

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DAYTON LeBAR,	:	
	:	
Appellant	:	No. 3282 EDA 2013

Appeal from the Order entered on November 4, 2013  
in the Court of Common Pleas of Monroe County,  
Criminal Division, No. CP-45-CR-0001636-2000

BEFORE: BOWES, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED JUNE 27, 2014**

Dayton LeBar (“LeBar”) appeals, *pro se*, from the Order denying his “Motion for Relief Pursuant to the Inherent Power of the Court.” We affirm.

LeBar pled guilty to one count each of sexual assault, endangering the welfare of children, and statutory sexual assault on March 6, 2001. On June 13, 2001, the trial court sentenced LeBar to an aggregate sentence of ten to twenty years in prison, followed by compliance with the registration provisions of Megan’s Law<sup>1</sup> for 25 years. This Court affirmed the judgment of sentence on March 20, 2002, and the Pennsylvania Supreme Court denied allocatur on December 20, 2002. ***See Commonwealth v. LeBar***, 799 A.2d 171 (Pa. Super. 2002) (unpublished memorandum), ***appeal denied***, 814 A.2d 676 (Pa. 2002).

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<sup>1</sup> 42 Pa.C.S.A. §§ 9791-9799.

LeBar filed a "Motion for Relief Pursuant to the Inherent Power of the Court" on October 30, 2013.<sup>2</sup> This Motion was denied on November 4, 2013. LeBar filed a timely Notice of Appeal.

On appeal, LeBar raises the following question for our review:

Did the lower court commit an error of law and/or an abuse of discretion when it denied LeBar's Motion for Relief Pursuant to the Inherent Powers of the Court for lack of jurisdiction where the judgment of June 13, 2001[,] was the result of fraud upon the court?

Brief for Appellant at 2 (capitalization omitted).

Initially, we observe that LeBar's "Motion for Relief Pursuant to the Inherent Power of the Court" should have been treated as his third PCRA petition as he claims in his Motion that his sentence was illegal. **See Commonwealth v. Johnson**, 803 A.2d 1291, 1293 (Pa. Super. 2002) (stating that "[t]he PCRA provides the sole means for obtaining collateral review, and any petition filed after the judgment of sentence becomes final will be treated as a Post Conviction Relief Act petition"); **see also** 42 Pa.C.S.A. § 9543(a)(2)(vii).

"An appellate court's review of an order denying post conviction relief is limited to examining whether the evidence of record supports the determination of the PCRA court and whether the ruling is free from legal error." **Commonwealth v. Bedell**, 954 A.2d 1209, 1211 (Pa. Super. 2008)

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<sup>2</sup> We note that LeBar filed two previous Petitions pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. LeBar's Petitions were denied.

(citation omitted). “We will not disturb findings of the PCRA court that are supported by the certified record.” *Id.* (citation omitted).

Under the PCRA, any PCRA petition “shall be filed within one year of the date the judgment becomes final[.]” 42 Pa.C.S.A. § 9545(b)(1). The PCRA’s timeliness requirements are jurisdictional in nature and a court may not address the merits of the issues raised if the PCRA petition was not timely filed. *Commonwealth v. Albrecht*, 994 A.2d 1091, 1093 (Pa. 2010).

Here, LeBar’s judgment of sentence became final in 2003, after the time required to file an appeal to the Supreme Court of the United States expired. LeBar did not file the instant Petition until October 30, 2013. Thus, LeBar’s Petition is facially untimely under the PCRA.

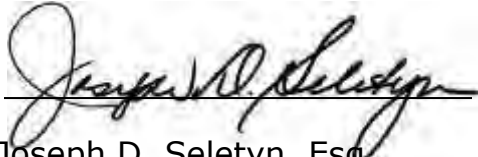
However, this Court may consider an untimely PCRA petition if the appellant can explicitly plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any PCRA petition invoking one of these exceptions “shall be filed within 60 days of the date the claim could have been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

Here, LeBar has failed to plead and prove any of the exceptions listed in 42 Pa.C.S.A. § 9545(b)(1), and thus, has failed to overcome the untimeliness of his Petition.

Order affirmed.

J-S31040-14

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: 6/27/2014