

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RUSSELL WESLEY MOSS

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1463 EDA 2015

Appeal from the PCRA Order April 27, 2015  
In the Court of Common Pleas of Delaware County  
Criminal Division at No(s): CP-23-CR-0002091-2002

BEFORE: BENDER, P.J.E., LAZARUS, J., and OTT, J.

JUDGMENT ORDER BY LAZARUS, J.:

**FILED NOVEMBER 17, 2015**

Russell Wesley Moss appeals from the order of the Court of Common Pleas of Delaware County that dismissed without prejudice his third petition filed pursuant to the Post Conviction Relief Act.<sup>1</sup> After careful review, we affirm.

On September 23, 2003, following Moss' guilty plea, the trial court sentenced him to 8-20 years' incarceration for third-degree murder and a concurrent term of 5-10 years' incarceration for solicitation to commit murder. This Court affirmed the judgment of sentence on February 28, 2005.

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<sup>1</sup> 42 Pa.C.S. §§ 9541-9546.

Moss filed a timely PCRA petition, which the court dismissed on December 28, 2006. This Court affirmed on October 11, 2007.

Moss filed his second PCRA petition on July 21, 2014. The court dismissed the petition on October 8, 2014. Moss filed a timely appeal to this Court. ***Commonwealth v. Moss***, No. 3605 EDA 2015 (filed October 20, 2014). The appeal is pending disposition.

On April 20, 2015, Moss filed a third PCRA petition, which the court dismissed without prejudice on April 27, 2015. Moss filed an appeal to this Court on May 18, 2015.

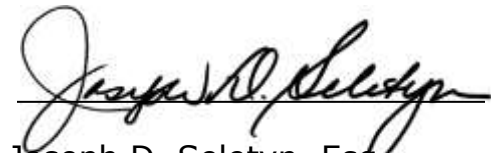
In ***Commonwealth v. Lark***, 746 A.2d 585, 588 (Pa. 2000), our Supreme Court held:

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.

Accordingly, in light of the pending PCRA petition, the court did not err when it dismissed Moss' third PCRA petition without prejudice.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 11/17/2015