

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
LUIS GARCIA	:	
	:	
Appellant	:	No. 1508 EDA 2017
	:	

Appeal from the PCRA Order April 19, 2017
 In the Court of Common Pleas of Philadelphia County Criminal Division at
 No(s): CP-51-CR-0315491-1986

BEFORE: SHOGAN, J., NICHOLS, J., and PLATT*, J.

MEMORANDUM BY SHOGAN, J.:

FILED MAY 25, 2018

Appellant, Luis Garcia, appeals *pro se* from the order denying his *pro se* "Petition for Habeas Corpus Petition [sic]". We affirm.

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

On January 14, 1987, following a jury trial before the Honorable Lisa A. Richette, [Appellant] was convicted of first degree murder and possession of an instrument of crime.^[1] On September 18, 1987, following post-trial motions, Judge Richette sentenced [Appellant] to life imprisonment without parole for the murder conviction. [Appellant] appealed and the Pennsylvania Superior Court affirmed the trial court's judgment of sentence on January 13, 1989.² The Pennsylvania Supreme Court denied *allocatur* [on] June 9, 1989.³

² ***Commonwealth v. Garcia***, 559 A.2d 9[62] (Pa. Super. 1989) (unpublished memorandum).

¹ 18 Pa.C.S. § 2502(a) and 18 Pa.C.S. § 907, respectively.

* Retired Senior Judge assigned to the Superior Court.

³ ***Commonwealth v. Garcia***, 562 A.2d 824 (Pa. 1989).

[Appellant] filed his first *pro se* petition for collateral relief pursuant to the Post Conviction Relief Act^[2] on August 3, 1989. Counsel was appointed and subsequently filed a “no merit” letter pursuant to *Turner/Finley*.⁴ On December 9, 1992, the PCRA court dismissed [Appellant’s] petition. [Appellant] did not timely appeal the order. Thereafter, [Appellant] filed several PCRA petitions. All were denied.

⁴ ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988).

On December 30, 2016, [Appellant] filed the instant *pro se* PCRA petition, styled as a writ of habeas corpus. This court sent a notice of its intent to dismiss⁵ the petition as untimely without exception on February 22, 2017. [Appellant] filed a response to the 907 notice on March 3, 2017. The PCRA petition was formally dismissed by [the common pleas] court on April 19, 2017. [Appellant] timely filed a notice of appeal to the Pennsylvania Superior Court on May 1, 2017.

⁵ Pursuant to Pa.R.Crim.P. 907.

PCRA Court Opinion, 6/12/17, at 1-2. The court of common pleas filed an opinion pursuant to Pa.R.A.P. 1925(a).

Appellant presents the following issue for our review: “The lower court abused its discretion when it dismissed the petition filed by the Appellant and pertaining to this instant case.” Appellant’s Brief at 3 (unnecessary capitalization omitted). In support of his issue, Appellant asserts that the PCRA court improperly considered his petition for writ of *habeas corpus* under

² Post Conviction Relief Act (“PCRA”), 42 Pa.C.S. §§ 9541-9546.

the PCRA framework. Specifically, Appellant challenges the penal statute under which he was sentenced, 18 Pa.C.S. § 1102(a), claiming that it “violates due process and is unconstitutional, and void under the vagueness doctrine, because the statute fails to give a person of ordinary intelligence fair notice that its true penalty is life imprisonment ‘without parole’”. **Id.** at 7-8 (unnecessary capitalization omitted). Appellant asserts that “the proper legal venue is the writ of habeas corpus, and not the PCRA” because “none of the windows for relief under PCRA address the challenge of the constitutionality of a penal statute.” **Id.** at 8 (unnecessary capitalization omitted). Appellant cites several cases in support of his argument, including **Commonwealth v. West**, 868 A.2d 1267 (Pa. Super. 2005) and **Commonwealth v. Judge**, 916 A.2d 511 (Pa. 2007).

As we have explained in considering whether *habeas corpus* petitions should be treated as PCRA petitions:

It is well-settled that the PCRA is intended to be the sole means of achieving post-conviction relief. 42 Pa.C.S. § 9542; **Commonwealth v. Haun**, 32 A.3d 697 (Pa. 2011). Unless the PCRA could not provide for a potential remedy, the PCRA statute subsumes the writ of *habeas corpus*. **Fahy**, supra at 223–224; **Commonwealth v. Chester**, 557 Pa. 358, 733 A.2d 1242 (1999). Issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a *habeas corpus* petition. **See Commonwealth v. Peterkin**, 554 Pa. 547, 722 A.2d 638 (1998); **see also Commonwealth v. Deaner**, 779 A.2d 578 (Pa. Super. 2001) (a collateral petition that raises an issue that the PCRA statute could remedy is to be considered a PCRA petition). Phrased differently, a defendant cannot escape the PCRA time-bar by titling his petition or motion as a writ of *habeas corpus*.

Commonwealth v. Taylor, 65 A.3d 462, 465-466 (Pa. Super. 2013).

Appellant's void-for-vagueness claim invokes a constitutional question. Our Supreme Court has held that a claim that a defendant's constitutional rights were violated is cognizable under the PCRA. ***Commonwealth v. Peterkin***, 722 A.2d 638, 640-641 (Pa. 1998). Appellant's claim challenging the constitutionality of Section 1102(a), under which he was sentenced, is therefore, cognizable under the PCRA. Accordingly, the PCRA is the sole means by which Appellant may seek relief for his claim. ***Taylor***, 65 A.3d at 465-466.

Additionally, Appellant's case is unlike those cases he cites which involve unique claims that were deemed to fall outside of the PCRA's statutory scheme. ***See Commonwealth v. West***, 938 A.2d 1034, 1044 (Pa. 2007)³ (holding that substantive due-process challenge to continued validity of the defendant's judgment of sentence after a nine-year delay is not cognizable under the PCRA); ***Judge***, 916 A.2d at 521 (holding that allegation that Canada violated the appellant's rights under the International Covenant for Civil and Political Rights is not cognizable under the PCRA). Thus, the common pleas court properly treated Appellant's petition as a PCRA petition.

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

³ The Superior Court case Appellant cited, ***West***, 868 A.2d 1267, was reversed by this Supreme Court case.

determination is free of legal error. **Commonwealth v. Phillips**, 31 A.3d 317, 319 (Pa. Super. 2011). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Id.**

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. Taylor**, 933 A.2d 1035, 1038 (Pa. Super. 2007) (citing **Commonwealth v. Murray**, 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. § 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. § 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. § 9545(b)(1)(i), (ii), and

(iii), is met.⁴ A petition invoking one of these exceptions must be filed within sixty days of the date the claim first could have been presented. 42 Pa.C.S. § 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). ***Commonwealth v. Hernandez***, 79 A.3d 649, 651-652 (Pa. Super. 2013).

Our review of the record reflects that Appellant's judgment of sentence became final on August 8, 1989, sixty days after the Pennsylvania Supreme Court denied Appellant's appeal, and the time for filing a petition for review with the United States Supreme Court expired. **See** 42 Pa.C.S. § 9545(b)(3);

⁴ The exceptions to the timeliness requirement 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), (ii), and (iii).

U.S.Sup.Ct.R. 20.1.⁵ Accordingly, Appellant's judgment of sentence became final prior to the effective date of the PCRA amendments. Appellant's instant PCRA petition, filed on December 30, 2016, does not qualify for the grace *proviso* because it was neither Appellant's first PCRA petition nor was it filed before January 16, 1997. Thus, the instant PCRA petition is patently untimely.

As previously stated, if a petitioner does not file a timely PCRA petition, his petition may nevertheless be received under any of the three limited exceptions to the timeliness requirements of the PCRA. 42 Pa.C.S. § 9545(b)(1). If a petitioner asserts one of these exceptions, he must file his petition within sixty days of the date that the exception could be asserted. 42 Pa.C.S. § 9545(b)(2). Herein, however, Appellant does not assert the applicability of any of these three limited exceptions to the timeliness requirements.

Consequently, because the PCRA petition was untimely and no exceptions apply, the PCRA court lacked jurisdiction to address the claims presented and grant relief. ***See Commonwealth v. Fairiror***, 809 A.2d 396, 398 (Pa. Super. 2002) (holding that PCRA court lacks jurisdiction to hear untimely petition). Likewise, we lack the authority to address the merits of any substantive claims raised in the PCRA petition. ***See Commonwealth v.***

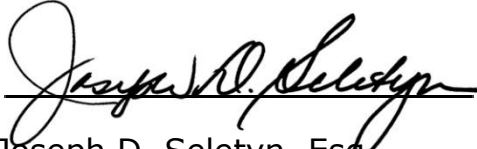
⁵ We observe that the Rules of the United States Supreme Court pertaining to the filing of a petition for *writ of certiorari* have been renumbered and the time-period altered several times since the applicable Rule in this case.

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Bennett, 930 A.2d 1264, 1267 (Pa. 2007) (“[J]urisdictional time limits go to a court’s right or competency to adjudicate a controversy.”).

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/25/18