

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MICHAEL D. GRAHAM,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1940 EDA 2013

Appeal from the PCRA Order of June 14, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-1005341-2000

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND STABILE, JJ.

MEMORANDUM BY OLSON, J.:

FILED JUNE 19, 2014

Appellant, Michael D. Graham, appeals *pro se* from the order entered on June 14, 2013, dismissing his first petition filed under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On July 11, 2001, a jury found Appellant guilty of third-degree murder, aggravated assault, theft by receiving stolen property, vehicular homicide, homicide by vehicle while driving under the influence, aggravated assault by vehicle while driving under the influence, accidents involving death or personal injury while not properly licensed, fleeing or attempting to elude police officer, and driving under the influence.¹ On September 10, 2001, the

¹ 18 Pa.C.S.A. §§ 2502(c), 2702(a)(1), and 3925(a), and 75 Pa.C.S.A. §§ 3732(a), 3735(a), 3735.1(a), 3742.1(a), 3733(a), and 3731, respectively.

trial court sentenced Appellant to serve an aggregate term of 30 to 60 years in prison. N.T. Sentencing, 9/10/01, at 14.

On December 3, 2002, Appellant filed a petition for post-conviction collateral relief, wherein Appellant sought the *nunc pro tunc* restoration of his direct appellate rights. On October 2, 2003, the PCRA court granted Appellant's PCRA petition and reinstated Appellant's direct appellate rights *nunc pro tunc*. Appellant filed a timely direct appeal to this Court and, on August 18, 2004, we affirmed Appellant's judgment of sentence. **Commonwealth v. Graham**, 860 A.2d 1128 (Pa. Super. 2003) (unpublished memorandum) at 1-10. Appellant did not file a petition for allowance of appeal with our Supreme Court.

On May 31, 2011, Appellant filed the current, *pro se* PCRA petition – which Appellant named a “writ of *habeas corpus*.” Within this petition, Appellant claimed that various “constitutional violations” occurred during his trial and on his direct appeal, including: Appellant's trial counsel “allowed [Appellant] to lose his Sixth Amendment right[] to [c]onfront his accusers, by stipulating to the various medical reports and testimony about the effects of cocaine and alcohol;” Appellant was “constructively denied counsel for his [direct] appeal;” the trial court erred in issuing a “confusing and prejudicial” jury instruction; and, the trial court abused its discretion by sentencing Appellant to serve a manifestly excessive term of imprisonment. Appellant's “Writ of *Habeas Corpus*,” 5/31/11, at 1-20.

Given that the current PCRA petition is considered to be Appellant's first petition for post-conviction collateral relief, the PCRA court appointed counsel to represent Appellant. **See Commonwealth v. Turner**, 73 A.3d 1283 (Pa. Super. 2013) ("[w]hen a PCRA petitioner's direct appeal rights are reinstated *nunc pro tunc* in his first PCRA petition, a subsequent PCRA petition will be considered a first PCRA petition for timeliness purposes"). After reviewing the case, however, appointed counsel filed a petition to withdraw and a "no merit" letter, pursuant to **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). Within these filings, counsel declared that the PCRA court should permit him to withdraw representation, as Appellant's PCRA petition was untimely and, even if the petition were timely, Appellant's claims were meritless. Motion for Leave to Withdraw as Counsel, 1/22/13, at 1-3.

On February 14, 2013, the PCRA court provided Appellant with notice that, in 20 days, it intended to dismiss Appellant's PCRA petition without a hearing, as the petition was untimely. PCRA Court Order, 2/14/13, at 1; Pa.R.Crim.P. 907(1). On June 14, 2013, the PCRA court entered an order, granting counsel's petition to withdraw and dismissing Appellant's PCRA petition. PCRA Court Order, 6/14/13, at 1.

Appellant filed a timely notice of appeal and Appellant now raises the following two claims:

[1.] The [PCRA] court erred when denying [Appellant] relief [on Appellant's] writ of *habeas corpus* filed May 31, 2011. The [PCRA] court erred by allowing appointed counsel to file a **Finley** Letter, abandoning all of Appellant's substantial Constitutional Due Process claims: that trial counsel failed to argue and preserve substantial claims as explained in Appellant's *pro se* writ of *habeas corpus*.

[2.] Whether the [PCRA] court violated [Appellant's] Sixth Amendment rights by adopting the **Finley** Letter which was not in [accordance with] the standard set [forth] in **Commonwealth v. Glover**, 738 A.2d 460 [(Pa. Super. 1999)] and denying relief to [Appellant's] extraordinary claims that he was abandoned by all prior counsel on prior appeals violated [Appellant] from ever having his claims heard within this Commonwealth.

Appellant's Brief at 11 and 15.²

On appeal, Appellant primarily claims that the PCRA court erred in construing his self-styled "writ of *habeas corpus*" under the PCRA. According to Appellant, the PCRA does not encompass his claims and, therefore, the timeliness requirements of the PCRA do not apply to his petition. Appellant's contention fails and the PCRA court properly dismissed Appellant's patently untimely PCRA petition.

We "review an order granting or denying PCRA relief to determine whether the PCRA court's decision is supported by evidence of record and whether its decision is free from legal error." **Commonwealth v. Liebel**, 825 A.2d 630, 632 (Pa. 2003).

² Appellant listed the above two claims in his court-ordered statement of errors complained of on appeal. **See** Appellant's Rule 1925(b) Statement, 7/24/13.

The PCRA “provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief.” 42 Pa.C.S.A. § 9542. As the statute declares, the PCRA “is the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies . . . including *habeas corpus* and *coram nobis*.” ***Id.***; **see also *Commonwealth v. Ahlborn***, 699 A.2d 718, 721 (Pa. 1997). Thus, under the plain terms of the PCRA, “if the underlying substantive claim is one that could potentially be remedied under the PCRA, that claim is **exclusive to** the PCRA.” ***Commonwealth v. Pagan***, 864 A.2d 1231, 1233 (Pa. Super. 2004) (emphasis in original).

Within Appellant’s “writ of *habeas corpus*” Appellant claims that he is entitled to relief because his prior counsel was ineffective and because the trial court either erred or abused its discretion at trial and at sentencing. However, the PCRA undoubtedly encompasses Appellant’s claims, as the claims concern “matters affecting [Appellant’s] conviction [or] sentence.” ***Commonwealth v. Judge***, 916 A.2d 511, 520 (Pa. 2007), *quoting *Coady v. Vaughn**, 770 A.2d 287, 293 (Pa. 2001) (Castille, J., concurring); **see also** 42 Pa.C.S.A. § 9542 (“[the PCRA] provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief”).

Appellant’s claims thus fall under the rubric of the PCRA and, since the PCRA encompasses Appellant’s claims, Appellant “can only find relief under

the PCRA's strictures." **Pagan**, 864 A.2d at 1233; **see also Commonwealth v. Jackson**, 30 A.3d 516, 521 (Pa. Super. 2011) ("[petitioner's legality of sentence] claim is cognizable under the PCRA [Thus, petitioner's] 'motion to correct illegal sentence' is a PCRA petition and cannot be considered under any other common law remedy").

The PCRA contains a jurisdictional time-bar, which is subject to limited statutory exceptions. This time-bar demands that "any PCRA petition, including a second or subsequent petition, [] be filed within one year of the date that the petitioner's judgment of sentence becomes final, unless [the] petitioner pleads [and] proves that one of the [three] exceptions to the timeliness requirement . . . is applicable." **Commonwealth v. McKeever**, 947 A.2d 782, 785 (Pa. Super. 2008); 42 Pa.C.S.A. § 9545(b). Further, since the time-bar implicates the subject matter jurisdiction of our courts, we are required to first determine the timeliness of a petition before we are able to consider any of the underlying claims. **Commonwealth v. Yarris**, 731 A.2d 581, 586 (Pa. 1999). Our Supreme Court has explained:

the PCRA timeliness requirements are jurisdictional in nature and, accordingly, a PCRA court is precluded from considering untimely PCRA petitions. **See, e.g., Commonwealth v. Murray**, 753 A.2d 201, 203 (Pa. 2000) (stating that "given the fact that the PCRA's timeliness requirements are mandatory and jurisdictional in nature, no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner"); **Commonwealth v. Fahy**, 737 A.2d 214, 220 (Pa. 1999) (holding that where a petitioner fails to satisfy the PCRA time requirements, this

Court has no jurisdiction to entertain the petition). [The Pennsylvania Supreme Court has] also held that even where the PCRA court does not address the applicability of the PCRA timing mandate, th[e court would] consider the issue *sua sponte*, as it is a threshold question implicating our subject matter jurisdiction and ability to grant the requested relief.

Commonwealth v. Whitney, 817 A.2d 473, 475-476 (Pa. 2003).

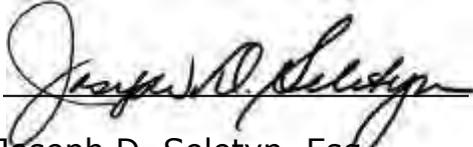
In the present case, this Court affirmed Appellant's judgment of sentence on August 18, 2004 and Appellant did not thereafter file a petition for allowance of appeal with our Supreme Court. Thus, Appellant's judgment of sentence became final for purposes of the PCRA on September 18, 2004, when the period for seeking review in our Supreme Court expired. 42 Pa.C.S.A. § 9545(b)(3). As Appellant did not file his current petition until May 31, 2011, the current petition is manifestly untimely and the burden thus fell upon Appellant to plead and prove that one of the enumerated exceptions to the one-year time-bar applied to his case. **See** 42 Pa.C.S.A. § 9545(b)(1); ***Commonwealth v. Perrin***, 947 A.2d 1284, 1286 (Pa. Super. 2008) (to properly invoke a statutory exception to the one-year time-bar, the PCRA demands that the petitioner properly plead and prove all required elements of the relied-upon exception).

Here, Appellant did not even attempt to plead a valid statutory exception to the PCRA's one-year time-bar. Thus, since Appellant's PCRA petition is manifestly untimely and Appellant did not plead any of the statutory exceptions to the one-year time-bar, our "courts are without jurisdiction to offer [Appellant] any form of relief." ***Commonwealth v.***

Jackson, 30 A.3d 516, 523 (Pa. Super. 2011). We, therefore, affirm the PCRA court's June 14, 2013 order dismissing Appellant's PCRA petition without a hearing.

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: 6/19/2014