

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RASHEED LA-QUN WILLIAMS,	:	
	:	
Appellant	:	No. 756 MDA 2014

Appeal from the PCRA Order Entered April 14, 2014,
In the Court of Common Pleas of Dauphin County,
Criminal Division, at Nos. CP-22-CR-0000339-1997
and CP-22-CR-0001194-1997.

BEFORE: BENDER, P.J.E., SHOGAN and MUSMANNNO, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED DECEMBER 23, 2014**

Appellant, Rasheed La-Qun Williams, appeals *pro se* from the order denying his third petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-9546. We affirm.

Following a jury trial on May 14 and 15, 1997, Appellant was convicted of attempted homicide, rape, involuntary deviate sexual intercourse, indecent assault, and unlawful restraint. On May 16, 1997, the trial court imposed an aggregate sentence of thirty-five to eighty-five years of imprisonment. Appellant filed a direct appeal, and on May 21, 1998, this Court affirmed the judgment of sentence, and an allowance of appeal was denied by our Supreme Court on December 1, 1998. ***Commonwealth v.***

Williams, 596 HBG 1997, 718 A.2d 863 (Pa. Super. filed May 21, 1998) (unpublished memorandum), *appeal denied*, 732 A.2d 1210 (Pa. 1998).

On March 5, 1999, Appellant filed a timely first petition under the PCRA. In his brief in support thereof, Appellant contended that his trial counsel was ineffective for failing to pursue DNA testing on traces of semen found at the crime scene. The PCRA court denied the petition without a hearing by order of July 21, 1999. We affirmed. **Commonwealth v. Williams**, 1511 MDA 1999, 776 A.2d 297 (Pa. Super. filed December 26, 2000) (unpublished memorandum). Our Supreme Court, however, granted *allocatur* and ordered the case remanded for an evidentiary hearing on the issue of whether it was reasonable for Appellant's trial counsel to forego DNA testing. **Commonwealth v. Williams**, 899 A.2d 1060 (Pa. 2006).

The PCRA court conducted the remand hearing on August 3, 2006. On October 26, 2006, the PCRA court dismissed the petition. On November 27, 2006, Appellant filed a direct appeal to the Superior Court. This Court affirmed the dismissal on July 23, 2007. **Commonwealth v. Williams**, 2229 MDA 2006, 932 A.2d 265 (Pa. Super. filed July 23, 2007) (unpublished memorandum). Appellant filed a petition for allowance of appeal with the Pennsylvania Supreme Court, and the Supreme Court denied the petition on March 20, 2008. **Commonwealth v. Williams**, 945 A.2d 171 (Pa. 2008).

On May 19, 2008, Appellant filed his second PCRA petition which was dismissed on May 28, 2008. Appellant appealed the dismissal of his second PCRA petition, and this Court dismissed the appeal for failure to file a brief. ***Commonwealth v. Williams***, 2085 MDA 2008 (Pa. Super. filed April 30, 2009).

On January 14, 2014, Appellant filed the instant *pro se* PCRA petition. After providing notice of its intent to dismiss the petition, the PCRA court issued a final order dismissing the PCRA petition on April 14, 2014. Appellant timely appealed. The trial court directed Appellant to file a statement pursuant to Pa.R.A.P. 1925(b) and Appellant timely complied.

Appellant presents the following issues for our review:

1. Whether the allegations in the Petitioner PCRA falls within the exceptions of the time limitation of 42 Pa.C.S. § 9545 (B-1-ii)?
2. Whether the court should vacate the Petitioner invalid sentence because there is NO signed sentencing order nor is there a sentencing order that was prepared by the judge?

Appellant's Brief at unnumbered 4 (*verbatim*).

Our standard of review of an order denying PCRA relief is whether the record supports the PCRA court's determination and whether the PCRA court's determination is free of legal error. ***Commonwealth v. Phillips***, 31 A.3d 317, 319 (Pa. Super. 2011) (citing ***Commonwealth v. Berry***, 877 A.2d 479, 482 (Pa. Super. 2005)). The PCRA court's findings will not be

disturbed unless there is no support for the findings in the certified record. **Id.** (citing **Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa. Super. 2001)).

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. Cintora**, 69 A.3d 759, 762 (Pa. Super. 2013) (citing **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).

However, an untimely petition may be received when the petition alleges, and the petitioner proves, that any of the three limited exceptions to the time for filing the petition, set forth at 42 Pa.C.S. § 9545(b)(1)(i), (ii), and (iii), is met.¹ A petition invoking one of these exceptions must be filed

¹ The exceptions to the timeliness requirement 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;

within sixty days of the date the claim could first have been presented. 42 Pa.C.S. § 9545(b)(2). In order to be entitled to the exceptions to the PCRA's one-year filing deadline, "the petitioner must plead and prove specific facts that demonstrate his claim was raised within the sixty-day time frame" under section 9545(b)(2). **Carr**, 768 A.2d at 1167.

Our review of the record reflects that the trial court imposed the judgment of sentence on May 16, 1997. This Court affirmed the judgment of sentence, and on December 1, 1998, the Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal. Accordingly, Appellant's judgment of sentence became final on March 1, 1999, ninety days after the Pennsylvania Supreme Court denied *allocatur* and the time expired for Appellant to file an appeal with the United States Supreme Court. 42 Pa.C.S. § 9545(b)(3); U.S. Sup. Ct. R. 13. Appellant did not file the instant PCRA petition until April 30, 2012. Thus, Appellant's instant PCRA petition is patently untimely.

(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), (ii), and (iii).

As previously stated, if a petitioner does not file a timely PCRA petition, his petition may nevertheless be received under any of the three limited exceptions to the timeliness requirements of the PCRA. 42 Pa.C.S. § 9545(b)(1). If a petitioner asserts one of these exceptions, he must file his petition within sixty days of the date that the exception could be asserted. 42 Pa.C.S. § 9545(b)(2).

Appellant first argues that his petition is timely under the after-discovered evidence exception pursuant to 42 Pa.C.S. § 9545(b)(1)(ii). Appellant's Brief at 3. Appellant maintains that two boxes of legal material, containing his entire legal file, were unlawfully taken and destroyed. **Id.** As a result, Appellant was corresponding with the clerk of courts in an attempt to obtain parts of his file. **Id.** He maintains that in one of the correspondences, the clerk informed Appellant that Appellant's file included a sentencing sheet, but there was no sentencing order signed by the judge. **Id.** Appellant maintains that this correspondence occurred in December 2013, and this is when Appellant first became aware of the unsigned sentencing order. **Id.** Appellant also refers, in his *pro se* brief, to Exhibits A-D that he alleges support these claims. **Id.**

In order to sustain an untimely PCRA petition under section 9545(b)(1)(ii), a 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. 42 Pa.C.S. § 9545(b)(1)(ii). If the petitioner alleges and proves these two components, then the PCRA court has jurisdiction over the claim under this subsection.

Commonwealth v. Bennett, 930 A.2d 1264, 1272 (Pa. 2007) (internal citations and quotations omitted). The sixty-day time limit related to section 9545(b)(ii) runs from the date the petitioner first learned of the alleged after-discovered facts. ***Commonwealth v. Williams***, 35 A.3d 44, 53 (Pa. Super. 2011). A petitioner must explain when he first learned of the facts underlying his PCRA claims and show that he brought his claim within sixty days thereafter. ***See Commonwealth v. Albrecht***, 994 A.2d 1091, 1094 (Pa. 2010) (holding petitioner failed to demonstrate his PCRA petition was timely where he did not explain when he first learned of facts underlying his PCRA petition). All of the time limits set forth in the PCRA are jurisdictional and must be strictly construed. ***Commonwealth v. Fahy***, 959 A.2d 312, 315 (Pa. 2008).

We first note that, despite his reference to Exhibits A-D in support of his claims, there are no exhibits attached to Appellant's brief, nor are there any exhibits attached to Appellant's PCRA petition. Appellant's allegations are unsupported by any evidence of record. Accordingly, Appellant has failed to plead and prove this claim.

Moreover, Appellant's judgment of sentence was entered in 1997. We cannot reasonably conclude that, with due diligence, Appellant would not

have discovered, in the past seventeen years, that there was no sentencing order signed by a judge entered in his case. Accordingly, Appellant has failed to establish the exception to the time bar pursuant to 42 Pa.C.S. § 9545(b)(1)(ii).

Appellant also asserts that his sentence should be vacated because “there is no signed sentencing order nor is there a sentencing order that was prepared by the Judge.” Appellant’s Brief at 4. While it appears that Appellant is making an illegality-of-sentence claim, we note that such claims must be raised in a timely PCRA. “[A]lthough illegal sentencing issues cannot be waived, they still must be presented in a timely PCRA petition.” ***Commonwealth v. Taylor***, 65 A.3d 462, 465 (Pa. Super. 2013) (quoting ***Fahy***, 737 A.2d 214, 223 (Pa. 1999)). Because Appellant has failed to plead and prove an exception to the time bar, we lack jurisdiction to review the merits of Appellant’s petition.

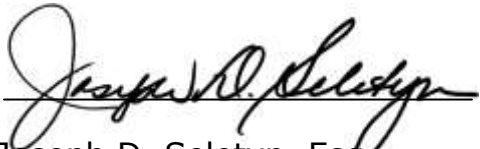
In sum, the PCRA court did not err in finding that Appellant’s petition was time-barred and that none of the exceptions to the one-year time limit applied. Consequently, the PCRA court lacked jurisdiction to address the claims presented and grant relief. ***See Commonwealth v. Fairiror***, 809 A.2d 396, 398 (Pa. Super. 2002) (holding that PCRA court lacks jurisdiction to hear untimely petition). Likewise, we lack jurisdiction to reach the merits of the appeal. ***See Commonwealth v. Johnson***, 803 A.2d 1291, 1294 (Pa.

J-S66022-14

Super. 2002) (holding that Superior Court lacks jurisdiction to reach merits of appeal from untimely PCRA petition).

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: 12/23/2014