

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

RICKY LYNN BATTLES

Appellant

No. 1914 WDA 2013

Appeal from the PCRA Order December 2, 2013
In the Court of Common Pleas of Crawford County
Criminal Division at No(s): CP-20-MD-0000311-2012; CR-508-1977

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

JUDGMENT ORDER BY GANTMAN, P.J.:

FILED JUNE 23, 2014

Appellant, Ricky Lynn Battles, appeals from the order entered in the Crawford County Court of Common Pleas, dismissing his serial petition filed under the Post Conviction Relief Act ("PCRA").¹ On August 17, 1977, sixteen-year-old Appellant killed the victim. Appellant pled guilty to murder generally and, on February 24, 1978, the court found Appellant guilty of first degree murder. That same day, the court sentenced Appellant to life imprisonment without the possibility of parole. This Court affirmed the judgment of sentence on June 20, 1979. ***See Commonwealth v. Battles***, 417 A.2d 779 (Pa.Super. 1979). Appellant filed the current *pro se* PCRA petition on July 30, 2012, and appointed counsel filed an amended petition

¹ 42 Pa.C.S.A. §§ 9541-9546.

on September 27, 2012. After oral argument, the PCRA court stayed its decision until our Supreme Court decided ***Commonwealth v. Cunningham***, ___ Pa. ___, 81 A.3d 1 (2013). Thereafter, the PCRA court dismissed the petition on December 3, 2013. The following day, Appellant timely filed a notice of appeal. The PCRA court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied.

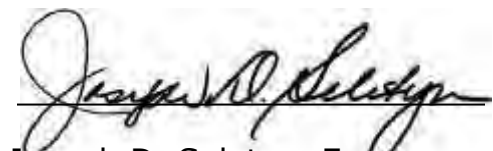
The timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Hackett***, 598 Pa. 350, 956 A.2d 978 (2008), *cert. denied*, 556 U.S. 1285, 129 S.Ct. 2772, 174 L.Ed.2d 277 (2009). A PCRA petition must be filed within one year of the date the underlying judgment becomes final. 42 Pa.C.S.A. § 9545(b)(1). A judgment is deemed final at the conclusion of direct review or at the expiration of time for seeking review. 42 Pa.C.S.A. § 9545(b)(3). The three statutory exceptions to the timeliness provisions in the PCRA allow for very limited circumstances under which the late filing of a petition will be excused. 42 Pa.C.S.A. § 9545(b)(1). A petitioner asserting a timeliness exception must file a petition within sixty days of the date the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2). When asserting the newly created constitutional right exception under section 9545(b)(1)(iii), “a petitioner must prove that there is a ‘new’ constitutional right and that the right ‘has been held’ by that court to apply retroactively.” ***Commonwealth v. Chambers***, 35 A.3d 34, 41 (Pa.Super.

2011), *appeal denied*, 616 Pa. 625, 46 A.3d 715 (2012).

Instantly, Appellant's judgment of sentence became final on July 20, 1979. Appellant filed his current petition on July 30, 2012, more than three decades after the judgment became final; thus, the petition is patently untimely. **See** 42 Pa.C.S.A. § 9545(b)(1). Appellant attempts to invoke Section 9545(b)(1)(iii), contending his sentence is unconstitutional pursuant to **Miller v. Alabama**, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and that the PCRA court should have stayed its decision until the U.S. Supreme Court decided whether to hear **Cunningham** and determine if **Miller** applies retroactively. Nevertheless, our Supreme Court has ruled **Miller** does not apply retroactively to judgments of sentence which became final before the filing date of **Miller** (June 25, 2012), **see Cunningham, supra**, and the U.S. Supreme Court has denied *certiorari* in **Cunningham**. **See Cunningham v. Pennsylvania**, 2014 WL 797250 (filed June 9, 2014). Thus, the PCRA court properly dismissed Appellant's petition.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/23/2014