

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JOEL A. BAEZ,	:	
	:	
Appellant	:	No. 622 EDA 2013

Appeal from the PCRA Order entered on February 5, 2013  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division, No. CP-51-CR-1005978-2004

BEFORE: BOWES, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED JUNE 27, 2014**

Joel A. Baez (“Baez”) appeals, *pro se*, from the Order denying his “Request to file Defendant’s *Pro Se* Motion to Reopen and Vacate Order/Sentence,” which was treated as a Petition under the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On June 24, 2005, Baez was found guilty of two counts each of corrupt organizations and delivery of a controlled substance, and one count each of possession with the intent to deliver and criminal conspiracy. The trial court sentenced Baez to an aggregate sentence of ten to twenty years in prison, followed by seven years of probation.

Baez filed a “Request to File Defendant’s *Pro Se* Motion to Reopen and Vacate Order/Sentence” on January 31, 2013. The PCRA court treated

Baez's Request as a PCRA Petition, which it denied on February 5, 2013.

Baez filed a timely Notice of Appeal.

On appeal Baez raises the following question for our review:

Did the lower court err in denying [Baez]'s Motion to Reopen and Vacate Order/Sentence Pursuant to 42 P[a].C.[S.]A. §§ 5504, 5505[;] and whether the court err [*sic*] in not granting an [*sic*] hearing regarding the evidence show [*sic*] by fraud upon the court and the constitutional violation of the [Fourth, Sixth and Fourteenth] Amendments [to the Constitution of the United States of America] and the **Brady** Violation<sup>[1]</sup> and miscarriage of justice and due process of the law [*sic*]?

Brief for Appellant at 3 (footnote added, capitalization omitted).

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error.

**Commonwealth v. Ford**, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

Initially, Baez's Request was properly treated as a PCRA Petition. **See** PCRA Court Opinion, 12/9/13, at 3; **see also Commonwealth v. Johnson**, 803 A.2d 1291, 1293 (Pa. Super. 2002) (stating that "[t]he PCRA provides the sole means for obtaining collateral review, and any petition filed after the judgment of sentence becomes final will be treated as a Post Conviction Relief Act petition.")

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<sup>1</sup> **Brady v. Maryland**, 373 U.S. 83 (1963).

Under the PCRA, any PCRA petition “shall be filed within one year of the date the judgment becomes final[.]” 42 Pa.C.S.A. § 9545(b)(1). When no timely direct appeal is filed, the one-year period allowed for the filing of a post-conviction petition commences upon the actual expiration of the time period allowed for seeking direct review. **See Commonwealth v. Brown**, 943 A.2d 264, 268 (Pa. 2008). The PCRA’s timeliness requirements are jurisdictional in nature and a court may not address the merits of the issues raised if the PCRA petition was not timely filed. **Commonwealth v. Albrecht**, 994 A.2d 1091, 1093 (Pa. 2010).

Here, Baez’s judgment of sentence became final on September 12, 2005, when the thirty-day time period in which to file a direct appeal expired. Baez had until September 12, 2006, to file his PCRA Petition, but did not do so until January 31, 2013. Thus, Baez’s Petition is facially untimely under the PCRA.

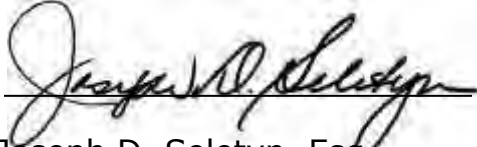
However, this Court may consider an untimely PCRA petition if the appellant can explicitly plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any PCRA petition invoking one of these exceptions “shall be filed within 60 days of the date the claim could have been presented.” **Id.** § 9545(b)(2); **Albrecht**, 994 A.2d at 1094.

Here, Baez has not pled any of the exceptions listed in 42 Pa.C.S.A. § 9545(b)(1). Thus, the PCRA court properly denied Baez’s Petition as untimely.

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Order affirmed.

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: 6/27/2014