

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| NAZARIO BURGOS, | : | |
| | : | |
| Appellant | : | No. 2916 EDA 2013 |

Appeal from the PCRA Order entered on October 4, 2013
in the Court of Common Pleas of Philadelphia County,
Criminal Division, No. CP-51-CR-0507951-1995

BEFORE: BOWES, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED JUNE 19, 2014**

Nazario Burgos ("Burgos") appeals, *pro se*, from the Order dismissing his fourth Petition for relief pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Burgos was convicted of first-degree murder and sentenced to life in prison on May 20, 1996. No direct appeal was filed. On April 13, 2012, Burgos filed the instant PCRA Petition, claiming that he had obtained exculpatory evidence. After appropriate Notice, the PCRA court dismissed Burgos's Petition without a hearing. On October 17, 2013, Burgos filed a timely Notice of Appeal.

On appeal, Burgos raises the following questions for our review:

1. Whether [] the lower court[’s] finding[s] that: [Burgos’s] PCRA petition [was] untimely.... and his first after-discovered [evidence] claim is only being used for impeachment

purposes[,] are supported by the record and free of legal error?[:;]

2. Whether []: (1) the lower court committed, *inter alia*, procedural error when it failed to address [Burgos's] second, and timely filed, after-discovered claim, [and] therefore, [it] continues to retain original jurisdiction over the matter, 42 Pa.C.S.A. § 9545(a); and (2) if the instant claim creates factual changes that involve[s] a genuine material issue for which reason the lower court['s] findings lack support of record and [are] in legal error with regard to the after-discovered [evidence] claim it did address?

Brief for Appellant at vii.

We review an order dismissing a petition under the PCRA in the light most favorable to the Commonwealth. ***Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa. Super. 2012). "This review is limited to the findings of the PCRA court and the evidence of record." ***Id.*** (citation omitted). "We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error." ***Id.*** (citation omitted).

Under the PCRA, any petition "shall be filed within one year of the date the judgment becomes final[.]" 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence becomes final "at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review." ***Id.*** § 9545(b)(3). The PCRA's timeliness requirements are jurisdictional in nature and a court may not address the merits raised if the PCRA petition was not timely filed. ***Commonwealth v. Albrecht***, 944 A.2d 1091, 1093 (Pa. 2010).

Here, Burgos's judgment of sentence became final on June 20, 1996. Burgos had until June 20, 1997, to file the instant PCRA Petition, but did not do so until April 13, 2012. Therefore, Burgos's PCRA Petition is facially untimely under the PCRA.

Pennsylvania courts may consider an untimely petition if the appellant can plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any PCRA petition invoking one of these exceptions "shall be filed within 60 days of the date the claim could have been presented." *Id.* § 9545(b)(2); *Albrecht*, 994 A.2d at 1094.

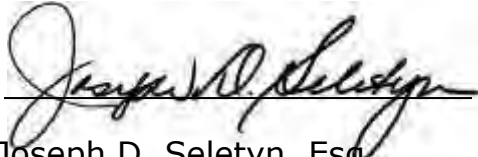
In the instant case, Burgos invokes the newly discovered evidence exception set forth at 42 Pa.C.S.A. § 9545(b)(i). Brief for Appellant at 2. Burgos claims that Terry Singletary is an eyewitness whose proposed testimony will exonerate him. *Id.* at 7. However, Burgos has failed to demonstrate that the eyewitness testimony could not have been obtained through the exercise of due diligence at the time of his trial. Indeed, Burgos fails to state the reason why he did not previously question or investigate the eyewitness. Thus, Burgos has failed to invoke the newly discovered exception to the timeliness requirement.

Because Burgos has failed to plead and prove any exception to the PCRA's timeliness requirements, we conclude that the trial court properly dismissed Burgos's fourth PCRA Petition as untimely.

Order affirmed.

J-S31033-14

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: 6/19/2014