

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

TYRONE HILL,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3273 EDA 2013

Appeal from the PCRA Order October 25, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-1018352-1992

BEFORE: BOWES, DONOHUE, and MUNDY, JJ.

MEMORANDUM BY BOWES, J.:

FILED JULY 17, 2014

Tyrone Hill appeals *pro se* from the October 25, 2013 order dismissing his PCRA petition as untimely. We affirm.

Based upon the following events, a jury found Appellant guilty of first degree murder, robbery, possession of an instrument of crime, conspiracy and a violation of the Uniform Firearms Act. On September 2, 1992, Appellant, Ronald Smith, and Steven Williamson agreed to rob a variety store on the basement floor of an apartment building located at 3800 Sheaff Lane, Philadelphia. Appellant was armed with a shotgun, and, while Williamson acted as a lookout, Appellant entered the business with Smith. Appellant ordered the store owner, Roy Adams, to the floor, and the victim complied. Appellant and Smith removed cash from the cash register, and, as he was leaving, Appellant shot Mr. Adams in the head and killed him.

The three men divided the cash proceeds of the robbery. Following his arrest, Appellant confessed to police that he had robbed the store, but maintained that his weapon discharged accidentally in Mr. Adams' direction. Williamson testified as a Commonwealth witness and reported that, following the crime, Appellant said that the victim was attempting to see where Appellant was fleeing so Appellant deliberately shot in the direction of Mr. Adams in order to scare him. A fingerprint belonging to Appellant was discovered on the cash register.

Since the jury was deadlocked on the appropriate punishment, the trial court sentenced Appellant to life imprisonment. Appellant did not immediately file a direct appeal, but did obtain reinstatement of that right. On September 13, 2001, we affirmed the judgment of sentence. ***Commonwealth v. Hill***, 788 A.2d 1029 (Pa.Super. 2001) (unpublished memorandum). Appellant filed a timely PCRA petition, which was denied. We affirmed on appeal. ***Commonwealth v. Hill***, 890 A.2d 1099 (Pa.Super. 2005) (unpublished memorandum).

On June 5, 2007, Appellant filed the underlying PCRA petition. The petition, which was assigned to the Honorable Shelia Woods-Skipper, remained unresolved until 2012. On March 15, 2012, the PCRA court issued notice of its intent to dismiss the petition, and, on May 4, 2012, Appellant filed an amended petition. The petition was dismissed on October 25, 2013, and this appeal followed. Appellant raises this issue: "Whether the PCRA

Court Erred as a matter of Law when Denying Appellant Relief Pursuant to 42 Pa.C.S. § 9545(b)(1)(ii), and/or 42 Pa.C.S. § 6501 et seq., or Article I § 14 of Pennsylvania's Constitution, or the 14th Amendment of U.S. Constitution, Where the Conviction is Based on Fraud Upon the Court." Appellant's brief at 4.

Our Supreme Court has articulated that, "Our role under the PCRA is one of limited appellate review." **Commonwealth v. Spatz**, 2014 WL 185435, 20 (Pa. 2014). As delineated in **Commonwealth v. Feliciano**, 69 A.3d 1270, 1274-75 (Pa.Super. 2013) (citation omitted),

Our standard of review of the denial of a PCRA petition is limited to examining whether the court's rulings are supported by the evidence of record and free of legal error. This Court treats the findings of the PCRA court with deference if the record supports those findings. It is an appellant's burden to persuade this Court that the PCRA court erred and that relief is due.

All PCRA petitions must be filed within one year of when a defendant's judgment of sentence becomes final. 42 Pa.C.S. § 9545(b)(1). In this case, Appellant's judgment of sentence became final on October 13, 2001, which was thirty days after we affirmed the judgment of sentence and Appellant failed to seek review with our Supreme Court. 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). Appellant had until October 13, 2002, to file a timely PCRA petition and his 2007 petition failed to satisfy that deadline.

There are three exceptions to the one-year time bar: when the government has interfered with the defendant's ability to present the claim, when the defendant has recently discovered the facts upon which his PCRA claim is predicated, and when either our Supreme Court or the United States Supreme Court has recognized a new constitutional right and made that right retroactive. 42 Pa.C.S. § 9545(b)(1)(i-iii). **Commonwealth v. Brandon**, 51 A.3d 231, 233-34 (Pa.Super. 2012) ("There are three exceptions to this [one-year] time requirement: (1) interference by government officials in the presentation of the claim; (2) newly discovered facts; and (3) an after-recognized constitutional right."). The defendant has the burden of pleading and proving the applicability of any exception. **Feliciano, supra**; 42 Pa.C.S. § 9545(b)(1).

The exception that Appellant invokes in his brief is the one pertaining to newly-discovered facts. Appellant's brief at 5, 13. That exception "has two components, which must be alleged and proved. Namely, the petitioner must establish that: 1) the facts upon which the claim was predicated were unknown and 2) could not have been ascertained by the exercise of due diligence." **Commonwealth v. Cintora**, 69 A.3d 759, 763 (Pa.Super. 2013) (quoting **Commonwealth v. Bennett**, 930 A.2d 1264, 1271 (Pa. 2007)); **see also Commonwealth v. Watts**, 23 A.3d 980, 981 (Pa. 2011).

Appellant's averments are that he was abandoned by counsel and that the Commonwealth perpetrated fraud to obtain his convictions. He accuses

the Commonwealth of “knowingly making false statements of material fact, fabricating inculpatory evidence, intentionally presenting a false expert, [and] knowingly eliciting false testimony from its witnesses.” Appellant’s brief at 4. Appellant informs this Court that: 1) two Commonwealth witnesses, Williamson and Smith’s girlfriend, lied on the stand; 2) police created a non-existent written confession from Appellant; 3) if Appellant did make a statement to police, it was coerced due to the fact that police had handcuffed his wife, who was eight and one-half months pregnant, to a chair; 4) the fingerprint expert falsified his qualifications and incorrectly reported that the latent fingerprint lifted from the cash register matched that of Appellant; 5) Appellant’s fingerprint was not on the cash register; 6) Appellant had wanted a man named Adrian Watson, whom would have reported seeing Williamson carrying a weapon, to testify at trial “but for some odd, reason, he could not be located,” Appellant’s brief at 11; and 7) Appellant wanted to present an alibi defense and could have offered witnesses demonstrating that he was visiting his father in the hospital when the crime occurred.

Appellant has failed to satisfy the second aspect of the newly-discovered facts exception under § 9545. Specifically, “A petitioner must explain why he could not have obtained the new fact(s) earlier with the exercise of due diligence. This rule is strictly enforced.” ***Commonwealth v. Monaco***, 996 A.2d 1076, 1080 (Pa.Super. 2010) (citations omitted); ***see***

also Commonwealth v. Edmiston, 65 A.3d 339 (Pa. 2013); **Commonwealth v. Priovolos**, 746 A.2d 621, 626 (Pa.Super. 2000).

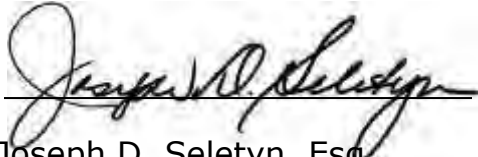
On appeal, the facts supporting Appellant's claims were either known to him when he was tried or could have been ascertained with due diligence. Even if they were not of public record, documents that supposedly support his positions were available to him and could have been discovered before or immediately after his trial. Thus, Appellant did not establish that he exercised due diligence in uncovering and presenting his contentions in a timely manner.

Appellant's failure to present Mr. Watson and alibi witnesses at trial does not invoke the newly-discovered facts exception. Rather, the absence of those witnesses at trial involves ineffectiveness of trial counsel in failing to ascertain their existence and present them. It is well established that allegations of trial counsel's ineffectiveness do not overcome the time bar of the PCRA. **Commonwealth v. Watson**, 886 A.2d 1120, 1127 (Pa. 2005) ("It is well-settled allegations of ineffective assistance of counsel will not overcome the jurisdictional timeliness requirements of the PCRA."); **Commonwealth v. Gamboa-Taylor**, 753 A.2d 780 (Pa. 2000); **Commonwealth v. Pursell**, 749 A.2d 911 (Pa. 2000). Hence, the PCRA court did not err in dismissing the present PCRA petition as untimely filed.

Order affirmed.

J-S41003-14

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: 7/17/2014