

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	!	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
STANTON STORY,		
Appellant		No. 314 WDA 2013

Appeal from the PCRA Order September 19, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s):
CP-02-CR-0005836-1974
CP-02-CR----6544-1974

BEFORE: BENDER, P.J.E., WECHT, J., and PLATT, J.*

MEMORANDUM BY BENDER, P.J.E.:

FILED JULY 15, 2014

Stanton Story (Appellant) *nunc pro tunc* appeals *pro se* from the order entered September 19, 2012, denying his petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm.

The procedural background of this case is lengthy and largely irrelevant for purposes of this appeal. We will limit our discussion to those matters relevant to our disposition. In July 1974, Appellant shot and killed City of Pittsburgh Police Officer Patrick Wallace. A jury convicted Appellant of first-degree murder, and thereafter, Appellant was sentenced to death. In December 1981, the Pennsylvania Supreme Court vacated Appellant's

* Retired Senior Judge assigned to the Superior Court.

sentence and re-sentenced him to life imprisonment. ***Commonwealth v. Story***, 440 A.2d 488 (Pa. 1981) (thereafter denying reargument on February 5, 1982).

In July 1983, Appellant filed *pro se* a petition under the Post Conviction Hearing Act. After a lengthy delay, due in part to federal proceedings, counsel was appointed and filed an amended petition in February 1994. Appellant's petition was denied. This Court affirmed. ***Commonwealth v. Story***, 663 A.2d 255 (Pa. Super. 1995) (unpublished memorandum).

In May 2007, Appellant filed *pro se* a second petition for collateral relief. This second petition is the subject of this appeal. After further delay, counsel was appointed and filed an amended petition in April 2012, raising several constitutional issues, claiming ineffective assistance of trial counsel, and asserting exculpatory evidence unavailable at the time of trial. In May 2012, the PCRA court issued Pa.R.Crim.P 907 notice of its intent to dismiss Appellant's petition without a hearing and, thereafter, dismissed the petition in September 2012. Counsel did not file a timely appeal. Appellant petitioned the PCRA court *pro se*, requesting reinstatement of his appellate rights *nunc pro tunc*. In January 2013, the PCRA court granted Appellant relief. Appellant appealed *pro se* and filed a court-ordered Pa.R.A.P. 1925(b) statement. The PCRA court issued an opinion.

Appellant raises the following issues:

[1.] Whether or not Appellant's PCRA petition should have been dismissed without an evidentiary hearing ... [;]

[2.] Whether or not Appellant's right to an impartial jury, fair trial and his due process rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution were violated by having a non-capital case tried before a capital death-qualified jury[;]

[3.] Whether or not counsel[s] for Appellant were ineffective for abandoning Appellant at crucial and critical stages of litigation in this instant case and for not challenging the credentials of the Commonwealth's expert witnesses[;]

[4.] Whether or not the PCRA court denied Appellant his due process rights when it failed to provide Appellant a sufficient Rule 907 notice of intent to dismiss [his] PCRA petition[;] and

[5.] Whether or not the [Pennsylvania] Supreme Court erred in imposing a life sentence on Appellant in violation of 18 Pa.C.S. § 1311(h)(2) [sic].

Appellant's Brief at 3.

We review an order denying a petition under the PCRA to determine whether the findings of the PCRA court are supported by the evidence of record and free of legal error. **Commonwealth v. Ragan**, 923 A.2d 1169, 1170 (Pa. 2007). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa. Super. 2001).

Preliminarily, however, we must address the timeliness of Appellant's petition, as it implicates our jurisdiction. **Commonwealth v. Bennett**, 930 A.2d 1264, 1267 (Pa. 2007). Under the PCRA, all petitions seeking collateral

relief must be filed within one year of the date the judgment of sentence becomes final. **Id.** There are three statutory exceptions:

(b) Time for filing petition.--

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) 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; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S. § 9545(b)(1)(i)-(iii). Additionally, any petition attempting to invoke one of these exceptions “shall be filed within 60 days of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2).

Here, Appellant’s judgment of sentence became final on April 6, 1982, sixty days after the Pennsylvania Supreme Court denied Appellant reargument. **See** 42 Pa.C.S. § 9545(b)(3) (judgment of sentence becomes final at the conclusion of direct review or the expiration of the time for seeking the review); U.S.Sup.Ct.R. 20 (requiring a petition for writ of certiorari within 60 days) (effective June 30, 1980). Thus, Appellant had until April 6, 1983, to file a timely PCRA petition, making his May 2007

petition patently untimely. **See Commonwealth v. Crawley**, 739 A.2d 108, 109 (Pa. 1999) (concluding that the grace period recognized in the 1995 amendments to the PCRA do not apply to second petitions).¹

Appellant does not assert the applicability of any of the above-stated exceptions. It is also apparent from our review of the certified record that he did not present any such argument to the PCRA court.²

To the extent Appellant challenges the manner in which the PCRA court dismissed his untimely petition, such claims are without merit. First, Appellant was not entitled to an evidentiary hearing. **See Commonwealth v. Jones**, 942 A.2d 903, 906 (Pa. Super. 2008) (noting that a petitioner is not entitled to an evidentiary hearing when there is no genuine issue of material fact). Second, the court afforded Appellant adequate notice of its intent to dismiss his petition. **See** Pa.R.Crim.P 907. Moreover, to the extent the PCRA court's Rule 907 notice provided insufficient detail of its reasons for summarily dismissing his petition, Appellant is not entitled to any relief as he failed to invoke the jurisdiction of the PCRA court. **See**

¹ Incidentally, the time-bar requirements under the PCRA were not enacted at the time of Appellant's first petition for collateral relief. Prior to the 1995 amendments to the PCRA, delay in filing a petition was not a sufficient reason to deny relief. **See Commonwealth v. Thomas**, 718 A.2d 326, 329 (Pa. Super. 1998). Thus, Appellant's first petition was not time-barred.

² Appellant's reference to the new evidence exception in his amended petition is unsupported by any assertion of evidence previously unknown to Appellant.

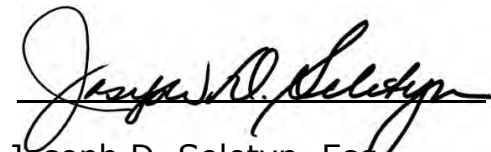
Commonwealth v. Pursell, 749 A.2d 911, 917 n.7 (Pa. 2000) (discussing a petitioner's failure to plead and prove the timeliness exceptions under the PCRA); **Commonwealth v. Lawson**, 90 A.3d 1, 5-6 (Pa. Super. 2014) (“[W]here the PCRA petition is untimely, the failure to provide [adequate] notice is not reversible error.”).

Finally, Appellant's challenge to the legality of his life sentence is not reviewable. “Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto.” **Commonwealth v. Infante**, 63 A.3d 358, 365 (Pa. Super. 2013) (quoting **Commonwealth v. Fowler**, 930 A.2d 586, 592 (Pa. Super. 2007)). Appellant has not done so.

In summary, Appellant's petition was patently untimely, and he failed to plead and prove an exception to the timeliness requirements of the PCRA. Accordingly, the PCRA court did not have jurisdiction to review the merits of Appellant's claims and properly dismissed his petition.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/15/2014