

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

v.

MAURICE WOODARD

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1690 WDA 2015

Appeal from the PCRA Order October 2, 2015
in the Court of Common Pleas of Erie County Criminal Division
at No(s): CP-25-CR-0001825-2004

BEFORE: SHOGAN, OTT, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED: July 6, 2016

Appellant, Maurice Woodard, appeals *pro se* from the order entered in the Erie County Court of Common Pleas dismissing his fifth Post Conviction Relief Act¹ ("PCRA") petition as untimely. Appellant contends that his 2004 mandatory minimum sentence is unconstitutional under ***Alleyne v. United States***, 133 S. Ct. 2151 (2013). We affirm.

On December 2, 2004, the trial court sentenced Appellant to an aggregate term of 18-36 years' imprisonment following his convictions for three counts of robbery and related offenses.² The trial court denied

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² The trial court imposed mandatory minimum sentences pursuant to 42 Pa.C.S. § 9712. Following the United States Supreme Court ruling in ***Alleyne***, we held this section unconstitutional. ***See Commonwealth v. Newman***, 99 A.3d 86, 98 (Pa. Super. 2014) (*en banc*).

Appellant's post-sentence motion on December 15, 2004, and Appellant did not file a direct appeal.

Appellant filed a timely PCRA petition on March 21, 2005, which the PCRA court denied after a hearing. On July 21, 2006, this Court affirmed, and on March 21, 2007, our Supreme Court denied allowance of appeal. ***Commonwealth v. Woodard***, 1463 WDA 2005 (Pa. Super. July 21, 2006), *appeal denied*, 574 WAL 2006 (Pa. Mar. 21, 2007). Appellant then filed his second PCRA petition on July 30, 2007, which the PCRA court dismissed as untimely. This Court affirmed on Feb 19, 2008. ***Commonwealth v. Woodard***, 1600 WDA 2007, (Pa. Super. Feb. 19, 2008). Appellant filed his third PCRA petition on July 7, 2011, which the PCRA court dismissed as untimely. Appellant appealed to this Court on July 25, 2011, and we affirmed on January 5, 2012. ***Commonwealth v. Woodard***, 1201 WDA 2011 (Pa. Super. Jan. 5, 2012). On May 23, 2012, Appellant filed his fourth PCRA petition, which the PCRA court dismissed as untimely. Appellant appealed to this Court on July 2, 2012, and we affirmed this latest dismissal on January 25, 2013. ***Commonwealth v. Woodard***, 1082 WDA 2012 (Pa. Super. Jan. 25, 2013), *appeal denied*, 147 WAL 2013 (Pa. Aug. 6, 2013). Our Supreme Court denied Appellant review of this PCRA petition on August 6, 2013. ***Id.***

Appellant filed, *pro se*, a writ of *habeas corpus* on April 28, 2015, in light of the United States Supreme Court's 2013 decision in ***Alleyne***, which

held “that facts that increase mandatory minimum sentences must be submitted to the jury [and] proven beyond a reasonable doubt.” **Alleyn**, 133 S. Ct. at 2163. On September 8, 2015, the PCRA court issued its notice of intent to dismiss the PCRA petition without a hearing pursuant to Pa.R.Crim.P. 907. Construing Appellant’s writ as a PCRA petition, the court reasoned that **Alleyn** does not afford relief to petitioners whose judgements of sentence were final prior to the date of the decision, *i.e.*, June 17, 2013. Pa.R.Crim.P. 907 Notice, 9/8/15, at 3. Therefore, because Appellant was sentenced in 2004, several years prior to **Alleyn**, Appellant could not rely upon the ruling to establish a timeliness exception. **Id.** On October 2, 2015, the PCRA court dismissed the petition as untimely. Appellant filed a timely notice of appeal to this Court on October 13, 2015, and on November 19, 2015, filed a timely court-ordered Pa.R.A.P. 1925(b) statement. The PCRA court filed a response on November 24, 2015.³

On appeal, Appellant challenges his sentence under 42 Pa.C.S. § 9712 as unconstitutional.⁴ Specifically, he argues that **Alleyn** establishes a new

³ The PCRA court referred this Court to its Rule 907 Notice for the reasons underlying its dismissal. PCRA Ct. Op., 11/24/15.

⁴ In his brief, Appellant raises three separate issues relating to the applicability of **Alleyn** to his case. The gravamen of all three arguments, however, is the notion that **Alleyn** should apply retroactively to his conviction. **See** Appellant’s Brief at 9-17.

Appellant additionally raises the claim that the trial court erred in treating his motion for writ of *habeas corpus* as a PCRA petition; however, he

rule of constitutional law that applies retroactively. **See** Appellant's Brief at 9-17.

"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). Before weighing the substantive merits of Appellant's arguments, however, we consider whether this Court has jurisdiction over the present case. If the PCRA petition is untimely, there is no subject matter jurisdiction over the case. **Commonwealth v. Abu-Jamal**, 941 A.2d 1263, 1267-68 (Pa. 2008). As our Supreme Court has explained:

the PCRA timeliness requirements are jurisdictional in nature and, accordingly, a PCRA court is precluded from considering untimely PCRA petitions. **See, e.g., Commonwealth v. Murray**, 753 A.2d 201, 203 (Pa. 2000) (stating that "given the fact that the PCRA's timeliness requirements are mandatory and jurisdictional in nature, no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner"); **Commonwealth v. Fahy**, 737 A.2d 214, 220 (Pa. 1999) (holding that where a petitioner fails to satisfy the PCRA time requirements, this Court has no jurisdiction to

concedes in his brief that the PCRA court was correct to do so. **Id.** at 15. We note that the PCRA **subsumes the writ of habeas corpus**. **See Commonwealth v. Taylor**, 65 A.3d 462 (Pa. Super. 2013) (holding that issues cognizable under PCRA must be raised in timely PCRA petition and cannot be raised in *habeas corpus* petition). A writ of *habeas corpus* cannot be used to escape the time-bar of the PCRA for a collateral attack on a conviction unless the PCRA does not provide a potential remedy. **Id.**

entertain the petition). [The Pennsylvania Supreme Court has] also held that even where the PCRA court does not address the applicability of the PCRA timing mandate, th[e Court would] consider the issue *sua sponte*, as it is a threshold question implicating our subject matter.

Commonwealth v. Whitney, 817 A.2d 473, 475-76 (Pa. 2003) (parallel citations omitted).

In order to satisfy the timeliness requirement, a PCRA petition “must be filed within one year of the date that the judgement 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) (citations and footnote omitted). This timeliness requirement applies equally to first-time PCRA petitions and to subsequent PCRA petition filings. 42 Pa.C.S. § 9545(b)(1). The PCRA enumerates three exceptions to this time limitation:

(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.

Id. § 9545(b)(1)(i)-(iii).

This Court has addressed whether **Alleynes** creates a new constitutional right that applies retroactively to untimely PCRA petitions. We held in **Commonwealth v. Miller**, 102 A.3d 988 (Pa. Super. 2014), that **Alleynes** does not satisfy the requirements of the PCRA time-bar exception. As this Court has explained:

Even assuming that **Alleynes** did announce a new constitutional right, neither our Supreme Court, nor the United States Supreme Court has held that **Alleynes** is to be applied retroactively to cases **in which the judgment of sentence had become final**. This is fatal to Appellant's argument regarding the PCRA time-bar. This Court has recognized that a new rule of constitutional law is applied retroactively to cases on collateral review only if the United States Supreme Court or our Supreme Court specifically holds it to be retroactively applicable to those cases.

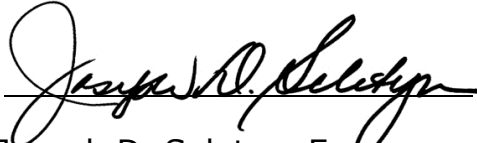
Miller, 102 A.3d at 995 (emphasis added) (citation omitted).

Sentenced on December 2, 2004, Appellant's judgment of sentence became final on January 14, 2005. 42 Pa.C.S. § 9545(b)(3); Pa.R.A.P. 903; **see also Woodard**, 1600 WDA 2007, at 5. Appellant filed the instant petition on April 28, 2015. Therefore, it is facially untimely. Appellant argues that the United States Supreme Court's decision in **Alleynes** provides a new constitutional right that applies retroactively to his case. **See** Appellant's Brief at 9-17. As we held in **Miller**, however, **Alleynes** does not have retroactive effect, and therefore does not satisfy an exception to the PCRA time-bar. **Miller**, 102 A.3d at 995. Accordingly, we affirm the PCRA

court's finding that Appellant's petition was untimely.⁵ **See Wilson**, 824 A.2d at 833.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/6/2016

⁵ Moreover, even if **Alleyn** constituted a proper avenue through which Appellant could seek to invoke the PCRA's third exception to the time bar, 42 Pa.C.S. § 9545(b)(1)(iii), his petition would still be untimely. Petitioners seeking to invoke the exception must file their petitions within 60 days of the filing of the court's decision. **See Commonwealth v. Baldwin**, 789 A.2d 728, 731 (Pa. Super. 2001). In the case at bar, almost two years had passed between the time of the **Alleyn** decision and the time Appellant filed his PCRA petition.