

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ERIC ROGERS,	:	
	:	
Appellant	:	No. 2051 EDA 2012

Appeal from the PCRA Order entered on July 3, 2012
in the Court of Common Pleas of Philadelphia County,
Criminal Division, No. CP-51-CR-1231721-1989

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED MAY 16, 2013

Eric Rogers ("Rogers"), *pro se*, appeals from the Order denying his Petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA").¹ We affirm.

In 1991, at trial court docket number CP-51-CR-1231721-1989 ("the Murder Case"), a jury convicted Rogers of first-degree murder, possessing an instrument of crime, criminal conspiracy and aggravated assault. On October 24, 1991, the trial court sentenced Rogers to life in prison. This Court affirmed Rogers's judgment of sentence on October 1, 1992. ***Commonwealth v. Rogers***, 615 A.2d 5 (Pa. Super. 1992). Rogers did not file a petition for allowance of appeal to the Pennsylvania Supreme Court.

¹ 42 Pa.C.S.A. §§ 9541-9546.

More than seven years later, on December 6, 1999, Rogers filed his first Petition pursuant to the PCRA.² The PCRA court appointed counsel to represent Rogers. Appointed counsel subsequently filed a Petition to withdraw and a **Turner/Finley**³ no-merit letter asserting that Rogers's petition was untimely filed and without merit. On July 14, 2000, the PCRA court entered an Order granting counsel's Petition to withdraw, and dismissing Rogers's PCRA Petition. This Court affirmed the Order of the PCRA court. **Commonwealth v. Rogers**, 778 A.2d 1247 (Pa. Super. 2001) (unpublished memorandum). Since that time, Rogers has filed multiple PCRA petitions challenging his conviction in the Murder Case, all of which were unsuccessful before the PCRA court and on appeal.

In a separate case, docketed at number CP-51-CR-0509222-1991 ("the Guilty Plea Case"), on October 31, 1991, Rogers pled guilty to possession with intent to deliver a controlled substance, criminal conspiracy and corrupt organizations. On December 3, 1991, the trial court sentenced Rogers to a prison term of ten to twenty years for his conviction of corrupt organizations, a prison term of five to ten years for his conviction of criminal conspiracy, and a prison term of one to two years for his narcotics offense.

² Rogers's first PCRA Petition did not fall within the 60-day "grace period" established by the 1995 amendments to the PCRA, which required Rogers to file his first Petition or before January 16, 1997.

³ **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

Rogers did not file a direct appeal of his judgment of sentence in the Guilty Plea Case. Rogers's first Petition for post-conviction collateral relief in the Guilty Plea Case was dismissed as untimely filed on November 16, 2011. This Court affirmed the Order of the PCRA court. ***Commonwealth v. Rogers***, 32 A.2d 844 (Pa. Super. 2011) (unpublished memorandum). Subsequently, the Pennsylvania Supreme Court denied Rogers's application for permission to file a *nunc pro tunc* petition for allowance of appeal. ***Commonwealth v. Rogers***, 2012 Pa. LEXIS 395 (Pa. filed February 24, 2012).

On March 19, 2012, Rogers filed the instant PCRA Petition, which was docketed only under the trial court number assigned to the Murder Case. This Petition constituted Rogers's sixth claim for relief under the PCRA in the Murder Case. On May 18, 2012, Rogers filed an Amended PCRA Petition, which was docketed at both the number assigned to the Murder Case and the number assigned to the Guilty Plea Case. Different judges were assigned to hear the Amended Petition filed at each number.

After appropriate notice, the PCRA judge assigned to hear Rogers's Petition in the Murder Case entered an Order dismissing Rogers's PCRA Petition as untimely filed. Thereafter, Rogers filed the instant appeal of that

Order.⁴

Rogers, *pro se*, presents the following claims for our review:

I. Did the [PCRA] Court err when it stated that the U.S. Supreme Court decision in **Maples v. Thomas**[, ___ U.S. ___, 132 S. Ct. 912, 181 L. Ed. 2d 807 (2012),] only applied specifically to the State of Alabama?

II. Did the [PCRA] Court err when it failed to acknowledge [Rogers's] filed Amendment [to his Petition] asserting the ruling in the U.S. Supreme Court's decision in **Martinez v. Ryan**[, ___ U.S. ___, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012)]?

III. Did [Rogers] invoke a valid exception asserting the egregious misconduct of his initial PCRA counsel—Thomas Moore?

IV. Did [Rogers] file his PCRA Petition within the 60 day time limit rule of the [PCRA]?

V. Did the [PCRA] Court deny [Rogers] his Due Process Rights in accordance with the Fourteenth Amendment?

Brief for Appellant at 3.

Rogers's first two claims challenge the PCRA court's dismissal of his Amended Petition, in his Murder Case, as untimely filed. Specifically, Rogers claims that the United States Supreme Court's decisions in **Maples** and **Martinez** establish the newly recognized constitutional right exception to the PCRA's timeliness requirement. Brief for Appellant at 8, 13-14. Rogers asserts that his first PCRA counsel, Thomas W. Moore, Esquire ("Attorney

⁴ The judge assigned to the Amended PCRA Petition in the Guilty Plea Case also issued Notice of intent to dismiss Rogers's Amended Petition. This Court is unaware if an Order has been entered in that case. Regardless, this Court has before it only Rogers's appeal from the denial of PCRA relief in the Murder Case.

Moore”), rendered ineffective assistance by failing to file a PCRA Petition and, in effect, abandoned Rogers. Brief for Appellant at 9-10. Citing **Martinez** and **Maples**, Rogers argues that he has suffered the abandonment by counsel described in **Martinez** and **Maples**, and that the PCRA court erred in not applying the same review as applied by the United States Supreme Court in **Martinez** and **Maples**. Brief for Appellant at 8, 11, 14.

An appellate court’s standard of review regarding an order denying a PCRA petition is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. **Commonwealth v. Kretchmar**, 971 A.2d 1249, 1251 (Pa. Super. 2009). The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Treadwell**, 911 A.2d 987, 989 (Pa. Super. 2006).

A PCRA petition must be filed within one year of the date the petitioner’s judgment of sentence became final. 42 Pa.C.S.A. § 9545(b)(3). The one-year time limitation is jurisdictional and a trial court has no power to address the substantive merits of an untimely filed petition. **Commonwealth v. Abu-Jamal**, 833 A.2d 719, 723-24 (Pa. 2003); **Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000). The three exceptions to the one-year filing requirement are for newly discovered facts, interference by a government official, and a newly-recognized

constitutional right. 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). The newly-recognized constitutional right exception requires that “the right asserted is a constitutional right that was recognized by the Supreme Court of the United States ... after the time period provided in this section and has been held by the court to apply retroactively.” **Id.** § 9545(b)(1)(iii).

Any petition asserting one of these exceptions must also establish that the exception was raised within sixty days of the date the claim could have been first presented. **Id.** § 9545(b)(2).

As such, when a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner’s PCRA claims.

Gamboa-Taylor, 753 A.2d at 783.

Rogers asserts that the United States Supreme Court’s decisions in **Martinez** and **Maples** overcome the timeliness restrictions of the PCRA, as his first PCRA counsel abandoned him. As a rule, a state prisoner’s *habeas* claims may not be entertained by a federal court when (1) a state court has declined to address those claims because the prisoner had failed to meet a state procedural requirement, and (2) the state judgment rests on independent and adequate state procedural grounds. **Maples**, ___ U.S. ___, 132 S. Ct. at 914, 181 L. Ed. 2d at 813. “The bar to federal review may be lifted, however, if the prisoner can demonstrate cause for the [procedural] default [in state court] and actual prejudice as a result of the

alleged violation of federal law.” **Id.** (citation and internal quotation marks omitted). In **Maples**, the United States Supreme Court held that “in the unusual circumstances of this case,” the abandonment by the defendant’s attorney in state court proceedings constituted cause for the procedural default overcoming the bar to federal *habeas corpus* review. **Id.** at ____, 132 S.Ct. at 916, 181 L. Ed. 2d at 814. There is nothing in **Maples** announcing a newly recognized constitutional right that would apply retroactively in Pennsylvania state court proceedings.

Similarly, in **Martinez**, the United States Supreme Court held that where a claim of ineffective assistance of trial counsel must be raised in initial review collateral proceedings,

a procedural default will not bar a federal *habeas* court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceedings, there was no counsel or counsel in that proceeding was ineffective.

Martinez, ___ U.S. at ____, 132 S.Ct. at 1320, 182 L. Ed. 2d at 288. However, the **Martinez** Court described its ruling as an equitable, not constitutional, one. **Id.** at ____, 132 S.Ct. at 1318, 182 L.Ed.2d at 286. Accordingly, Rogers has not pled nor proven a newly recognized constitutional right.

In his third claim of error, Rogers argues that the timeliness requirement of the PCRA is overcome by his claim of actual innocence in the Guilty Plea Case. Brief for Appellant at 16. However, this appeal involves

only the Murder Case and not the Guilty Plea Case. Therefore, we cannot grant Rogers relief on this claim.

In his fourth claim of error, Rogers argues that the PCRA court erred in dismissing his Petition, where he had filed his Petition within 60 days of the United States Supreme Court's decisions in **Maples** and **Martinez**. Brief for Appellant at 18. However, as set forth above, we conclude that the United States Supreme Court's decisions in **Maples** and **Martinez** do not provide Rogers with a basis for relief. Accordingly, this claim lacks merit.

Finally, Rogers claims that the PCRA court violated his constitutional right of due process because he is actually innocent. Brief for Appellant at 19. However, Rogers's claim is not cognizable under the PCRA, as it was previously litigated. Further, as stated above, the PCRA's timeliness requirement is jurisdictional in nature. **Abu-Jamal**, 833 A.2d at 723-24. Because Rogers failed to plead and prove an exception to the timeliness requirement, the PCRA court lacked jurisdiction to hear the merits of Rogers's claim. Accordingly, Rogers's present claim is without merit.

For the foregoing reasons, we therefore affirm the Order of the PCRA court.

Order affirmed.

J-S08037-13

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambitt", written over a horizontal line.

Prothonotary

Date: 5/16/2013