

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

LENWARD GOLPHIN,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 3306 EDA 2013

Appeal from the PCRA Order October 28, 2013  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-1224451-1984

BEFORE: FORD ELLIOTT, P.J.E., BOWES, and SHOGAN, JJ.

MEMORANDUM BY BOWES, J.:

**FILED JUNE 23, 2014**

Lenward Golphin appeals from the October 28, 2013 order dismissing his PCRA petition as untimely filed. We affirm.

In 1986, Appellant was convicted by jury of first degree murder and sentenced to life imprisonment for the death of Sydiah Turk. Police were summoned to the home that Appellant shared with the victim based on complaints that there was an altercation occurring therein. They discovered Sydiah's dead body. Appellant said that he had slapped the victim several times, but the autopsy revealed that Appellant strangled her to death. On direct appeal, we affirmed the judgment of sentence, and our Supreme Court denied further review. ***Commonwealth v. Golphin***, 538 A.2d 939 (Pa.Super. 1987), *appeal denied*, 542 A.2d 1366 (Pa. 1988). Thereafter, Appellant filed three unsuccessful requests for post-conviction relief.

**Commonwealth v. Golphin**, 678 A.2d 827 (Pa.Super. 1996), *appeal denied*, 681 A.2d 1341 (Pa. 1996); **Commonwealth v. Golphin**, 808 A.2d 244 (Pa.Super. 2002), *appeal denied*, 815 A.2d 631 (Pa. 2002); **Commonwealth v. Golphin**, 947 A.2d 824 (Pa.Super. 2008), *appeal denied*, 956 A.2d 432 (Pa. 2008). Significantly, in connection with litigation of Appellant's second petition, we noted that his judgment of sentence became final on July 10, 1988, and that he could no longer avail himself of the grace period applicable to PCRA petitioners whose judgment of sentence became final prior to the enactment of the 1995 amendments to the PCRA.

This appeal is from the denial of Appellant's latest PCRA petition. He raises the following issues:

- A. Whether the PCRA court abused its discretion in dismissing appellant's petition in violation of the Eighth Amendment protection from cruel and unusual punishment?
- B. Whether trial counsel was ineffective for failing to provide competent counsel during plea bargaining process?
- C. Whether PCRA court abused its discretion in dismissing appellant's petition for Writ of *Habeas Corpus Ad Subjiciendum* concluding his relief is solely through the post conviction relief act?

Appellant's brief at 3.

Our Supreme Court has observed that limited appellate review applies in the PCRA context. **Commonwealth v. Spatz**, 84 A.3d 294 (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, we have ruled that Appellant's judgment of sentence became final on July 10, 1988, and his PCRA petitions no longer qualify for the grace period applicable to defendants whose sentences became final prior to enactment of § 9545. Thus, Appellant's present petition, as were his last two, are facially untimely.

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).

Appellant's first issue involves the third exception, an after-recognized constitutional right. Specifically, although he admittedly was an adult when he murdered Ms. Turk, Appellant claims that his life sentence constitutes cruel and unusual punishment under **Miller v. Alabama**, 132 S.Ct. 2455 (2012). We have rejected a claim that the **Miller** decision, which held that it was unconstitutional to sentence a juvenile to a mandatory term of life imprisonment without parole, is applicable to defendants who were legally adults when they committed the crime in question. **Commonwealth v. Cintora**, 69 A.3d 759 (Pa.Super. 2013). Since Appellant was an adult when he committed his offenses, **Miller** does not create an exception to the time bar of § 9545. We also observe that the **Miller** decision has been ruled not to apply retroactively to defendants seeking collateral relief. **Commonwealth v. Cunningham**, 81 A.3d 1 (Pa. 2013).

Appellant's second claim is that his trial attorney failed to give him "adequate advice on the terms and conditions of a plea bargain offer." Appellant's brief at 11. The only exception arguably applicable to this position is the one pertaining to newly discovered facts. 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).

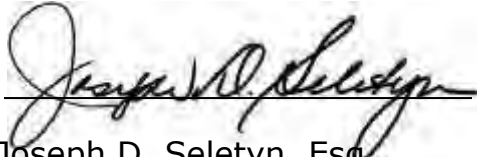
Appellant has failed to satisfy the first aspect of this test. Appellant was aware of the advice proffered by trial counsel with respect to the guilty plea prior to proceeding to trial, which is when that advice was given. Hence, the fact in question is not newly discovered and does not fall within the parameters of the exception.

Appellant's final position is that his petition should not have been treated as a PCRA petition since herein, he "sought a legal remedy for the unlawful restraint of his liberty on the basis of the absence of a Sentencing Order containing statutory authorization for the sentence imposed for the Department of Corrections to detain him which constitutes cruel and usual punishment." Appellant's brief at 16. While this aspect of Appellant's post-conviction request for relief is cognizable as a *habeas corpus* petition, he is not entitled to relief on this basis. ***Joseph v. Glunt***, 2014 WL 2155396 (Pa.Super. 2014). Since our review of the record confirms that Appellant was sentenced, N.T. Deferred Sentencing, 12/15/1986, at 20, it does not matter whether the Department of Corrections possesses a copy of a written sentencing order for Appellant. ***Id.***

Order affirmed.

J-S38018-14

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: 6/23/2014