

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

CLAY CALDWELL

Appellant

No. 3603 EDA 2014

Appeal from the PCRA Order November 24, 2014  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0202251-2000  
CP-51-CR-1107861-1999

BEFORE: BOWES, J., PANELLA, J., and FITZGERALD, J.\*

JUDGMENT ORDER BY PANELLA, J.

**FILED OCTOBER 14, 2015**

Appellant, Clay Caldwell, appeals *pro se* from the order dismissing his fourth petition pursuant to the Post Conviction Relief Act as untimely. After reviewing Caldwell's filings and briefs, we conclude that he failed to successfully plead an exception to the PCRA's jurisdictional time bar. As a result, we affirm.<sup>1</sup>

Caldwell pled guilty to first-degree murder and simple assault on December 19, 2000, and did not file a direct appeal. In 2010, this Court

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> In light of our conclusion that the PCRA court correctly determined that it lacked jurisdiction to entertain Caldwell's petition, we deny Caldwell's motion to strike the Commonwealth's brief.

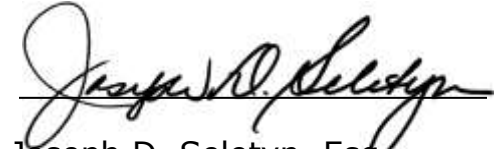
affirmed the dismissal of Caldwell's third PCRA petition, filed May 26, 2009, as untimely. **See *Commonwealth v. Caldwell***, 940 EDA 2010 (unpublished judgment order filed December 22, 2010).

Given this history, it is clear that Caldwell's instant petition, filed September 17, 2013, is also facially untimely. Once again, Caldwell's petition failed to plead any exceptions to the PCRA's time-bar. In a "memorandum of law," attached to his petition, Caldwell briefly summarizes case law concerning abandonment by counsel. **See** Memorandum of Law in Support of the Defendants [sic] PCRA petition, 9/15/13, at 1. However, Caldwell failed to apply the cited law to the facts of his case in any manner. Even assuming that the memorandum of law attached to his petition functioned as a pleading, Caldwell has not satisfied the requirements for successfully pleading abandonment by counsel as an exception to the time bar. **See *Commonwealth v. Burton***, 936 A.2d 521, 525 (Pa. Super. 2007); ***Commonwealth v. Williamson***, 21 A.3d 236, 242 n.6 (Pa. Super. 2011). Therefore, the PCRA court correctly concluded that Caldwell's petition was untimely and that the court lacked jurisdiction to entertain it.

Order affirmed. Petition to Strike Appellee's Brief denied. Motion to file supplemental brief denied. Jurisdiction relinquished.

J-S54024-15

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: 10/14/2015