

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RICHARD WILLIAM FLEWELLEN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 309 WDA 2013

Appeal from the PCRA Order December 31, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0014428-2004
CP-02-CR-0015587-2004

BEFORE: BENDER, J., LAZARUS, J., and STRASSBURGER, J.*

JUDGMENT ORDER BY LAZARUS, J.

FILED: May 17, 2013

Richard Flewellen appeals the order entered in the Court of Common Pleas of Allegheny County dismissing his petition filed under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546. We affirm.

On November 18, 2005, Flewellen was sentenced to life imprisonment for first-degree murder. This Court affirmed his judgment of sentence, and on October 1, 2008, our Supreme Court denied his petition for allowance of appeal.

On August 14, 2012, Flewellen filed the instant PCRA petition in which he invoked the timeliness exception of section 9545(b)(1)(iii), asserting that **Miller v. Alabama**, ___ U.S. ___, 132 S.Ct. 2455 (2012), required the

*Retired Senior Judge assigned to the Superior Court.

reversal of his sentence. The PCRA court dismissed the petition on December 31, 2012, and this appeal followed.

For purposes of the PCRA, Flewellen's conviction became final on January 1, 2009, at the expiration of the time for seeking direct review of the judgment of sentence. **See** 42 Pa.C.S. § 9545(b)(3). Section 9545(b)(1)(iii) permits the filing of a PCRA petition more than one year after a judgment of sentence becomes final if the petitioner alleges and proves that the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania and has been held by that court to apply retroactively. 42 Pa.C.S. § 9545(b)(1)(iii).

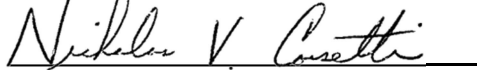
On June 25, 2012, the Supreme Court of the United States held in **Miller** that mandatory life sentences without the possibility of parole for juveniles are unconstitutional under the Eighth Amendment. The new right set forth in **Miller** applies only to individuals who were under the age of eighteen when they committed murder. Flewellen was 38 years old when he killed the victim, who was his wife. Because **Miller** does not recognize a new right that applies to Flewellen, his PCRA petition is untimely. Flewellen's related argument that **Miller** violates equal protection because it treats adults and juveniles convicted of first-degree murder differently, also fails to meet the timeliness requirements of the PCRA.

The timeliness of a PCRA petition is a jurisdictional requisite. **Commonwealth v. Hackett**, 956 A.2d 978 (Pa. 2008). "Jurisdictional time

limits go to a court's right or competency to adjudicate a controversy." **Id.**
at 983. Accordingly, the PCRA court properly dismissed Flewellen's petition.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: May 17, 2013