

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

| | | |
|-------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| AARON TYSON, | : | |
| | : | |
| Appellant | : | No. 3176 EDA 2013 |

Appeal from the PCRA Order October 17, 2013,
Court of Common Pleas, Monroe County,
Criminal Division at No. CP-45-CR-0000817-2003

BEFORE: BOWES, DONOHUE and MUNDY, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED JULY 16, 2014

Aaron Tyson (“Tyson”) appeals *pro se* from the October 17, 2013 order entered by the Court of Common Pleas, Monroe County, dismissing his second petition filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546 (“PCRA”), as untimely. We affirm.

The PCRA court summarized the procedural history of this case as follows:

On May 9, 2006, [Tyson] was found guilty of [f]irst-[d]egree [m]urder. On July 17, 2006, [Tyson] was sentenced to life in prison without the possibility of parole.

On October 19, 2006, [Tyson] filed Post Sentence Motions. On February 15, 2007, this Court denied [Tyson]’s Post Sentence Motions.

[Tyson] filed a direct appeal with the Superior Court on March 19, 2007. On January 11, 2008, the

Superior Court denied [Tyson]'s appeal and affirmed the judgment of sentence.

On February 19, 2009, [Tyson] filed a *pro se* Petition for Allowance of Appeal *Nunc Pro Tunc*, alleging that his attorney abandoned him during his direct appeal. On April 28, 2009, the Supreme Court granted [Tyson]'s Petition *Nunc Pro Tunc* and directed his attorney to file a Petition within thirty (30) days, which was filed on May 27, 2009. The Supreme Court denied [Tyson]'s Petition for Allowance of Appeal on February 23, 2010.

On November 19, 2010, [Tyson] filed a *Pro Se* [PCRA petition] and his brief in support. By [o]rder dated November 29, 2010, this [c]ourt appointed counsel and granted leave to file an Amended Petition and a brief by December 29, 2010. This [c]ourt granted two separate motions filed by PCRA counsel requesting an extension of time, thereby allowing PCRA counsel to file an Amended Petition and a brief by March 31, 2011.

[Tyson] filed a Supplemental PCRA Petition and Motion for Evidentiary Hearing on March 31, 2011. The Commonwealth filed an Answer to [Tyson]'s PCRA Petition on April 29, 2011. The evidentiary hearing was held on October 4, 2011. [Tyson] filed a brief in support of his PCRA Petition on November 14, 2011, and the Commonwealth filed a brief in opposition on November 30, 2011.

On February 1, 2012, this [c]ourt denied [Tyson]'s [PCRA petition], and the [o]pinion was filed on March 22, 2012.

On February 16, 2012, prior to the filing of this [c]ourt's [o]pinion, [Tyson] filed a *pro se* Letter/Notice of Appeal with the Superior Court. On March 5, [Tyson]'s attorney filed a separate Notice of Appeal with the Superior Court. On March 2, 2012, this [c]ourt directed [Tyson] to file a Concise Statement pursuant to Pa.R.A.P. 1925(b), which was

filed by counsel on March 9, 2012. On April 17, 2012, this [c]ourt filed its statement pursuant to Pa.R.A.P. 1925(a).

The Superior Court affirmed on February 1, 2013, and the Supreme Court denied [Tyson]'s Petition for Allowance of Appeal on September 11, 2013.

Subsequently, [Tyson] filed a second PCRA [p]etition, *pro se*, on September 26, 2013. [The court] filed a Notice of Disposition Without Hearing on October 1, 2013. Prior to any Order and/or Opinion dismissing [Tyson]'s second PCRA Petition, [Tyson] filed a Motion for Reconsideration on October 15, 2013, which we denied on October 17, 2013. Additionally, before this [c]ourt could issue a dismissal of [Tyson]'s second PCRA [p]etition, [Tyson] prematurely filed a *pro se* Letter/Notice of Appeal with the Superior Court on October 28, 2013. On November 1, 2013, [the court] ordered [Tyson] to submit a Concise Statement within twenty-one days. On November 18, 2013, [Tyson] filed a Concise Statement.

PCRA Court Opinion, 11/22/13, at 1-3.¹

On appeal, Tyson raises the following issues for our review:

- I. Whether [Tyson] was denied effective assistance of counsel for failing to challenge the fact that [the] prosecution obtain[ed] their [*sic*] conviction through false testimony[?]
- II. Whether [Tyson] was denied effective assistance of counsel for failing to object to [the] misleading jury instructions[?]

¹ Although Tyson's notice of appeal was prematurely filed prior to the appealable order denying his second PCRA petition, we treat the notice of appeal as if it was filed "after such entry and on the day thereof." Pa.R.A.P. 905(a)(5).

- III. Whether [Tyson] was denied effective assistance of counsel for denying [Tyson] his [r]ight to present evidence in his favor[?]
- IV. Whether [Tyson] was denied effective assistance of counsel for failing to challenge [Tyson]'s illegal sentence[?]
- V. Whether [Tyson]'s [s]econd [PCRA petition] is timely due to the exception of an '[a]fter [d]iscovered [e]vidence' affidavit[?]

Tyson's Brief at 3-4.

Our standard of review is well settled:

In reviewing the denial of PCRA relief, we examine whether the PCRA court's determination is supported by the record and free of legal error. The PCRA timeliness requirement, however, is mandatory and jurisdictional in nature. The court cannot ignore a petition's untimeliness and reach the merits of the petition. Section 9545(b)(1) requires a petitioner to file a PCRA petition within one year of the date the judgment [became] final.

Commonwealth v. Taylor, 67 A.3d 1245, 1248 (Pa. 2013) (internal citations and quotations omitted). "[A] judgment 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." 42 Pa.C.S.A. § 9545(b)(3).

The judgment of sentence in the case before us became final on May 24, 2010 – 90 days after the Pennsylvania Supreme Court denied his request for allowance of appeal. **See** U.S.SUP.CT.R. 13 (stating that a writ of *certiorari* is timely if filed within 90 days of the entry of judgment by a state

court of last resort or a federal court of appeals). Thus, the instant PCRA petition, filed on September 26, 2013, is facially untimely.

Section 9545(b)(1) provides three statutory exceptions to the timeliness provisions that allow for very limited circumstances under which the late filing of a PCRA petition will be excused:

(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.

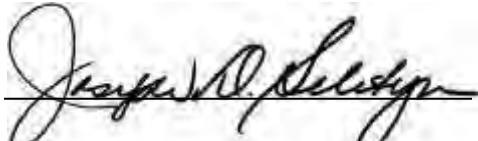
42 Pa.C.S.A. § 9545(b)(1). Tyson attempts to invoke the second exception, asserting that he “received an affidavit from Robert Goodine” that “goes to [Tyson’s] actual innocence, and it also represents the trial counsel’s ineffectiveness for not investigating potential witnesses pretrial.” Tyson’s Brief at 13. The affidavit referred to by Tyson bears the date June 13, 2013. ***Id.***; Affidavit of Robert Goodine, 6/13/13. The law requires that any PCRA petition invoking one of the exceptions enumerated above “shall be filed ***within 60 days*** of the date the claim could have been presented.” 42 Pa.C.S.A. § 9545(b)(2) (emphasis added). Tyson’s second PCRA petition

was not filed until September 26, 2013, which was 105 days after the date the claim could have been presented.

As Tyson's PCRA petition is facially untimely and he failed to file his petition within 60 days of the date his claim could have been presented, neither this Court nor the PCRA court has jurisdiction to decide the substantive claim raised. **Taylor**, 67 A.3d at 1248. We therefore find no error in the PCRA court's decision to dismiss his second PCRA petition without a hearing.

Order affirmed.

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: 7/16/2014