

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

JOSEPH WATSON

Appellant

No. 986 EDA 2015

Appeal from the PCRA Order March 23, 2015
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-1206401-1998

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and JENKINS, J.

MEMORANDUM BY OTT, J.:

FILED FEBRUARY 16, 2016

Joseph Watson appeals *pro se* from the order entered March 23, 2015, in the Court of Common Pleas of Philadelphia County, that dismissed as untimely his third petition for relief, filed pursuant to the Pennsylvania Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541–9546. Watson claims the PCRA court erred “in dismissing appellant[’s] PCRA petition/application for reinstatement of his appellate rights, that was not addressed by the court.” Watson’s Brief at 6. We affirm.

The PCRA court summarized the procedural history of this case as follows:

On February 4, 2000, following a jury trial, [Watson] was convicted of involuntary deviate sexual intercourse, aggravated assault, and possession of an instrument of crime. On September 22, 2000, [Watson] was resentenced to an aggregate term of twenty-two and a half to forty-five years’ incarceration. On September 12, 2003, following a direct appeal, the Superior

Court affirmed the judgment of sentence.² [Watson] did not file for allowance of appeal.

On April 15, 2004, [Watson] filed a timely PCRA petition. On May 11, 2005, the PCRA court denied the petition. The Superior Court affirmed [the PCRA] court's denial of [Watson's] petition on September 29, 2006.³ The Pennsylvania Supreme Court denied his petition for allowance of appeal on April 13, 2007.⁴

On July 8, 2009, [Watson] filed his second PCRA petition. Pursuant to Pennsylvania Rule of Criminal Procedure 907, [Watson] was served notice of the [PCRA] court's intention to dismiss his PCRA petition on July 19, 2010. On June 13, 2011, the [PCRA] court dismissed [Watson's] petition as untimely. On December 13, 2012, following a direct appeal, the Superior Court affirmed the dismissal of [Watson's] PCRA petition.⁵

On June 4, 2014, [Watson] filed his third *pro se* PCRA petition, the dismissal of which is the subject of the current appeal. On September 26, 2014, the PCRA court issued notice of intent to dismiss pursuant to Rule 907.

² ***Commonwealth v. Watson***, [835 A.2d 838] 3150 EDA 2000 (unpublished memorandum) (Pa. Super. Sept. 12, 2003).

³ ***Commonwealth v. Watson***, [911 A.2d 188] 1465 EDA 2005 (unpublished memorandum) (Pa. Super. Sept. 29, 2006).

⁴ ***Commonwealth v. Watson***, [921 A.2d 496] 602 EAL 2006 (Pa. Apr. 13, 2007).

⁵ ***Commonwealth v. Watson***, [64 A.3d 18] 1733 EDA 2011 (unpublished memorandum) (Pa. Super. Dec. 13, 2012).

PCRA Court Opinion, 4/22/2015, at 1-2. On March 23, 2015, the court dismissed Watson's PCRA petition as untimely. This timely appeal followed.

Watson was not ordered to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

The principles that guide our review are well settled:

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 decision is free of legal error. **Commonwealth v. Phillips**, 2011 PA Super 231, 31 A.3d 317, 319 (Pa. Super. 2011) (citing **Commonwealth v. Berry**, 2005 PA Super 219, 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**, 2001 PA Super 54, 768 A.2d 1164, 1166 (Pa. Super. 2001)).

We must first address whether Appellant satisfied the timeliness requirements of the PCRA. The timeliness of a PCRA petition is a jurisdictional threshold and may not be disregarded in order to reach the merits of the claims raised in a PCRA petition that is untimely. **Commonwealth v. Murray**, 562 Pa. 1, 753 A.2d 201, 203 (Pa. 2000). Effective January 16, 1996, the PCRA was amended to require a petitioner to file any PCRA petition within one year of the date the judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1). 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.A. § 9545(b)(3). Where a petitioner's judgment of sentence became final on or before the effective date of the amendment, a special grace *proviso* allowed first PCRA petitions to be filed by January 16, 1997. **See Commonwealth v. Alcorn**, 703 A.2d 1054, 1056-1057 (Pa. Super. 1997) (explaining application of PCRA timeliness *proviso*).

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.A. § 9545(b)(1)(i), (ii), and (iii), are met. A petition invoking one of these exceptions must be filed within sixty days of the date the claim could first have been presented. 42 Pa.C.S.A. § 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.

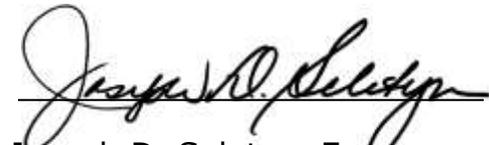
Commonwealth v Lawson, 90 A.3d 1, 4–5 (Pa. Super. 2014) (footnote omitted).

In its opinion, the PCRA court found that Watson’s present PCRA petition was untimely. The PCRA court also determined that, although Watson advanced a claim based upon the new constitutional right announced in **Alleyne v. United States**, 133 S. Ct. 2151 (2013), Watson failed to file his petition within 60 days of the date the claim could have been presented, as required by 42 Pa.C.S. § 9545(b)(2). **See** PCRA Court Opinion, 4/22/2015, at 3. Further, the PCRA court found Watson failed to satisfy the “newly recognized constitutional right” exception to the PCRA’s bar, 42 Pa.C.S. § 9545(b)(1)(iii), since **Alleyne** has not been afforded retroactive effect by our Supreme Court or the United States Supreme Court. **See** PCRA Court Opinion, *supra* at 3–4, *citing Commonwealth v. Miller*, 102 A.3d 988, 995 (Pa. Super. 2014). Finally, the PCRA court determined that Watson’s remaining claims, including ineffective assistance of counsel, malicious prosecution, trial court error, and fraud — which we interpret as the claims presented in support of his request for reinstatement of direct appeal rights — do not satisfy any exception to the PCRA’s timeliness requirements. Accordingly, the PCRA court concluded it lacked jurisdiction to entertain Watson’s third PCRA petition.

Having carefully reviewed the record, the applicable law, and the well-reasoned opinion of the PCRA court, we agree that Watson's present petition is untimely and that no timeliness exception applies. The PCRA court's opinion aptly addresses Watson's claims. Accordingly, we affirm on the basis of the PCRA court's opinion.

Order affirmed.¹

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: 2/16/2016

¹ In the event of further proceedings, we direct the parties to attach a copy of the PCRA court's 4/22/2015 Opinion to this memorandum.