

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CHRISTOPHER POLLER,	:	
	:	
Appellant	:	No. 3077 EDA 2013

Appeal from the PCRA Order entered on October 15, 2013  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division, No. CP-51-CR-1124322-1993

BEFORE: BOWES, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED JUNE 19, 2014**

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

In June 1994, Poller was found guilty of second-degree murder, robbery, criminal conspiracy, and possessing an instrument of crime.<sup>1</sup> He was sentenced to life in prison on the murder conviction and concurrent prison terms of 5 to 10 years and 6 to 12 months in prison for the conspiracy and possessing an instrument of crime convictions, respectively. This Court affirmed Poller's judgment of sentence, and the Supreme Court of Pennsylvania denied allowance of appeal. **See Commonwealth v. Poller,**

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<sup>1</sup> **See** 18 Pa.C.S.A. §§ 2502(b), 3701, 903, 907.

679 A.2d 849 (Pa. Super. 1996) (unpublished memorandum), *appeal denied*, 687 A.2d 377 (Pa. 1996).

Poller filed his first PCRA Petition on December 15, 1997. The PCRA court dismissed the Petition on February 25, 1999. This Court affirmed the dismissal, and the Supreme Court denied allowance of appeal. **See *Commonwealth v. Poller***, 767 A.2d 1112 (Pa. Super. 2000) (unpublished memorandum), *appeal denied*, 786 A.2d 987 (Pa. 2001).

Poller filed a second PCRA Petition on April 17, 2006, which the PCRA court dismissed as untimely on July 16, 2008. This Court affirmed the dismissal. **See *Commonwealth v. Poller***, 996 A.2d 553 (Pa. Super. 2010) (unpublished memorandum).

On March 8, 2011, Poller filed the instant PCRA Petition, *pro se*, claiming a newly recognized constitutional right as an exception to the timeliness requirement. The PCRA court issued a Notice of Intent to Dismiss on November 23, 2011. Poller filed an Objection to the court's Notice of Intent to Dismiss on December 9, 2011. On October 15, 2013, the PCRA court dismissed the Petition as untimely. Poller filed a timely Notice of Appeal.

On appeal, Poller raises the following question for our review: "Did the PCRA [c]ourt abuse [its] discretion in denying the PCRA [Petition] in this instant case?" Brief for Appellant at 1.

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of the record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error.

***Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

Under the PCRA, a petition must be filed within one year from the date the judgment of sentence becomes final. ***See*** 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence becomes final at the conclusion of direct review or at the expiration of the period of time for seeking review. ***Id.*** § 9545(b)(3). An appellate court cannot reach the merits of an appeal if the PCRA petition is untimely. ***Commonwealth v. Fisher***, 870 A.2d 864, 869 n.10 (Pa. 2005).

Poller's judgment of sentence became final in 1997. Because Poller did not file his PCRA Petition until 2011, the Petition was facially untimely.

However, we may consider an untimely PCRA petition if the petitioner can plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1)(i-iii). Any 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); ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1094 (Pa. 2010).

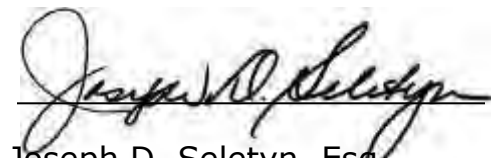
Here, Poller invokes section 9545(b)(1)(iii), and claims that the United States Supreme Court recognized a new constitutional right in ***Melendez-***

**Diaz v. Massachusetts**, 557 U.S. 305 (2009), which should apply retroactively to his case. **See** Brief for Appellant at 9, 12. Invoking **Melendez-Diaz**, Poller claims that he was denied his right to confrontation when the Commonwealth did not make the forensic pathologist and toxicologist available for examination at trial. **Id.** at 5.

The United States Supreme Court filed the **Melendez-Diaz** decision in 2009. Because Poller filed his Petition in 2011, far outside of the 60-day filing period required by section 9545(b)(2), he did not successfully invoke an exception necessary to circumvent the PCRA's timeliness requirement. **See Commonwealth v. Leggett**, 16 A.3d 1144, 1146 (Pa. Super. 2011) (stating that a PCRA petition must be filed within 60 days of the filing of the judicial decision that created a new right). Furthermore, **Melendez-Diaz** did not establish a new constitutional right for the purpose of the timeliness exception at 42 Pa.C.S.A. § 9545(b)(1)(iii). **See id.** at 1147-48. Therefore, we cannot address the merits of Poller's claim on appeal. Accordingly, the PCRA court did not err in dismissing Poller's Petition as untimely.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/19/2014