

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RANDOLPH CLIFTON WILLIAMS

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2192 EDA 2012

Appeal from the PCRA Order July 17, 2012
In the Court of Common Pleas of Monroe County
Criminal Division at No(s): CP-45-CR-0001748-2006

BEFORE: STEVENS, P.J., GANTMAN, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.

Filed: February 15, 2013

Randolph Clifton Williams appeals from the order of the Court of Common Pleas of Monroe County dismissing his third petition brought pursuant to the Post Conviction Relief Act ("PCRA").¹ We affirm.

The PCRA court set forth the facts and procedural history of this case as follows:

On September 7, 2007, a jury convicted [Williams] of the crimes of burglary, criminal trespass, and theft committed at the Kunkletown General Store. On October 24, 2007, this court sentenced [Williams] for the second degree felony burglary crime . . . to imprisonment for a period of not less than thirty-nine months and not more than seventy-eight months at a State Correctional Institution and directed that the sentence was to be served consecutively to any other sentence that was previously imposed and that [Williams] was then serving. The court

¹ 42 Pa.C.S. §§ 9541-9546.

imposed no sentence for the other two crimes. [Williams] filed no motion to modify the sentence imposed.

[Williams] appealed to the Superior Court from the judgment of sentence. The only issue [Williams] raised . . . was whether the court properly refused to give a corrupt source accomplice instruction regarding a Commonwealth witness. [Williams] did not challenge on appeal the legality of the length of the sentence the court imposed.

[On] September 15, 2008, the Superior Court affirmed the judgment of sentence . . . [and] on May 13, 2009, the Supreme Court . . . denied [Williams'] petition for allowance of appeal.

On June 5, 2009, [Williams] filed his first *pro se* petition under the PCRA. [The court] appointed counsel, who filed an amended petition on November 12, 2009, [raising the sole issue of] whether the Commonwealth committed a ***Brady [v. Maryland]***, 373 U.S. 83 (1963) violation by failing to disclose as part of discovery a video surveillance tape of the outside of the store that was burglarized. At the conclusion of [an] April 13, 2010 hearing, the court issued an order that denied [Williams'] amended PCRA petition. [Williams] filed no appeal of the court's . . . order.

On May 12, 2010, [Williams] filed a *pro se* application for time credit and a *pro se* petition for credit for imprisonment while in custody prior to sentencing. The court construed these documents as [Williams'] second *pro se* PCRA petition . . . [and] appointed counsel to represent [him]. Following a hearing . . . the court issued an Order, dated July 23, 2010, which denied the . . . PCRA petition.

On June 30, 2011, [Williams] filed a *pro se* petition for extraordinary relief. On July 13, 2010, the court . . . dismissed the . . . petition.

On February 3, 2012, [Williams] filed a *pro se* petition for credit for imprisonment while in custody prior to sentencing and a *pro se* brief in support of his petition. In an order dated February 9, 2012, the court denied [Williams'] petition.

On June 1, 2012, [Williams] filed his third, and current *pro se* PCRA petition in this case. In the petition, [Williams] asked the court to vacate the sentence that was imposed and resentence him. The reasons [Williams] gave for the requested relief

related to the sentence that was imposed (the sentence exceeded the Sentencing Guidelines' aggravated range, and the court imposed an illegal sentence for the theft crime, because it exceeded the legal limit for a first-degree misdemeanor crime), the manner by which the court imposed the sentence (the court did not provide a contemporaneous written statement of or did not adequately explain the reasons for the sentence that was imposed), and the accuracy of the offense gravity score calculation that was listed in the pre-sentence investigation report.

Notice of Intent to Dismiss, 6/25/12, at 1-6 (incorporated by reference into Trial Court Opinion, 9/6/12).

On July 17, 2012, the PCRA court dismissed Williams' petition as untimely filed. Williams filed a timely notice of appeal, and on August 28, 2012, in response to an order from the PCRA court, Williams filed a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On September 6, 2012, the PCRA court filed its Rule 1925(a) opinion.

On appeal, Williams raises the following issues for our review:

1. Was [Williams'] issue of a non-waivable sentencing matter waived?
2. Was [Williams'] issue of a non-waivable sentencing matter untimely filed pursuant to 42 Pa.C.S. § 9545(B)(1)(iii)?
3. Was [Williams] entitled to counsel on his subsequent PCRA petition?

Brief of Appellant, at 1.

In reviewing an appeal from the denial of PCRA relief, "our standard of review is whether the findings of the PCRA court are supported by the record and are free of legal error." *Commonwealth v. Martin*, 5 A.3d 177, 182 (Pa. Super. 2010) (citations 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).

Williams' sentence became final on August 11, 2009, one year after the expiration of the ninety-day period during which he could have sought discretionary review in the U.S. Supreme Court of the Pennsylvania Supreme Court's May 13, 2009 order denying his petition for allowance of appeal. **See** United States Supreme Court Rule 13. Williams filed the instant petition on June 1, 2012, more than one year after his judgment of sentence became final. Accordingly, it was untimely.

Williams argues that a claim raising the legality of a sentence can never be waived, and therefore may be raised under the PCRA regardless of the Act's time limitations. We disagree. As this Court has noted:

The Supreme Court has held that the timeliness requirements of the PCRA are "[j]urisdictional time limits [that] go to a court's right or competency to adjudicate a controversy. These limitations are mandatory and interpreted literally; thus, a court has no authority to extending filing periods except as the statute permits." **Commonwealth v. Fahy**, 737 A.2d 214, 222 (Pa. 1999) (citations omitted). The **Fahy** court added that

'[a]lthough legality of sentence is always subject to review within the PCRA's time limits or one of the exceptions thereto." *Id.* at 223. **See also *Commonwealth v. Guthrie***, 748 A.2d 502, 503 (Pa. Super. 2000) (citing *Fahy* and stating that "[e]ven within the PCRA, the time limits described in 42 Pa.C.S. § 9545 have been held to apply to questions raising the legality of sentence.").

Commonwealth v. Beck, 848 A.2d 987, 989-90 (Pa. Super. 2004).

Williams and his counsel discussed his prior record score and offense gravity score prior to his sentencing hearing. Accordingly, he was aware of these issues by the date of his sentencing. N.T. Sentencing Hearing, 10/24/07, at 17. Therefore, Williams has failed to prove that his challenge to the legality of his sentence is based upon facts that were unknown to him and could not have been ascertained through the exercise of due diligence. **See** 42 Pa.C.S. § 9545(b)(1)(ii).

Because Williams' third *pro se* PCRA petition was untimely, the trial court did not abuse its discretion in determining that the interests of justice did not require the appointment of counsel. **See** Pa.R.Crim.P. 904(E).

Order affirmed.