

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

JEFFREY A. SHOCKLEY

Appellant

No. 1805 EDA 2016

Appeal from the PCRA Order May 17, 2016
in the Court of Common Pleas of Philadelphia County Criminal Division
at No(s): CP-51-CR-1113481-1999

BEFORE: BENDER, P.J.E., LAZARUS, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED APRIL 20, 2017

Appellant, Jeffrey A. Shockley, appeals *pro se* from the order entered in the Philadelphia County Court of Common Pleas dismissing his serial Post Conviction Relief Act¹ ("PCRA") petition as untimely. Appellant argues he is entitled to relief pursuant to the United States Supreme Court's decision in ***Miller v. Alabama***, 132 S. Ct. 2455 (2012). We affirm.

On July 6, 2001, Appellant pled guilty to first-degree murder² and possessing an instrument of crime³ ("PIC") for offenses he committed when he was thirty-seven years old. That same day, the trial court sentenced Appellant to life imprisonment without the possibility of parole for murder,

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² 18 Pa.C.S. § 2502(a).

³ 18 Pa.C.S. § 907.

and a concurrent two-and-one-half to five years' imprisonment for PIC. Appellant did not file a direct appeal.

Appellant filed his first PCRA petition *pro se* on April 15, 2002. The PCRA court appointed counsel, who filed an amended petition. The PCRA court dismissed Appellant's petition on January 21, 2004. This Court affirmed, and our Supreme Court denied allowance of appeal. Appellant subsequently filed a second unsuccessful PCRA petition.

Appellant filed his current petition *pro se* on August 9, 2012, and an amended *pro se* petition on January 18, 2013. On April 14, 2016, the PCRA court issued notice of its intent to dismiss Appellant's petition without a hearing pursuant to Pa.R.Crim.P. 907. Appellant responded *pro se*, and the PCRA court subsequently dismissed Appellant's petition as untimely on May 17, 2016. This timely appeal followed.

"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).

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. We have also held that even where the PCRA court does not address the applicability of the PCRA timing mandate, th[e] Court will consider the issue *sua sponte*, as it is a threshold question implicating our subject matter jurisdiction and ability to grant the requested relief.

Commonwealth v. Whitney, 817 A.2d 473, 477-78 (Pa. 2003) (citations omitted).

A PCRA petition “must normally be filed within one year of the date the judgment 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) (some citations and footnote omitted). The three exceptions to the general one-year time limitation 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;

(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.

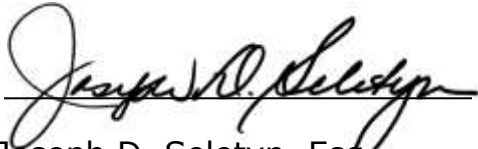
42 Pa.C.S. § 9545(b)(1)(i)-(iii).

Instantly, there is no dispute that Appellant’s current petition, filed on August 9, 2012, was facially untimely. Nevertheless, Appellant alleged that his sentence of life without parole was unconstitutional pursuant to ***Miller***, which was decided on June 25, 2012, less than sixty days prior to the filing of his current petition. However, Appellant was more than eighteen years

old at the time he committed the offenses. Therefore, the right recognized by **Miller** and held to be retroactive in **Montgomery v. Louisiana**, 136 S. Ct. 718, 724 (2016), does not provide Appellant a basis for relief from the PCRA time bar. **See Miller**, 132 S. Ct. at 2460 (holding mandatory life without parole sentences for individuals **under eighteen** at the time of their crimes are unconstitutional). Accordingly, we affirm the PCRA court's order dismissing Appellant's petition. **See Wilson**, 824 A.2d at 833.

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: 4/20/2017