

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JEAN SAXON,	:	
	:	
Appellant	:	No. 587 EDA 2014

Appeal from the PCRA Order January 14, 2014
In the Court of Common Pleas of Bucks County
Criminal Division No(s): CP-09-CR-0002168-2005

BEFORE: GANTMAN, P.J., ALLEN, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED JULY 09, 2014

Appellant, Jean Saxon, appeals *pro se* from the order entered in the Bucks County Court of Common Pleas dismissing her second Post Conviction Relief Act¹ ("PCRA") petition as untimely. She challenges the sufficiency and weight of her convictions, alleges a **Brady**² violation, claims the court erred in admitting a dying declaration, and maintains prior counsel were ineffective regarding the aforementioned. We affirm.

We adopt the facts and procedural history set forth by the PCRA court's opinion. **See** PCRA Ct. Op., 4/8/14, at 1-2 (unpaginated). Appellant

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² **Brady v. Maryland**, 373 U.S. 83 (1963).

J. S43039/14

filed the instant, *pro se* second PCRA petition on November 12, 2013³—while her appeal from the denial of her first PCRA petition was outstanding.⁴ On January 14, 2014,⁵ the PCRA court issued a Pa.R.Crim.P. 907 notice of intent to dismiss. On January 27, 2014,⁶ Appellant filed a notice of appeal from the court's Rule 907 notice. On February 27, 2014, the PCRA court dismissed Appellant's petition. According to the PCRA court's decision, on February 28, 2014, the PCRA court ordered that Appellant's January 27, 2014 notice of appeal be treated as if it was timely filed from the subsequent February 27, 2014 order formally dismissing Appellant's petition.⁷ **See id.** at 2. The order also instructed Appellant to comply with Pa.R.A.P. 1925(b) within twenty-one days. **See id.** Appellant did not comply.

³ The envelope was post-marked this date. **See Commonwealth v. Wilson**, 911 A.2d 942, 944 n.2 (Pa. Super. 2006) (discussing prisoner mailbox rule).

⁴ We note "that when an appellant's PCRA appeal is pending before a court, a subsequent PCRA petition cannot be filed until the resolution of review of the pending PCRA petition by the highest state court in which review is sought, or upon the expiration of the time for seeking such review." **Commonwealth v. Lark**, 746 A.2d 585, 588 (Pa. 2000). This Court affirmed the denial of Appellant's first PCRA petition on November 25, 2013. As discussed *infra*, however, the PCRA court lacked jurisdiction to entertain the instant petition because it was untimely.

⁵ The order was docketed on this date.

⁶ The certificate of service stated this date. The PCRA court docketed Appellant's notice of appeal on January 30, 2014.

⁷ The docket reflects that an order was entered on February 28, 2014, but the order is not part of the certified record.

Appellant raises the following issues:

Whether the government failed to meet its burden of proof . . . resulting in an irrational verdict . . . and resulting in a miscarriage of justice?

Whether [Appellant] was denied exculpatory (**Brady**) testimony in violation of her constitutional right to obtain witnesses in her favor and in violation of the Commonwealth Rules of Evidence?

Whether trial and post trial counsel through raising the above questions in part, totally failed to apprehend the magnitude of miscarriage of justice perpetrated on [Appellant] and were as a matter of law ineffective?

Appellant's Brief at 1.

Before examining the merits of Appellant's claims, our Supreme Court has required this Court to examine whether we have jurisdiction to entertain the underlying PCRA petition. **See Commonwealth v. Fahy**, 737 A.2d 214, 223 (Pa. 1999). "Our standard of review of a PCRA court's dismissal of a PCRA petition is limited to examining whether the PCRA court's determination is supported by the evidence of record and free of legal error." **Commonwealth v. Wilson**, 824 A.2d 331, 333 (Pa. Super. 2003) (*en banc*) (citation omitted). A PCRA petition "must normally be filed within one year of the date the judgment becomes final . . . unless one of the exceptions in § 9545(b)(1)(i)-(iii) applies and the petition is filed within 60 days of the date the claim could have been presented." **Commonwealth v. Copenhefer**, 941 A.2d 646, 648 (Pa. 2007) (internal citations and footnote omitted).

The PCRA's timeliness requirements are jurisdictional in nature and must be strictly construed; courts may not address the merits of the issues raised in a petition if it is not timely filed. It is the petitioner's burden to allege and prove that one of the [three] timeliness exceptions applies.

Commonwealth v. Abu-Jamal, 941 A.2d 1263, 1267-68 (Pa. 2008)

(internal citations omitted).

The three timeliness exceptions are:

(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.

42 Pa.C.S. § 9545(b)(1)(i)-(iii).

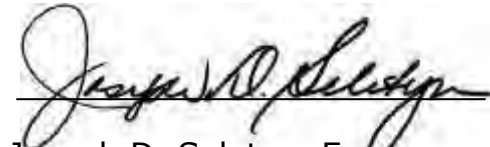
Instantly, we examine whether the PCRA court erred by holding Appellant's second PCRA petition was untimely. **See** 42 Pa.C.S. § 9545(b)(1), (2); ***Abu-Jamal***, 941 A.2d at 1267-68. With respect to her direct appeal, the Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal on December 20, 2007. Appellant's judgment of sentence became final on March 19, 2008, ninety days after the Pennsylvania Supreme Court denied *allocatur*.

Appellant filed the instant petition on November 12, 2013, over five years later. Thus, this Court must discern whether the PCRA court erred in concluding Appellant did not plead and prove one of the three timeliness exceptions. **See** 42 Pa.C.S. § 9545(b)(1)(i)-(iii); **Copenhefer**, 941 A.2d at 648.

In this case, Appellant has not pleaded or proved any of the timeliness exceptions. **See** 42 Pa.C.S. § 9545(b)(1)(i)-(iii). Accordingly, we agree with the PCRA court's determination that Appellant has not proved one of the three timeliness exceptions. **See Abu-Jamal**, 941 A.2d at 1267-68; **Copenhefer**, 941 A.2d at 648. Thus, the PCRA court lacks jurisdiction to consider her petition. **See Fahy**, 737 A.2d at 223. Having discerned no error of law, we affirm the order below.⁸ **See Wilson**, 824 A.2d at 333.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/9/2014

⁸ Because Appellant's PCRA petition is untimely, we need not address Appellant's failure to comply with the court's order instructing her to file a Pa.R.A.P. 1925(b) statement.