

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
NATHANIEL BROWN,	:	No. 2118 EDA 2011
	:	
Appellant	:	

Appeal from the PCRA Order, July 13, 2011,
in the Court of Common Pleas of Philadelphia County
Criminal Division at Nos. CP-51-CR-1212551-2002
and MC-51-CR-1151181-2002

BEFORE: FORD ELLIOTT, P.J.E., BENDER AND COLVILLE,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: Filed: January 30, 2013

Appellant appeals the order denying relief on his first petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546, which was based upon untimeliness. Finding no error, we affirm.

On April 8, 2004, a jury found appellant guilty of numerous sexual offenses in regard to his girlfriend's two sons, as well as appellant's own young son. Immediately after the verdict, appellant was sentenced to 8½ to 17 years' imprisonment. Importantly, charges had been brought against appellant at three separate trial court docket numbers as to each child: Nos. CP-51-CR-1212541-2002, CP-51-CR-1212551-2002, and MC-51-CR-1151181-2002.

* Retired Senior Judge assigned to the Superior Court.

On April 28, 2004, appellant filed a notice of appeal as to trial court docket number CP-51-CR-1212541-2002 only. **See *Commonwealth v. Brown***, 919 A.2d 968 (Pa.Super. 2007) (unpublished memorandum) at footnote 4. On February 4, 2005, this appeal was dismissed for failure to file a brief. Thereafter, on March 28, 2005, appellant filed a PCRA petition to restore his direct appeal rights to trial court docket number CP-51-CR-1212541-2002 only, and on February 23, 2006, the PCRA court restored these rights.

On April 6, 2006, counsel attempted to file an amended notice of appeal that sought to review all three trial court docket numbers. The Philadelphia County Clerk of Courts refused to accept the amended notice as to all three docket numbers because the PCRA court's order restored appeal rights only as to trial court docket number CP-51-CR-1212541-2002.¹

Appellant subsequently filed the instant PCRA petition to restore his direct appeal rights to trial court docket numbers CP-51-CR-1212551-2002, and MC-51-CR-1151181-2002. The date of filing of this petition was disputed as its postmark was partially illegible, reading "??N 19 '06." Because only the three letter abbreviation of January or June would end in

¹ The appeal at trial court docket number CP-51-CR-1212541-2002 went forward and, on January 5, 2007, appellant's judgment of sentence was vacated and a new trial was granted. The basis for the court's decision was that the trial court gave appellant an inadequate waiver colloquy before he waived the right to counsel and proceeded *pro se* at trial. Presumably, had appellant appealed the other two trial court docket numbers, he would have won complete relief as to all of his convictions.

"N," the petition was either filed on January 19, 2006, or June 19, 2006. This disputed date became important after June 18, 2008, when the PCRA court denied appellant's petition as untimely and appellant appealed.

On appeal, a prior panel of this court determined that it was critical to the timeliness of appellant's petition as to which date appellant filed his petition. The panel reasoned that since appellant's direct appeal had been dismissed on February 4, 2005 for failure to file a brief, appellant's judgment became final, for purposes of the PCRA, on March 4, 2005, when the 30-day period for seeking review with the Supreme Court expired. Thus, the panel found that appellant had until March 6, 2006 to file a timely PCRA petition. Therefore, the panel returned the case to the PCRA court to determine whether appellant filed his petition on January 19, 2006, or June 19, 2006, because one date was timely while the other was not. ***Commonwealth v. Brown***, 996 A.2d 3 (Pa.Super. 2010) (unpublished memorandum).²

The PCRA court conducted a hearing on this issue on December 13, 2010. The PCRA court determined that the petition had been filed on June 19, 2006 and was untimely. The court also found that a time of filing exception claimed by appellant was invalid. Appellant had claimed governmental interference regarding the Clerk of Court's refusal to accept a notice of appeal as to all three trial court docket numbers. Appellant now

² We note that an earlier decision by this panel was withdrawn on November 18, 2009.

brings this timely appeal arguing that the PCRA court incorrectly decided that his PCRA petition had been filed on June 19, 2006, and that his time of filing exception was not valid.

Our standard of review for an order denying post-conviction relief is whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. ***Commonwealth v. Franklin***, 990 A.2d 795, 797 (Pa.Super. 2010). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***Id.***

Moreover, a PCRA petition must be filed within one year of the date that the judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1). This time requirement is mandatory and jurisdictional in nature, and the court may not ignore it in order to reach the merits of the petition. ***Commonwealth v. Taylor***, 933 A.2d 1035, 1038 (Pa.Super. 2007), ***appeal denied***, 597 Pa. 715, 951 A.2d 1163 (2008).

We begin our analysis by noting that the prior panel of this court incorrectly calculated the date upon which appellant's judgment became final as to trial court docket numbers CP-51-CR-1212551-2002, and MC-51-CR-1151181-2002. The panel held that appellant's judgment became final 30 days after February 4, 2005, when appellant's direct appeal was dismissed for failure to file a brief. However, that direct appeal was filed as to trial court docket number CP-51-CR-1212541-2002 only. Thus, this

appeal in no way tolled the time that appellant had to file a PCRA petition as to trial court docket numbers CP-51-CR-1212551-2002, and MC-51-CR-1151181-2002.

Appellant's judgment of sentence as to these two trial court docket numbers actually became final on May 8, 2004, 30 days after the judgment of sentence was entered and the time for filing a direct appeal expired. 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P., Rule 903(a), 42 Pa.C.S.A. Thus, appellant actually had only until Monday, May 9, 2005 to file a PCRA petition as to these two trial court docket numbers.³ Therefore, either proposed date of filing, January 19, 2006, or June 19, 2006, is untimely.⁴ The instant petition is manifestly untimely, and cannot be reviewed unless appellant

³ The actual date upon which appellant needed to file his PCRA petition, May 8, 2005, fell on a Sunday and is excluded from the calculation of time. **See** 1 Pa.C.S.A. § 1908.

⁴ We are mindful of the coordinate jurisdiction rule, which holds that judges of coordinate jurisdiction sitting in the same case should not overrule each other's decisions. **Commonwealth v. Hernandez**, 39 A.3d 406, 412 (Pa.Super. 2012). Since the prior panel made no ruling that appellant's petition was timely because it was filed January 19, 2006, but only proposed that it could be timely, our present ruling does not overrule the prior panel. Moreover, to the extent that we may be bound by that rule, we agree with the trial court's decision that the petition was actually filed on June 19, 2006. The petition bears "received" time stamps from the Clerk of Quarter Sessions and the PCRA Unit dated June 22, 2006 and June 28, 2006, respectively. Furthermore, there is no docket activity in January or February 2006, but there is an entry on July 6, 2006 that states, "PCRA CASE ENTRY." Thus, even under the interpretation of the prior panel, appellant's PCRA petition was untimely filed.

invokes a valid exception to the time bar of the PCRA. **See** 42 Pa.C.S.A. § 9545(b)(1)(i-iii).

Instantly, appellant presents a governmental interference exception:

(b) Time for filing petition.—

- (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:
 - (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;

42 Pa.C.S.A. § 9545(b) (in pertinent part).

Appellant contends that the failure of the Clerk of Courts to accept an amended notice of appeal that included all three docket numbers amounts to governmental interference. We reject appellant's contention that because these three cases were consolidated at trial, and because the issue raised on appeal was the same as to all three, the Clerk of Courts should have accepted the amended notice.

The order restoring appellant's direct appeal rights restored his rights solely to his conviction at trial court docket number CP-51-CR-1212541-2002. The Clerk of Courts had no authority whatsoever to modify that order and could not accept a notice of appeal as to trial court docket numbers CP-

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51-CR-1212551-2002, and MC-51-CR-1151181-2002 where there was no court order authorizing a restoration of appeal rights. In fact, at the time counsel submitted the amended notice of appeal, April 6, 2006, not even a PCRA court could have authorized such a notice of appeal, because any PCRA petition would have already been untimely as to those trial court docket numbers. There is no governmental interference here.

Accordingly, having found no error below, we will affirm the order of the PCRA court.

Order affirmed.