

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

MICHAEL A. SCOTT

Appellant

No. 2325 EDA 2013

Appeal from the PCRA Order July 19, 2013  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0417841-1977

BEFORE: GANTMAN, P.J., JENKINS, J., and FITZGERALD, J.\*

JUDGMENT ORDER BY GANTMAN, P.J.:

**FILED JUNE 17, 2014**

Appellant, Michael A. Scott, appeals from the order entered in the Philadelphia County Court of Common Pleas, which dismissed his second petition filed under the Post Conviction Relief Act ("PCRA"), at 42 Pa.C.S.A. §§ 9541-9546. On July 18, 1977, a jury found Appellant guilty of first-degree murder and possessing instruments of crime. The court sentenced Appellant on February 14, 1978, to life imprisonment. On October 5, 1979, this Court affirmed Appellant's judgment of sentence. **See Commonwealth v. Scott**, 411 A.2d 1222 (Pa.Super. 1979). Our Supreme Court denied allowance of appeal on March 19, 1980. On June 11, 1990, Appellant filed a *pro se* PCRA petition; the court subsequently appointed counsel, who filed an amended petition. The court dismissed Appellant's petition on April 13,

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\*Former Justice specially assigned to the Superior Court.

1999. On May 11, 2012, Appellant filed his second and current PCRA petition. The court issued Pa.R.Crim.P. 907 notice on May 3, 2013; Appellant did not respond. The court dismissed Appellant's petition on July 19, 2013. On July 25, 2013, Appellant timely filed a notice of appeal. No Rule 1925(b) statement was ordered, and Appellant filed none.

The timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Turner***, 73 A.3d 1283 (Pa.Super. 2013). 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 PCRA's timeliness provisions allow for very limited circumstances under which the late filing of a petition will be excused; and a petitioner asserting a timeliness exception must file a petition within 60 days of the date the claim could have been presented. **See** 42 Pa.C.S.A. § 9545(b)(1), (b)(2). Instantly, Appellant's judgment of sentence became final on June 17, 1980, upon expiration of the time to file a petition for writ of *certiorari* with the United States Supreme Court.<sup>1</sup> Appellant filed the current petition on May 11, 2012, more than thirty years after his judgment of sentence became

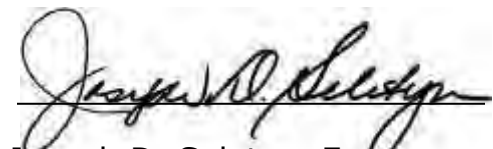
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<sup>1</sup> **See** U.S.Sup.Ct.R. 22 (effective July 1, 1970, until amended June 30, 1980, at U.S.Sup.Ct.R. 20; allowing 90 days to file petition for writ of *certiorari*).

final, which is patently untimely. **See** 42 Pa.C.S.A. § 9545(b)(1). Appellant now attempts to invoke the “new constitutional right” exception to the PCRA’s time restrictions under Section 9545(b)(1)(iii), claiming **Lafler v. Cooper**, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012) and **Missouri v. Frye**, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012) set forth newly recognized constitutional rights, held to apply retroactively. Nevertheless, this Court has specifically held that neither **Lafler** nor **Frye** created a new constitutional right. **See Commonwealth v. Feliciano**, 69 A.3d 1270 (Pa.Super. 2013) (explaining **Lafler** and **Frye** simply applied Sixth Amendment right to counsel and ineffectiveness test to circumstances where counsel’s conduct resulted in plea offer lapsing or being rejected to defendant’s detriment; appellant’s reliance on these decisions to satisfy Section 9545(b)(1)(iii) exception to PCRA’s time restrictions is unavailing). Thus, the court properly dismissed Appellant’s petition as untimely.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/17/2014