

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

SAMUEL THEODORE ROSS

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2193 EDA 2012

Appeal from the PCRA Order July 16, 2012  
In the Court of Common Pleas of Montgomery County  
Criminal Division at No(s): CP-46-CR-0003055-1996

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

MEMORANDUM BY LAZARUS, J.

Filed: February 1, 2013

Samuel Theodore Ross appeals from the trial court's order dismissing, as untimely, his tenth petition filed pursuant to the Post Conviction Relief Act (PCRA).<sup>1</sup> We affirm.

On May 19, 1997, Ross pled guilty to third-degree murder and related offenses and was sentenced to 30-60 years in prison. After an unsuccessful direct appeal in 1998, Ross filed a timely, first PCRA petition which was denied without a hearing on February 17, 1999. Between 2003 and 2012, Ross filed eight more PCRA petitions, all of which have been dismissed as untimely.

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<sup>1</sup> 42 Pa.C.S.A. §§ 9541-46.

Generally, a petition for PCRA relief, including a second or subsequent petition, must be filed within one year of the date the judgment is final. **See** 42 Pa.C.S.A. § 9545(b)(3). There are, however, exceptions to the time requirement; where the petition alleges, and the petitioner proves, that an exception to the time for filing the petition is met, the petition will be considered timely. These exceptions include interference by government officials in the presentation of the claim, after-discovered facts or evidence, and an after-recognized constitutional right. 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). A PCRA petition invoking one of these exceptions must “be filed within 60 days of the date the claims could have been presented.” 42 Pa.C.S.A. § 9545(b)(2). Timeliness requirements of the PCRA are jurisdictional in nature and, accordingly, a PCRA court cannot hear untimely petitions. ***Commonwealth v. Robinson***, 837 A.2d 1157 (Pa. 2003).

Here, Ross’ sentence became final on February 19, 1998, when his time for filing a petition for allowance of appeal to the Pennsylvania Supreme Court expired. **See** Pa.R.A.P. 1113. Therefore, he had until February 19, 1999 to file a timely PCRA petition. The instant petition, his tenth, was not filed until May 24, 2012. The petition, therefore, is facially untimely. 42 Pa.C.S.A. § 9545(b).

Ross, however, claims that his tenth PCRA petition is not time-barred under section 9545(b) “where [his claim alleging ineffectiveness] was raised within one year of final judgment in a previous first PCRA petition and is not barred by neither [sic] the final order doctrine (Pa.R.Crim.P. 910), the

previously litigated doctrine (42 Pa.C.S.[A.] § 9544(A)(3)), nor the waiver doctrine (42 Pa.C.S.[A.] § 9544(B)).” Appellant’s Brief, at 6.

Ross’ bald assertion that his ineffectiveness claim should be accorded finality does not convert his otherwise untimely PCRA petition into a timely one. Nor is Ross’ argument the equivalent of pleading and proving an exception to the PCRA time bar under section 9545(b)(1). In fact, Ross raised the ineffectiveness claim (for counsel’s failure to file a petition for allowance of appeal) on direct appeal to this Court; therefore, the claim is previously litigated. 42 Pa.C.S.A. § 9544(a)(2). Moreover, to the extent that Ross claims that the section 9545(b)(iii) exception applies to his petition based upon the United States Supreme Court decision *Missouri v. Frye*, 132 S.Ct. 1399 (U.S. 2012), he is entitled to no relief. Ross failed to file his petition within 60 days of the date that *Frye* was decided.<sup>2</sup> 42 Pa.C.S.A. § 9545(b)(2).

Order affirmed.

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<sup>2</sup> Even if Ross had filed his petition within 60 days of *Frye*, we do not believe that the case even recognized a new constitutional right. *Frye*, applying prior Supreme Court case law, noted that the long-standing Sixth Amendment Right to competent counsel extends to the plea bargain process and, more specifically requires defense counsel to communicate formal offers from the prosecution to his client. *Frye*, 132 S.Ct. at 1408. Finally, as the trial court aptly notes, Ross’ oral colloquy evidences his intelligent and voluntary plea to third-degree murder where counsel explained the elements of the crime to him and he acknowledged his understanding of the same.