

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
SAMMY D. BELLE,	:	
	:	
Appellant	:	No. 2234 EDA 2012

Appeal from the PCRA Order entered on July 24, 2012
in the Court of Common Pleas of Philadelphia County,
Criminal Division, No. CP-51-CR-0804001-1980

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

MEMORANDUM BY MUSMANNO, J.:

FILED MAY 14, 2013

Sammy D. Belle ("Belle") appeals, *pro se*, from the Order dismissing his second Petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In July 1983, following a jury trial, Belle was convicted of second-degree murder, among other offenses. The trial court sentenced Belle to life in prison. Subsequently, this Court affirmed Belle's judgment of sentence, after which the Supreme Court of Pennsylvania denied allowance of appeal. **See Commonwealth v. Belle**, 534 A.2d 126 (Pa. Super. 1987) (unpublished memorandum), **appeal denied**, 539 A.2d 810 (Pa. 1988).

In June 1988, Belle timely filed a *pro se* Petition under the former Post Conviction Hearing Act ("PCHA"), 42 Pa.C.S.A. §§ 9541-9551 (repealed and substantially modified by the PCRA). The PCHA court dismissed Belle's Petition in February 1990. Thereafter, this Court affirmed, after which our

Supreme Court denied allowance of appeal. **See *Commonwealth v. Belle***, 593 A.2d 910 (Pa. Super. 1991) (unpublished memorandum), **appeal denied**, 602 A.2d 855 (Pa. 1991).

In June 2009, Belle filed his instant *pro se* Petition under the PCRA. On July 24, 2012, the PCRA court dismissed Belle's Petition as untimely. Belle timely filed a *pro se* Notice of appeal.

Initially, we note that under the PCRA, any PCRA petition, "including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final[.]" 42 Pa.C.S.A. § 9545(b)(1). The PCRA's timeliness requirements are jurisdictional in nature and a court may not address the merits of the issues raised if the PCRA petition was not timely filed. ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010).

Here, Belle's judgment of sentence became final in April 1988, following the expiration of the ninety-day period for filing a petition for writ of *certiorari* with the Supreme Court of the United States. **See** 42 Pa.C.S.A. § 9545(b)(3). Belle did not file the instant PCRA Petition until June 2009, over two decades after his judgment of sentence became final. Accordingly, Belle's Petition is facially untimely under the PCRA.

However, Pennsylvania courts may consider an untimely PCRA Petition if the petitioner can plead and prove one of the three statutory exceptions set forth in 42 Pa.C.S.A. § 9545(b)(1). Additionally, any petition invoking the statutory exceptions must be filed within sixty days of the date that the claim could have been presented. **See *id.*** § 9545(b)(2). Further, it is well

settled that section 9545(b)(1) “makes clear that where, as here, the petition is untimely, it is the petitioner’s burden to plead in the petition *and prove* that one of the exceptions applies.” ***Commonwealth v. Beasley***, 741 A.2d 1258, 1261 (Pa. 1999) (emphasis added).

In the instant case, the PCRA court stated as follows in its Opinion:

[Belle] asserts [in his PCRA Petition] that this [P]etition meets an exception to the timeliness [requirement] because previously unknown facts have since been ascertained by [Belle].¹ However, no other information is given that would inform the court as to whether this was truly new evidence and whether it has been presented within 60 days of [Belle] learning about said evidence.

PCRA Court Opinion, 7/24/12, at 2 (unnumbered; footnote added). A review of the record confirms the PCRA court’s contentions. Indeed, in his PCRA Petition, Belle failed to set forth *any* newly discovered facts, and he wholly failed to prove that he satisfied the requirements for this exception. **See** PCRA Petition, 6/29/09, at 3-4 (unnumbered) (wherein Belle merely cited the statutory section and case law regarding the newly discovered facts exception without explaining how this exception is met in his case).

Based upon the foregoing, we lack jurisdiction to address the merits of Belle’s claims on appeal. **See *Commonwealth v. McKeever***, 947 A.2d 782, 786 (Pa. Super. 2008) (holding that the PCRA court lacked jurisdiction

¹ The PCRA court is referring to the “newly discovered facts” exception, 42 Pa.C.S.A. § 9545(b)(1)(ii). That exception provides that a PCRA petitioner may file a petition after the expiration of the one-year time bar if the petitioner can plead and prove that “the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence[.]” ***Id.***

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to entertain the merits of the appellant's second PCRA petition where it was untimely and the appellant failed to plead and prove any exception to the timeliness requirement of the PCRA). Thus, the PCRA court properly dismissed Belle's second PCRA Petition as untimely.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambett", written over a horizontal line.

Prothonotary

Date: 5/14/2013