**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA,<br><br>Appellee<br><br>v.<br><br>RUSSELL J. STAUFFER,<br><br>Appellant | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br><br>No. 2021 WDA 2012 |

Appeal from the PCRA Order September 25, 2012
In the Court of Common Pleas of Erie County
Criminal Division at No.: CP-25-CR-0002029-1993

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

MEMORANDUM BY PLATT, J. FILED: June 3, 2013

Appellant, Russell J. Stauffer, appeals *pro se* from the order denying his second petition for relief pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541–9546. Appellant's petition is untimely without a proven exception to the statutory time bar. We affirm.

On September 20, 1994, a jury convicted Appellant of first degree murder and aggravated assault for killing his wife, and the court sentenced him to life imprisonment without parole. (***See*** Appellant's Brief, at 2). This Court affirmed the judgment of sentence on direct appeal, and our Supreme Court denied allowance of appeal, on June 16, 1997. (***Commonwealth v.***

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* Retired Senior Judge assigned to the Superior Court.

***Stauffer***, 687 A.2d 861 (Pa. Super. 1996) (unpublished memorandum), *appeal denied*, 698 A.2d 66 (Pa. 1997)).

Appellant filed a timely, counseled first PCRA petition on May 19, 1998, which the PCRA court denied on October 16, 1998. This Court affirmed, and our Supreme Court denied allowance of appeal. (***Commonwealth v. Stauffer***, 748 A.2d 777 (Pa. Super. 1999) (unpublished memorandum), *appeal denied*, 759 A.2d 385 (Pa. 2000)).

Appellant filed the instant petition, *pro se*, on August 10, 2012,[1] which the PCRA court denied, after a notice of intention to dismiss pursuant to Pa.R.Crim.P. 907, and a written response from Appellant, on September 25, 2012. This timely appeal followed.[2]

Appellant raises two questions for our review.

> A. Did [the PCRA] court abuse its discretion in ruling that the Supreme Court ruling in ***Miller*** [***v. Alabama***, 132 S. Ct. 2455 (2012)] has no bearing on adults in Pennsylvania who received mandatory life without parole sentences?
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> B. Did [the PCRA] court abuse its discretion when it ruled without analyzing Equal Protection as applied to the facts at hand?

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[1] We accord Appellant the benefit of the prisoner mailbox rule. ***See Commonwealth v. Castro***, 766 A.2d 1283, 1287 (Pa. Super. 2001).

[2] The PCRA court filed a Rule 1925(a) opinion, referring to its Notice of Intent to Dismiss of August 28, 2012. ***See*** Pa.R.A.P. 1925(a). The court did not order a statement of errors. ***See*** Pa.R.A.P. 1925(b). The Commonwealth did not file a brief.

(Appellant's Brief, at 1).

> Our standard of review is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error. Our scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the party who prevailed in the PCRA court proceeding.

***Commonwealth v. Busanet***, 54 A.3d 35, 45 (Pa. 2012) (citations omitted).[3] "Questions regarding the scope of the statutory exceptions to the PCRA's jurisdictional time-bar raise questions of law; accordingly, our standard of review is *de novo.*" ***Commonwealth v. Fahy***, 959 A.2d 312, 316 (Pa. 2008) (citation omitted).

"In the PCRA context, jurisdiction is tied to the filing of a timely PCRA petition. . . . Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition." ***Commonwealth v. Infante***, 63 A.3d 358, 365 (Pa. Super. 2013) (citations and internal quotation marks omitted).

> The PCRA requires that all petitions be filed within one year of the date the judgment of sentence became final unless the petitioner alleges and proves that the failure to raise a timely claim: (1) was the result of interference by government officials; (2) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by reasonable diligence; or (3) the right asserted is a constitutional right that has been recognized by the United States Supreme Court or the Supreme Court of Pennsylvania after the one-year time period, and has been held to apply retroactively. 42 Pa.C.S. § 9545(b)(1).

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[3] We note for the clarity of the record that Appellant's assumption that an abuse of discretion standard applies is an error of law. (***See*** Appellant's Brief, at iv).

***Commonwealth v. Saunders***, 60 A.3d 162, 163-64 (Pa. Super. 2013).

Here, Appellant's judgment of sentence became final on Monday, September 15, 1997, ninety days after our Supreme Court denied allowance of appeal and the time to petition the United States Supreme Court for a writ of *certiorari* expired.[4] ***See*** U.S.Sup.Ct. Rule 13. Therefore, Appellant's instant petition, filed on August 10, 2012, almost fifteen years later, is untimely on its face unless Appellant pleads and proves one of the statutory exceptions to the time bar.

We construe Appellant's claims liberally in the interest of justice and judicial economy; however, *pro se* status generally confers no special benefit on an appellant. ***See Commonwealth v. Lyons***, 833 A.2d 245, 252 (Pa. Super. 2003), *appeal denied*, 879 A.2d 782 (Pa. 2005).

Liberally construed, Appellant's brief argues by implication that he is entitled to an exception to the time bar under ***Miller v. Alabama***, ***supra*** and its companion case, ***Jackson v. Hobbs***, also at 132 S. Ct. 2455 (2012). (***See*** Appellant's Brief, at 4). However, Appellant's reliance is misplaced.

Appellant argues, without citation or other support, that "[t]he [United States] Supreme Court in companion cases ***Miller v. Alabama*** . . . and ***Jackson v. Hobbs*** . . . recognized juveniles and adults as comprising a

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[4] September 14, 1997 fell on a Sunday.

single statutory class insofar as offense and punishment are concerned." (***Id.***). Appellant apparently seeks to invoke section 9545(b)(1)(iii):

> [T]he 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.A. § 9545(b)(1)(iii).

In this appeal, Appellant neither pleads, nor provides supporting argument or citation to pertinent authority, that ***Miller*** announces a new constitutional right, and notably, makes no claim that such a right applies to him or other adult offenders retroactively on collateral appeal.[5] Therefore, Appellant has failed to prove that the exception for a constitutional right "held by that court to apply retroactively" pertains. 42 Pa.C.S.A. § 9545(b)(1)(iii). ***See Commonwealth v. Wojtaszek***, 951 A.2d 1169, 1171-72 (Pa. Super. 2008), *appeal denied*, 963 A.2d 470 (Pa. 2009) (rejecting reliance on time bar exception of Section 9545(b)(iii), since case cited neither announced new constitutional right, nor applied retroactively). Moreover, ***Miller*** simply does not support the claim Appellant asserts.

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[5] Our Supreme Court has granted allowance of appeal for issues related to retroactive application of ***Miller, supra*** under the PCRA for a defendant sentenced to mandatory life imprisonment without possibility of parole for a murder committed when the defendant was **under the age of eighteen**. ***See Commonwealth v. Cunningham***, 51 A.3d 178 (Pa. 2012).

Appellant argues in effect that the constitutional right to equal protection requires that the holding in ***Miller*** be applied to him. We disagree. To the contrary, the entire thrust of ***Miller*** is that distinct classes of offenders **do** exist, and that, based on existing lines of controlling caselaw, juveniles can and must be treated differently from adult offenders: "Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences **for juveniles** violate the Eighth Amendment." ***Miller***, ***supra*** at 2464 (emphasis added). The ***Miller*** Court reasoned, in pertinent part, as follows:

> ***Roper*** [***v. Simmons***, 543 U.S. 551, 569 (2005)] and ***Graham*** [***v. Florida***, 130 S. Ct. 2011 (2010)] establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, they are less deserving of the most severe punishments. Those cases relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited contro[l] over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievabl[e] deprav[ity].

***Id.*** (most citations and internal quotation marks omitted).

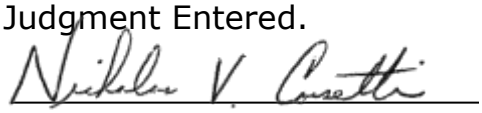
Accordingly, ***Miller*** does not provide a statutory exception to the time bar. Appellant's argument that ***Miller*** mandates that juveniles and adults be treated the same is totally unsupported by the authority cited, and is

therefore, legally frivolous.[6] Additionally, Appellant's invocation of the Universal Declaration of Human Rights presents no statutory exception to the time-bar. (***See*** Appellant's Brief, at 4).[7]

Therefore, Appellant has failed to plead and prove one of the statutory exceptions to the PCRA time bar. The PCRA court properly determined that it had no jurisdiction to review the merits of his claims.

Order affirmed.

Judgment Entered.



Deputy Prothonotary

Date: June 3, 2013

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[6] We note for the benefit of the *pro se* Appellant that, for the same reason, his equal protection claims would merit no relief, even if we had jurisdiction to review them. Appellant concedes that he was thirty-two years old at the time of the murder. (***See*** Appellant's Brief, at 5).

[7] Moreover, it would not merit relief. As previously explained, the equal protection claim is without merit. In any event, the Declaration is a statement of principles, not a treaty or international agreement imposing legal obligations as a matter of international law. ***See Sosa v. Alvarez-Machain***, 542 U.S. 692, 734-35 (2004).