

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ANTHONY DUANE SMITH

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 548 WDA 2013

Appeal from the PCRA Order February 27, 2013  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0016177-1999

BEFORE: GANTMAN, P.J., ALLEN, J., and STABILE, J.

JUDGMENT ORDER BY GANTMAN, P.J.:

**FILED MAY 06, 2014**

Appellant, Anthony Duane Smith, appeals from the order entered in the Allegheny County Court of Common Pleas, which dismissed his second petition filed under the Post Conviction Relief Act ("PCRA").<sup>1</sup> We affirm.

On February 26, 2001, following a bench trial, the court convicted Appellant of first-degree murder and sentenced him to life imprisonment without parole. This Court affirmed the judgment of sentence on May 7, 2004, and our Supreme Court denied allowance of appeal on October 12, 2004. **See *Commonwealth v. Smith***, 855 A.2d 137 (Pa.Super. 2004) (unpublished memorandum), *appeal denied*, 580 Pa. 697, 860 A.2d 123 (2004). Appellant did not seek review with the U.S. Supreme Court. On

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<sup>1</sup> 42 Pa.C.S.A. §§ 9541-9546.

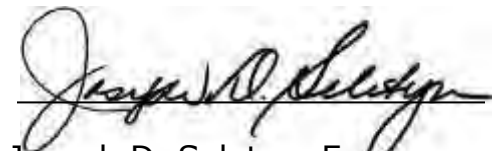
September 28, 2005, Appellant filed his first PCRA petition, which the court ultimately denied on February 15, 2008. This Court affirmed on December 16, 2008. **See Commonwealth v. Smith**, 965 A.2d 302 (Pa.Super. 2008) (unpublished memorandum), *appeal denied*, 601 Pa. 702, 973 A.2d 1006 (2009). Appellant filed his current PCRA petition on April 25, 2012. On June 22, 2012, the PCRA court issued Pa.R.Crim.P. 907 notice; Appellant filed a response on September 6, 2012. On February 27, 2013, the PCRA court dismissed Appellant's petition as untimely. Appellant filed a timely notice of appeal on March 26, 2013. The court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied.

The timeliness of a PCRA petition is a jurisdictional requisite. **Commonwealth v. Hackett**, 598 Pa. 350, 956 A.2d 978 (2008). A PCRA petition must be filed within one year of the date the underlying judgment becomes final. 42 Pa.C.S.A. § 9545(b)(1). A judgment is deemed final at the conclusion of direct review or at the expiration of time for seeking review. 42 Pa.C.S.A. § 9545(b)(3). The three statutory exceptions to the PCRA's timeliness provisions allow for very limited circumstances under which the late filing of a petition will be excused. **See** 42 Pa.C.S.A. § 9545(b)(1). A petitioner asserting a timeliness exception must file a petition within 60 days of the date the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2). This rule is strictly enforced. **Commonwealth v.**

**Vega**, 754 A.2d 714 (Pa.Super. 2000). Instantly, Appellant's judgment of sentence became final on January 10, 2005. Appellant filed the current petition on April 25, 2012, more than seven years after his judgment of sentence became final; thus, Appellant's petition is patently untimely. **See** 42 Pa.C.S.A. § 9545(b)(1). Appellant attempts to invoke the "new facts" exception to the PCRA's time restrictions under Section 9545(b)(1)(ii), by presenting affidavits of two new witnesses from the night of the murder, whose testimony allegedly would have changed the outcome of Appellant's trial. Nevertheless, Appellant failed to satisfy the PCRA's 60-day rule.<sup>2</sup> **See** 42 Pa.C.S.A. § 9545(b)(2); **Vega, supra**. Thus, the court properly dismissed the petition.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 5/6/2014

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<sup>2</sup> The proposed affidavits are dated September 27, 2011 and October 8, 2011, and they each have a fax transmittal date of November 19, 2011. Assuming without deciding that Appellant did not discover the affidavits or information within them until the date they were faxed, Appellant filed his second PCRA petition on April 25, 2012, well outside the 60-day window under Section 9545(b)(2).