life imprisonment. Appellant claims that this statute is too vague to constitute valid legislation. This argument does not involve our Supreme Court's, or the United States Supreme Court's, recognizing a new constitutional right that applies retroactively.

As Appellant's petition is untimely and does not satisfy any exception to the PCRA timeliness requirement, we are without jurisdiction to review his claims. Consequently, the PCRA court did not err in dismissing Appellant's petition as untimely.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above the printed name and title.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/25/2014

