

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

LUTHER JOHN HADIX

Appellant

No. 1802 MDA 2013

Appeal from the PCRA Order September 13, 2013
In the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0003625-1994
CP-36-CR-0003626-1994
CP-36-CR-0003627-1994

BEFORE: PANELLA, J., OLSON, J., and MUSMANNO, J.

MEMORANDUM BY PANELLA, J.:

FILED MAY 13, 2014

Appellant, Luther John Hadix, appeals *pro se* from the order entered September 13, 2013, by the Honorable Howard F. Knisely, Court of Common Pleas of Lancaster County, which denied his *fifth* petition filed pursuant to the Post Conviction Relief Act¹ ("PCRA"). We affirm.

A panel of this Court previously summarized the facts and procedural history of this case as follows:

On July 18, 1995, Appellant pled guilty but mentally ill to one count each of rape, statutory rape, corruption of a minor, involuntary deviate sexual intercourse, aggravated assault, possession of marijuana and two counts each of simple assault, terroristic threats, unlawful restraint, reckless endangerment,

¹ 42 PA.CON.S.TAT.ANN. § 9541, *et seq.*

and firearm not to be [carried] without a license. On August 25, 1995, Appellant was sentenced to an aggregate term of imprisonment of 21 to 60 years. Post-sentence motions were filed and denied. Appellant filed a direct appeal in which he challenged the validity of the guilty plea and the discretionary aspects of sentencing. On September 16, 1996, this Court affirmed the judgment of sentence. **Commonwealth v. Hadix**, 686 A.2d 1363 (Pa. Super. 1996)(unpublished memorandum). Appellant did not seek allowance of appeal with our Supreme Court.

On June 10, 1997, Appellant filed his first PCRA petition *pro se*. Appointed counsel subsequently filed a no merit letter pursuant to **Commonwealth v. Turner**, 518 Pa. 491, 544 A.2d 927 (1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988)(*en banc*), and sought to withdraw as counsel. On August 21, 1997, the PCRA court denied Appellant's PCRA petition and granted counsel's request to withdraw. Appellant appealed, and on April 2, 1998, this Court affirmed. **Commonwealth v. Hadix**, 718 A.2d 341 (Pa. Super. 1998) (unpublished judgment order). On March 17, 1999, the Supreme Court denied Appellant's petition for allowance of appeal.

On May 28, 2003, Appellant filed a second PCRA petition *pro se*. On July 10, 2003, the PCRA court filed a notice to dismiss the petition pursuant to Pa.R.Crim.P. 907 on the basis the petition was untimely filed and the issues raised were without merit. Appellant was given thirty days to file an amended petition or response to the court's notice. On July 31, 2002, Appellant filed objections to the notice. On September 26, 2003, the PCRA court entered an order appointing counsel for Appellant solely to determine whether he was entitled to file a petition for allowance of appeal to the Supreme Court of Pennsylvania *nunc pro tunc* in light of the recent decision in **Commonwealth v. Liebel**, 573 Pa. 375, 825 A.2d 630 (2003). Thereafter, on October 24, 2003, appointed counsel filed a no-merit letter and a request to withdraw as counsel. Counsel maintained that the petition was untimely filed and lacked merit. On November 6, 2003, the PCRA court filed a notice of intent to dismiss pursuant to Pa.R.Crim.P. 907. In response, Appellant filed a *pro se* objection to the Rule 907 notice. On November 26, 2003, the PCRA court entered an order dismissing the petition as lacking in merit and granted counsel's petition to withdraw. The trial court also denied Appellant's request for the appointment of counsel.

In its 1925(a) opinion filed February 10, 2004, the trial court determined that the petition was untimely filed, and it was without jurisdiction to consider the merits.

Commonwealth v. Hadix, 139 MDA 2004, at 1-3 (Pa. Super. 2004) (unpublished memorandum) (footnote omitted).

On appeal, this Court affirmed the denial of Appellant's second PCRA petition as untimely filed. **Id.** Appellant's third and fourth *pro se* PCRA petitions were subsequently denied on the same basis. **Commonwealth v. Hadix**, 915 A.2d 142 (Pa. Super. 2006) (unpublished memorandum); **Commonwealth v. Hadix**, 37 A.3d 1246 (Pa. Super. 2011) (unpublished memorandum).

Hadix filed his fifth PCRA petition on June 26, 2013. On August 21, 2013, the PCRA court issued notice of its intent to dismiss the petition pursuant to Pa.R.Crim.P. 907. Hadix filed a response in objection thereto and an amended PCRA petition on September 5, 2013. On September 13, 2013, the PCRA court again dismissed Hadix's petition as untimely. This timely appeal followed.

Hadix raises nine issues for our review. "On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court's findings are supported by the record and without legal error." **Commonwealth v. Edmiston**, 65 A.3d 339, 345 (Pa. 2013) (citation omitted), *cert. denied*, **Edmiston v. Pennsylvania**, 134 S. Ct. 639 (2013). "[Our] scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the

prevailing party at the PCRA court level.” **Commonwealth v. Koehler**, 36 A.3d 121, 131 (Pa. 2012) (citation omitted). In order to be eligible for PCRA relief, a petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence arose from one or more of the errors listed at 42 Pa.C.S.A. § 9543(a)(2). These issues must be neither previously litigated nor waived. 42 Pa.C.S.A. § 9543(a)(3). “[T]his Court applies a *de novo* standard of review to the PCRA court’s legal conclusions.” **Commonwealth v. Spatz**, 18 A.3d 244, 259 (Pa. 2011) (citation omitted).

Before we may address the merits of a PCRA petition, we must first consider the petition’s timeliness because it implicates the jurisdiction of both this Court and the PCRA court. **Commonwealth v. Williams**, 35 A.3d 44, 52 (Pa. Super. 2011) (citation omitted), *appeal denied*, 50 A.3d 121 (Pa. 2012). We may raise issues concerning our appellate jurisdiction *sua sponte*. **Commonwealth v. Patterson**, 940 A.2d 493, 497 (Pa. Super. 2007), *appeal denied*, 960 A.2d 838 (Pa. 2008). “Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition.” **Id.** The PCRA “confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar[.]” **Commonwealth v. Watts**, 23 A.3d 980, 983 (Pa. 2011) (citation omitted). This is to “accord finality to the collateral review process.” **Id.** “A petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final unless the petition alleges, and the petitioner proves, that an exception to the time for filing the petition, set

forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii), is met.”
Commonwealth v. Harris, 972 A.2d 1196, 1199-1200 (Pa. Super. 2009),
appeal denied, 982 A.2d 1227 (Pa. 2009).

Section 9545 provides, in relevant part, as follows.

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

...

42 Pa.C.S.A. § 9545(b).

Instantly, Hadix's judgment of sentence became final on October 16, 1996, when the period for filing a direct appeal to the Supreme Court of Pennsylvania expired.² Hadix had until October 16, 1997, to file his PCRA petition. His instant petition—filed almost seventeen years late—is patently untimely. Therefore, Hadix must plead and prove one of the three enumerated statutory exceptions to the time-bar.

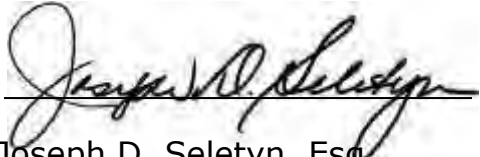
In support of a timeliness argument, Hadix merely repeats claims regarding his alleged insanity and “unlawfully suppressed exculpatory DNA blood test evidence and unlawful ex parte evidence”—all arguments this Court has previously deemed meritless in Hadix's myriad appeals. Hadix therefore fails to properly establish any exception to the PCRA jurisdictional time bar. Accordingly, we are prohibited from examining his claims on appeal and we affirm the PCRA court's order dismissing Hadix's fifth PCRA petition.

Order affirmed.

² Pa.R.A.P. 1113 provides, in pertinent part, that “a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days of entry of the order of the Superior Court....”

J-S19012-14

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: 5/13/2014