

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

RICKY BREEZE MOOREFIELD,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 33 WDA 2014

Appeal from the PCRA Order December 4, 2013  
in the Court of Common Pleas of Allegheny County  
Criminal Division at No.: CP-02-CR-0013363-1996

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

MEMORANDUM BY PLATT, J.:

**FILED July 1, 2014**

Appellant, Ricky Breeze Moorefield, appeals from the order denying his counseled third petition for relief pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541–9546. Appellant maintains that despite the decision in ***Commonwealth v. Cunningham***, 81 A.3d 1, 11 (Pa. 2013), *cert. denied*, 82 USLW 3555 (filed June 9, 2014), the holding in ***Miller v. Alabama***, 132 S. Ct. 2455 (2012), can apply retroactively to him on other grounds. We affirm.

On September 27, 1996, Appellant fatally shot Jason Wingfield. Appellant was seventeen at the time of the homicide.<sup>1</sup> A jury convicted him

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\* Retired Senior Judge assigned to the Superior Court.

of murder of the first degree and violation of the Uniform Firearms Act (VUFA), on December 3, 1999. On January 19, 2000, the court sentenced Appellant to life imprisonment for the murder.<sup>2</sup> This Court affirmed the judgment of sentence on July 17, 2001, and our Supreme Court denied allowance of appeal on September 23, 2002. (***Commonwealth v. Moorefield***, 782 A.2d 1057 (Pa. Super. 2001) (unpublished memorandum), *appeal denied*, 808 A.2d 570 (Pa. 2002)).<sup>3</sup>

Appellant filed the instant third PCRA petition, *pro se*, on July 6, 2012. The PCRA court appointed counsel, who filed an amended petition. The PCRA court filed a notice of intention to dismiss. Appellant replied. After  
(Footnote Continued) \_\_\_\_\_

<sup>1</sup> Appellant was born August 22, 1979.

<sup>2</sup> The court also sentenced Appellant to a term of not less than three nor more than six years' imprisonment (concurrent) for the VUFA. (**See** Sentencing Information Sheet, 1/19/00). Appellant erroneously asserts that the sentences were consecutive. (**See** Appellant's Brief, at 6). In any event, the VUFA sentence is not at issue in this appeal.

<sup>3</sup> Appellant filed his first PCRA petition on November 27, 2002. Counsel filed a **Turner/Finley** "no merit" letter; the court dismissed the petition on April 28, 2003. **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). This Court affirmed the denial on November 17, 2004. (**See Commonwealth v. Moorefield**, 867 A.2d 648 (Pa. Super. Nov 17, 2004) (unpublished memorandum)). Our Supreme Court denied allowance of appeal. (**See Commonwealth v. Moorefield**, 882 A.2d 478 (Pa. Aug 10, 2005)). Appellant filed a second PCRA petition, *pro se*, on June 30, 2008, which the court denied on May 24, 2010; this Court affirmed on June 7, 2011. (**See Commonwealth v. Moorefield**, 31 A.3d 737 (Pa. Super. 2011) (unpublished memorandum), *appeal denied*, 30 A.3d 1192 (Pa. 2011)).

staying the petition pending the decision of our Supreme Court in **Cunningham, supra**, the PCRA court denied relief (as well as Appellant's petition to stay and petition to amend) on December 4, 2013, concluding the petition lacked arguable merit. Appellant timely filed a notice of appeal on January 3, 2014.<sup>4</sup>

Appellant presents one omnibus question for our review:

Did the trial court err in denying Appellant's PCRA petition since pursuant to the 6/25/12 United States Supreme Court decision in **Miller v. Alabama**, Appellant, who was a juvenile at the time of the commission of the instant crime, received an unconstitutional mandatory sentence of life without the possibility of parole for second degree murder and therefore his sentence must be vacated and he be re-sentenced? Moreover, regardless [sic] of the PA Supreme Court's holding in **Commonwealth v. Cunningham**, 2013 Pa Lexis 2546 (PA 2013; 10/30/13), that **Miller v. Alabama** is not retroactive [sic] to defendants in Appellant's procedural [sic] posture, who were not on direct appeal when **Miller v. Alabama** was decided, this Honorable Court can still decide, on other grounds, that **Miller v. Alabama** is applicable and should be retroactively applied to Appellant's case. Additionally, the trial court erred in denying Appellant's petition to stay dismissal of the PCRA petition and Appellant's request to amend the PCRA petition.

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<sup>4</sup> Appellant timely filed a concise statement of errors, on January 27, 2014. **See** Pa.R.A.P. 1925(b). The PCRA court filed an opinion on March 3, 2014, reasoning that the petition was untimely. **See** Pa.R.A.P. 1925(a). We note that the PCRA court's reasoning changed from its original determination of no arguable merit. (**See** Order, 12/04/13). However, "we may affirm the PCRA court's decision on any basis." **Commonwealth v. Charleston**, 2014 WL 2557575, \*13 (Pa. Super. 2014) (citation omitted).

(Appellant's Brief, at 3).<sup>5, 6</sup>

These issues pose purely legal questions: thus, our review of the [PCRA] [c]ourt's determinations is plenary and *de novo*. To the extent review of the PCRA court's determinations is implicated, an appellate court reviews the PCRA court's findings of fact to determine whether they are supported by the record, and reviews its conclusions of law to determine whether they are free from legal error. The scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the trial level.

***Commonwealth v. Spatz***, 84 A.3d 294, 311 (Pa. 2014) (citations and internal quotation marks omitted).

Appellant's judgment of sentence became final on December 23, 2002, ninety days after our Supreme Court denied allowance of appeal on September 23, 2002 and Appellant did not file a petition for a writ of *certiorari* with the United States Supreme Court.<sup>7</sup> **See** U.S.S.Ct.R. 13. Appellant had one year to file a timely PCRA petition, or December 23, 2003. **See** 42 Pa.C.S.A. § 9545(b)(1). Therefore, the instant third petition, filed on July 6, 2012, eight and a half years later, is untimely on its face unless

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<sup>5</sup> Appellant's one hundred sixty-word question fails to comply with Pennsylvania Rule of Appellate Procedure 2116, which provides in pertinent part that: "The statement of the questions involved must state **concisely** the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail." Pa.R.A.P. 2116 (emphasis added).

<sup>6</sup> Appellant's question assumes erroneously that he was convicted of second-degree murder. (**See** Appellant's Brief, at 3; **compare** Verdict Slip, 12/03/99). In his statement of the case, Appellant notes, correctly, that he was convicted of murder of the first degree. (**See** Appellant's Brief, at 5).

<sup>7</sup> December 22, 2002 fell on a Sunday.

Appellant pleads and proves one of the three statutory exceptions to the PCRA time-bar. **See** 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii); **see also Commonwealth v. Hackett**, 956 A.2d 978, 980 n.5 (Pa. 2008), *cert. denied*, 556 U.S. 1285 (2009).

Here, Appellant concedes that our Supreme Court decided against his argument, that **Miller** applies retroactively, in **Cunningham**. (**See** Appellant's Brief, at 17). Therefore, under **Cunningham**, Appellant cannot prove an exception under 42 Pa.C.S.A. § 9545(b)(1)(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.").

Nevertheless, he claims PCRA court error in the denial of his motion for a stay pending the outcome of a petition for a writ of *certiorari* in **Cunningham**. (**See id.**). He also maintains that **Miller** applies retroactively on other grounds. (**See id.** at 19). We disagree.

Preliminarily, we note that the United States Supreme Court has recently declined to grant *certiorari* in **Cunningham**. **See Cunningham v. Pennsylvania**, \_\_\_ S. Ct. \_\_\_\_, 2014 WL 797250 (2014), 82 USLW 3555 (filed June 9, 2014). Thus, our Supreme Court's decision in **Cunningham** is final and binding. Accordingly, Appellant's companion argument that the PCRA court erred when it denied him permission to file a "state *habeas* petition or to Stay the Dismissal of the instant PCRA [p]etition pending the

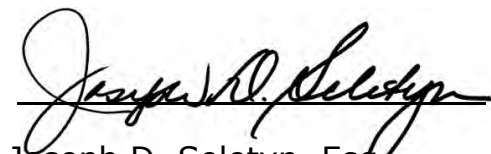
outcome of finalization (*i.e.*, a ruling by the United States Supreme Court) of ***Commonwealth v. Cunningham***” is moot. (Appellant’s Brief, at 17).

Appellant also argues that ***Miller*** can be construed to be retroactive under Article I, Section 13 of the Pennsylvania Constitution (prohibiting “cruel punishments”). (***See id.*** at 19-21). As noted by the Commonwealth, (***see*** Commonwealth’s Brief, at 17, 21, 22), this Court has already rejected Appellant’s argument as a non-reviewable attempt at circumvention of the holding in ***Cunningham***. ***See Commonwealth v. Seskey***, 86 A.3d 237, 243 (Pa. Super. 2014) (holding that this Court “cannot manufacture jurisdiction based upon the substantive claims raised by the parties,” citing 42 Pa.C.S.A. § 9545(b)(1)(iii) and ***Cunningham***). Appellant presents no other facts which would plead or prove a statutory exception to the PCRA time-bar. ***See*** 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii).

The PCRA court properly determined that Appellant’s petition was untimely, with no exception to the statutory time-bar proven.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/1/2014

