

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
KENNETH L. MONTURE, JR.,	:	
	:	
Appellant	:	No. 340 WDA 2014

Appeal from the Order Entered January 15, 2014,
 In the Court of Common Pleas of Blair County,
 Criminal Division, at Nos. CP-07-CR-0000948-1999,
 CP-07-CR-0000949-1999, CP-07-CR-0000950-1999,
 CP-07-CR-0000951-1999, CP-07-CR-0001080-1999,
 CP-07-CR-0001081-1999, CP-07-CR-0001082-1999,
 and CP-07-CR-0001641-1999.

BEFORE: BENDER, P.J.E., SHOGAN, J., and STRASSBURGER, J.*

MEMORANDUM BY SHOGAN, J.:

FILED DECEMBER 23, 2014

Appellant, Kenneth L. Monture, Jr., appeals *pro se* from the order entered on January 15, 2014, that dismissed his petition for writ of *habeas corpus*. We affirm.

The record reflects that on February 22, 2000, Appellant entered an open guilty plea to numerous offenses in connection with an extensive heroin trafficking operation in Blair County. On April 7, 2000, Appellant was sentenced to a term of incarceration of eighteen years and three months to sixty-two years, followed by five years of probation. Appellant filed a timely direct appeal, and a panel of this Court affirmed Appellant’s judgment of

*Retired Senior Judge assigned to the Superior Court.

sentence. **Commonwealth v. Monture**, 2137 WDA 2000, 779 A.2d 1220 (Pa. Super. filed June 26, 2001) (unpublished memorandum). Appellant did not seek allowance of appeal in the Pennsylvania Supreme Court.

On March 27, 2002, Appellant filed a timely petition for collateral relief pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-9546. On July 14, 2005, the PCRA court granted Appellant partial relief only insofar as it reduced his maximum sentence from sixty-two years of incarceration to fifty-four years of incarceration. Curiously, on August 12, 2005, the PCRA court rescinded its July 14, 2005 order that granted Appellant partial relief. However, on October 18, 2006, the PCRA court reinstated its July 14, 2005 order.

Appellant then filed a timely appeal from the reinstated July 14, 2005 order. After review, this Court affirmed the decision of the PCRA court. **Commonwealth v. Monture**, 1465 WDA 2007, 970 A.2d 473 (Pa. Super. filed February 5, 2009) (unpublished memorandum). On August 17, 2009, our Supreme Court denied Appellant's petition for allowance of appeal. **Commonwealth v. Monture**, 983 A.2d 1248 (Pa. 2009).

On December 16, 2013, Appellant filed the underlying petition for writ of *habeas corpus*. In his petition, Appellant claimed that, because he is an enrolled member of the Six Nations Indian Tribe, the Commonwealth of Pennsylvania did not have jurisdiction to prosecute him, and he should be

released from prison. On January 15, 2014, the trial court filed an order dismissing Appellant's petition. This appeal followed.

On appeal, Appellant raises the following issues:

WHETHER THE COURT BELOW ERRED IN DISMISSING THE APPELLANT'S WRIT OF HABEAUS [sic] CORPUS WITHOUT PREJUDICE TO RAISE JURISDICTIONAL CLAIM IN ANY OTHER VENUE, AND THUS MANIFESTLY ABUSED ITS DISCRETION IN DISMISSING APPELLANT'S REQUEST FOR HABEAS CORPUS RELIEF?

WHETHER THE FAILURE OF THE COMMONWEALTH TO "ENGAGE TO DELIVER THE PERSON THAT MAY BE ACCUSED" PURSUANT TO THE FORT HARMAR TREATY OF 1789, AND ITS FAILURE TO COMPLY WITH "COMPLAINT SHALL BE MADE BY THE PARTY INJURED" PURSUANT TO THE CANANDAIGUA TREATY OF 1794, VIOLATED SAID TREATIES, AND APPELLANT['s] SIX NATIONS TRIBAL TREATY RIGHTS UNDER THE AFORESAID TREATIES?

WHETHER THE COMMONWEALTH OF PENNSYLVANIA LACKED JURISDICTION OVER APPELLANT, AN ENROLLED MEMBER OF THE MOHAWK NATION OF THE IROQUOIS CONFEDERACY OF SIX NATIONS, TO PROSECUTE HIM UNDER ITS CRIMINAL LAWS?

WHETHER THE JUDGMENTS ENTERED BY THE COURT BELOW ARE NULL AND VOID FOR LACK OF JURISDICTION OVER APPELLANT [sic], AN ENROLLED MEMBER OF THE MOHAWK NATION OF THE IROQUOIS CONFEDERACY OF SIX NATIONS?

Appellant's Brief at 4.

While Appellant has presented four separate issues, a review of the argument portion of his *pro se* brief reveals that he argues only one distinct claim of error. Appellant's issue, which is the contention he presented in his *habeas corpus* petition, is that the Commonwealth of Pennsylvania lacked

jurisdiction to prosecute him because he is an enrolled member of the Six Nations Indian Tribe.

On review, we point out that because Appellant's purported petition for a writ of *habeas corpus* presented a challenge to the jurisdiction of the Blair County Court of Common Pleas, the court in which he was charged and convicted, his claim was cognizable under the PCRA. 42 Pa.C.S. § 9543(a)(2)(viii). Accordingly, the trial court should have treated Appellant's petition for writ of *habeas corpus* as a second PCRA petition. However, we need not remand this matter for further consideration of Appellant's petition under the PCRA because, as will be discussed below, the lower court was without jurisdiction to address Appellant's claims.

A PCRA petition must be filed within one year of the date that the judgment of sentence becomes final. 42 Pa.C.S. § 9545(b)(1). This time requirement is mandatory and jurisdictional in nature, and the court may not ignore it in order to reach the merits of the petition. ***Commonwealth v. Murray***, 753 A.2d 201, 203 (Pa. 2000). A judgment of sentence "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. § 9545(b)(3).

As set forth above, Appellant was sentenced on April 7, 2000. He filed a direct appeal to this Court, and his judgment of sentence was affirmed on June 26, 2001. Thus, Appellant's judgment of sentence became final thirty days later when the time to file a petition for allowance of appeal to the Pennsylvania Supreme Court expired. 42 Pa.C.S. § 9545(b)(3); Pa.R.A.P. 1113.¹ Accordingly, in order to satisfy the timing requirements of the PCRA, Appellant's first PCRA petition and any subsequent petition, had to be filed on or before July 26, 2002. Here, however, Appellant did not file the instant petition until December 16, 2013. Therefore, Appellant's petition is patently untimely.

It is well settled that the time limitations established by the PCRA are jurisdictional in nature, and a court lacks jurisdiction to address the claims raised in an untimely petition. ***Commonwealth v. Liebensperger***, 904 A.2d 40, 45 (Pa. Super. 2006); 42 Pa.C.S. § 9545(b)(1), (3). However, the PCRA does provide exceptions to the one-year time bar for filing a petition:

¹ The July 14, 2005 order of the PCRA court does not alter the date upon which Appellant's judgment of sentence became final. In ***Commonwealth v. McKeever***, 947 A.2d 782 (Pa. Super. 2008), this Court held that a successful first PCRA petition "does not 'reset the clock' for the calculation of the finality of the judgment of sentence for purposes of the PCRA where the relief granted in the first petition neither restored a petitioner's direct appeal rights nor disturbed his conviction, but, rather, **affected his sentence only.**" *Id.* at 785 (citing ***Commonwealth v. Dehart***, 730 A.2d 991, 994 n.2 (Pa. Super. 1999)) (emphasis added). Here, the PCRA court's 2005 grant of partial relief affected only Appellant's sentence, and therefore, it did not reset the clock for purposes of a subsequent PCRA petition.

(b) Time for filing petition. -

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

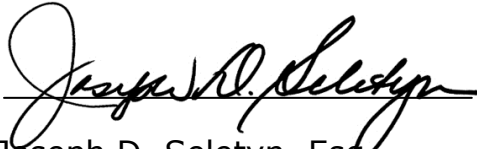
42 Pa.C.S. § 9545(b)(1)-(2). These exceptions must be specifically pled and proved. ***Liebensperger***, 904 A.2d at 46.

Upon review, we conclude that Appellant's petition for writ of *habeas corpus* was an untimely second PCRA petition. Appellant's petition was filed more than twelve years after his judgment of sentence became final, and Appellant has failed to set forth, much less argue, that any exception to the timing requirements of the PCRA apply. Accordingly, because Appellant's

petition was untimely, the lower court was without jurisdiction to address Appellant's claims. **Libensperger**, 904 A.2d at 45. Likewise, this Court lacks jurisdiction to reach the merits of the appeal. **See Commonwealth v. Johnson**, 803 A.2d 1291, 1294 (Pa. Super. 2002) (holding that the Superior Court lacked jurisdiction to reach the merits of an appeal from an untimely PCRA petition).²

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2014

² Were we to reach Appellant's claim of error, we would conclude that it is completely devoid of merit. Appellant's status as an enrolled member of an Indian Nation does not exempt him from the jurisdiction of state courts for crimes committed outside reservation lands. **See Nevada v. Hicks**, 533 U.S. 353, 362 (2001) (stating that it is well settled that states have criminal jurisdiction over reservation Indians for crimes committed off the reservation) (citing **Mescalero Apache Tribe v. Jones**, 411 U.S. 145, 148-149, (1973)). Appellant's heroin trafficking occurred in and around Blair County Pennsylvania, which is outside any reservation territory. Thus, Blair County had criminal jurisdiction in this matter.

