

of the discretionary aspects of his sentence, this Court determined that Miller had waived these challenges and therefore affirmed Miller's judgment of sentence.

Shortly thereafter, Miller filed his first PCRA petition, alleging counsel's ineffectiveness in failing to preserve his claims. The PCRA court denied the petition. Instead of seeking appellate review, Miller filed a timely second PCRA petition seeking reinstatement of his direct appeal rights *nunc pro tunc*. The PCRA court granted the petition. And the *nunc pro tunc* appeal reached this Court. But after concluding that Miller failed to preserve his issues through a post-sentence motion, this Court, once again, affirmed his judgment of sentence. Based upon this ruling, Miller filed another PCRA petition seeking reinstatement of his post-sentence rights *nunc pro tunc*. The PCRA court granted Miller this relief, but denied his subsequently filed post-sentence motion. This Court affirmed Miller's judgment of sentence on March 8, 2013. Miller did not seek further direct review.

On April 2, 2014, Miller filed another PCRA petition, this time raising ineffective assistance of counsel claims. The PCRA court denied Miller's petition following an evidentiary hearing. Miller filed this *pro se* PCRA petition on March 20, 2017. Finding Miller's petition untimely, the PCRA court filed a notice of its intent to dismiss without a hearing. Despite Miller's response to the notice, the court dismissed his petition. This appeal follows.

Prior to reaching the merits of Miller's claims, we must first consider the timeliness of his PCRA petition. ***See Commonwealth v. Miller***, 102 A.3d 988,

992 (Pa. Super. 2014). The timing of a petition “is a threshold question implicating our subject matter jurisdiction and ability to grant the requested relief.” **Commonwealth v. Whitney**, 817 A.2d 473, 478 (Pa. 2003) (citations omitted). A second petition must be filed within one year of the date the judgment is final unless the petition alleges, and the petitioner proves, an exception to the timeliness requirement. **See** 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). “A judgment becomes final at the conclusion of direct review by this Court or the United States Supreme Court, or at the expiration of the time for seeking such review.” **Commonwealth v. Jones**, 54 A.3d 14, 17 (Pa. 2012) (citation omitted).

Miller claims that, contrary to the PCRA’s court’s determination, the instant PCRA petition was timely filed. In support of his argument, Miller alleges that the one-year time limit under the PCRA was tolled from the date he filed his first PCRA petition following his *nunc pro tunc* direct appeal in 2014 until the conclusion of direct review of that petition in 2017. Therefore, because Miller asserts his current PCRA petition was filed within a one-year time frame, after adjusting for tolling, Miller contends that the PCRA court erred in concluding it did not have jurisdiction to review his claims.

Because the PCRA’s time restrictions are jurisdictional in nature, the “period for filing a PCRA petition is not subject to the doctrine of equitable tolling.” **Commonwealth v. Robinson**, 139 A.3d 178, 185 (Pa. 2016) (citation omitted). Thus, Miller’s judgment of sentence became final on April

8, 2013,^{2,3} when his time for seeking a petition for allowance of appeal with our Supreme Court expired. **See** Pa.R.A.P. 1113(a) (petitioner has thirty days from the entry of the order sought to be reviewed to petition the Pennsylvania Supreme Court for allowance of appeal). His current PCRA petition, filed almost four years later, is untimely. The PCRA court lacked jurisdiction to review Miller's petition unless he was able to successfully plead and prove one of the statutory exceptions to the PCRA's time bar. **See** 42 Pa.C.S.A. § 9545(b)(1)-(iii).

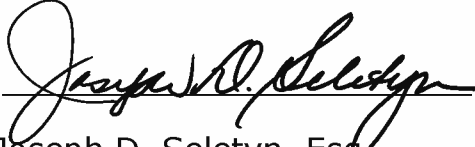
Because Miller believed his petition was timely filed, he failed to plead the applicability of any of the timeliness exceptions to the PCRA time-bar. Therefore, the PCRA court correctly concluded that the petition was untimely, and therefore unreviewable.

Order affirmed.

² While Miller's judgment of sentence was imposed in 2006, his *nunc pro tunc* direct appeal following the reinstatement of his post-sentence rights altered the date his sentence became final and, therefore, restarted the one-year time period for filing a PCRA. **See Turner**, 73 A.3d at 1286.

³ The thirtieth day following the entry of our memorandum denying relief fell on Sunday, April 7, 2013. Pursuant to statute, Miller had until the following business day to file a petition with our Supreme Court. **See** 1 Pa.C.S.A. § 1908.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/22/18