

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

GERALD JONES

Appellant

No. 2300 EDA 2013

Appeal from the PCRA Order July 17, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0607981-1979

BEFORE: SHOGAN, J., ALLEN, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED JUNE 24, 2014

Gerald Jones appeals, *pro se*, from the order entered July 17, 2013, in the Philadelphia County Court of Common Pleas, dismissing his seventh petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9541 *et seq.* Jones seeks relief from the judgment of sentence of an aggregate term of life imprisonment imposed on **April 15, 1981**, after he was convicted of first degree murder (three counts), arson (two counts), causing or risking catastrophe, and criminal conspiracy¹ for his participation of the firebombing of two houses in December of 1977. On appeal, Jones contends the PCRA court erred in dismissing his petition as untimely filed

¹ 18 Pa.C.S. §§ 2502, 3301, 3302, and 903, respectively.

when he presented a valid claim of newly discovered evidence. For the reasons set forth below, we affirm.

The procedural history following Jones's jury trial and sentence is aptly summarized by the PCRA court as follows:

[Jones's] judgment of sentence was affirmed by the Superior Court on November 5, 1986.^[2] Petition for allowance of appeal was not sought in the Pennsylvania Supreme Court.

[Jones] filed his first post-conviction relief act (PCRA) petition on January 4, 1988. On January 14, 1992, [the PCRA court] dismissed the petition. On February 23, 1993, the Superior Court affirmed the dismissal. **Commonwealth v. Jones**, 627 A.2d 202 (Pa. Super. 1993). On March 22, 1994, the Supreme Court denied *allocatur*. **Commonwealth v. Jones**, 644 A.2d 733 (Pa. 1994).

[Jones] filed a second PCRA petition on November 6, 1996. On May 29, 1997, the PCRA court dismissed the petition. The Superior Court again affirmed the PCRA court's order, and the Supreme Court again denied *allocatur*. **Commonwealth v. Jones**, 718 A.2d 858 (Pa. Super. 1998) (unpublished memorandum), *appeal denied*, 556 Pa. 688, 727 A.2d 1118 (1998).

On April 12, 2002, [Jones] filed a third PCRA petition. On July 11, 2003, the PCRA court dismissed the petition. On July 8, 2004, the Superior Court again affirmed the PCRA court's order.^[3] A fourth PCRA petition was filed on January 11, 2005 and was dismissed as untimely on February 23, 2006; again the

² **Commonwealth v. Mason**, 518 A.2d 282 (Pa. Super. 1986). Jones's direct appeal was consolidated with those of his co-defendants.

³ **Commonwealth v. Jones**, 859 A.2d 831 (unpublished memorandum) (Pa. Super. 2004).

Superior Court affirmed the dismissal.^[4] On December 5, 2007, [Jones] filed a fifth PCRA petition. On February 20, 2009, the Superior Court affirmed the dismissal.^[5]

On March 18, 2009, [Jones] filed a sixth petition for post-conviction collateral relief. On July 16, 2009, this court dismissed the petition. On May 27, 2010, the Superior Court again affirmed the PCRA court's order.^[6]

Undaunted, on May 21, 2012, [Jones] filed another PCRA petition, his seventh.

PCRA Court Opinion, 7/17/2013, at 1-2.

Thereafter, Jones filed an amended petition on May 21, 2012, and a supplement to the amended petition on June 26, 2012. On July 17, 2013, the PCRA court dismissed Jones's seventh petition as untimely filed.⁷ This appeal followed.⁸

⁴ ***Commonwealth v. Jones***, 918 A.2d 787 (unpublished judgment order) (Pa. Super. 2006).

⁵ ***Commonwealth v. Jones***, 970 A.2d 471 (unpublished judgment order) (Pa. Super. 2009).

⁶ ***Commonwealth v. Jones***, 4 A.3d 207 (unpublished judgment order) (Pa. Super. 2010).

⁷ We note that the PCRA court dismissed Jones's petition without first providing notice of its intent to dismiss pursuant to Pa.R.Crim.P. 907. Although Rule 907 notice is mandatory, this Court has previously held that when, as here, an appellant fails to object to the lack of notice, the issue is waived. ***Commonwealth v. Boyd***, 923 A.2d 513, 514 n.1 (Pa. Super. 2007), *appeal denied*, 932 A.2d 74 (Pa. 2007). ***See also Commonwealth v. Pursell***, 749 A.2d 911, 917 n.7 (Pa. 2000) (acknowledging PCRA court's error in failing to provide appellant with notice of its intent to dismiss PCRA petition, but declining to provide review since petition was untimely filed).

⁸ The PCRA court did not order Jones to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

On appeal, Jones argues the PCRA court erred in dismissing his petition as untimely filed because he invoked an exception to the time-for-filing requirements, namely, the newly discovered evidence exception. He argues the Commonwealth's witnesses lied during their testimony before the investigating grand jury, and he only recently learned that a grand jury indictment based upon perjured testimony is invalid.

When reviewing an order dismissing a PCRA petition, we must determine whether the ruling of the PCRA court is supported by record evidence and is free of legal error. ***Commonwealth v. Burkett***, 5 A.3d 1260, 1267 (Pa. Super. 2010). "Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record." ***Commonwealth v. Carter***, 21 A.3d 680, 682 (Pa. Super. 2011) (citation omitted).

The PCRA mandates that any petition for relief, "including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final[.]" 42 Pa.C.S. §9545(b)(1).

The PCRA's timeliness requirements are jurisdictional; therefore, a court may not address the merits of the issues raised if the petition was not timely filed. The timeliness requirements apply to all PCRA petitions, regardless of the nature of the individual claims raised therein.

Commonwealth v. Jones, 54 A.3d 14, 16 (Pa. 2012) (internal citations omitted). Here, Jones's petition, filed more than 24 years after his judgment of sentence became final is patently untimely. ***See Commonwealth v.***

Jones, 4 A.3d 207 (Pa. Super. 2010) (unpublished judgment order) (finding Jones's prior PCRA petition, filed on March 18, 2009, was untimely filed).

However, the PCRA provides three exceptions to the one year time bar.⁹ In his *pro se* petition, Jones attempts to invoke the newly discovered evidence exception, which permits the untimely filing of a petition when (1) "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[,]" and (2) the petition is filed "within 60 days of the date the claim could have been presented." 42 Pa.C.S. § 9543(b)(1)(ii) and (2).

Here, Jones's underlying claim is that several of the Commonwealth's witness lied during their testimony before the investigating grand jury. He claims he just recently learned that perjured testimony cannot support a grand jury indictment. In support of this assertion, he avers that he attended an April 4, 2012, seminar at the prison, where he learned that a grand jury indictment based upon false testimony is invalid. Amended Petition Pursuant to the Post Conviction Act, 5/21/2012, at 4, Exhibit A. In addition, he attached to his June 26, 2012, supplemental petition a June 19, 2012, Philadelphia Newspaper article in which a victim/witness in **a recent, non-related case** was charged with perjury by the Philadelphia District

⁹ **See** 42 Pa.C.S. § 9545(b).

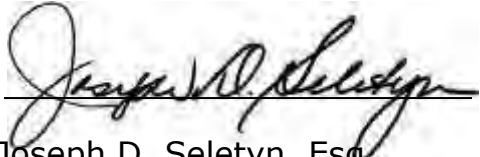
Attorney's Office after he repeatedly lied to an investigating grand jury about who shot him. Letter Amend Brief, 6/26/2012, Exhibit N.

We fail to see how Jones's underlying claim constitutes newly discovered facts. The same witnesses who testified during his investigating grand jury also testified at his trial. In fact, he does **not** aver that they provided different testimony before the grand jury than at the time of trial. Therefore, Jones simply cannot demonstrate why he could not have discovered this purported false testimony previously. Moreover, we note that Jones does not provide any support for his allegation that the testimony was false, save for excerpts from the witnesses' trial testimony and statements to police, which, as noted, he certainly would have had access to in the preceding 24 years. Furthermore, the fact that he recently learned perjured testimony cannot support an indictment is irrelevant, and does not constitute newly discovered **facts**. The same is true for the June 2012 newspaper article that involves an unrelated witness in an unrelated case. Accordingly, we agree with the PCRA court that Jones has failed to properly invoke one of the time-for-filing exceptions, and his petition is, therefore, manifestly untimely.

Order affirmed.

J-S21038-14

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: 6/24/2014