

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
MICHAEL E. KEELING,	:	
	:	
Appellant	:	No. 3379 EDA 2012

Appeal from the PCRA Order November 1, 2012,
Court of Common Pleas, Montgomery County,
Criminal Division at No. CP-46-CR-0002660-1995

BEFORE: GANTMAN, DONOHUE and PLATT*, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED SEPTEMBER 13, 2013

Michael E. Keeling (“Keeling”) appeals from the order of court dismissing his petition filed pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541 – 9546. We affirm.

In 1997, Keeling was convicted of multiple counts of robbery and sentenced to an aggregate term of 60 to 120 years of incarceration. This Court affirmed his judgment of sentence and the Pennsylvania Supreme Court denied his petition for allowance of appeal on September 30, 1999. Keeling filed his first PCRA petition in February 2000 and a second PCRA petition in January 2009. The PCRA court dismissed both of these petitions, and this Court affirmed their dismissals on appeal. On July 24, 2012, Keeling filed the petition at issue in this appeal, which he captioned, “Petition for Writ of Habeas Corpus Due to the Illegal Confinement and Restraint of

*Retired Senior Judge assigned to the Superior Court.

Prisoner.” After evaluating the content of this petition, the PCRA court decided that the petition was governed by the PCRA and issued notice of its intent to dismiss the petition. The PCRA court ultimately dismissed Keeling’s petition on November 1, 2012 on the basis that the PCRA petition was patently untimely and that Keeling “failed to allege any facts which could brief this case within the exceptions to the one-year deadline set out at 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii).” PCRA Court Opinion, 12/11/12. This timely appeal followed.

Keeling presents five issues for our review, but we need only address the predicate issue of whether “the [PCRA] [c]ourt erred by amending [his] state *habeas corpus* [petition] ... into a [PCRA petition] ... where it was established [that] the PCRA was inadequate as a corrective mechanism during both first and second PCRA filings[.]” Appellant’s Brief at iii. As we consider the merits of this claim, we note that this Court’s standard of review is limited to determining whether the PCRA court’s determination is supported by the evidence of record and is free of legal error. ***Commonwealth v. Walls***, 993 A.2d 289, 294-95 (Pa. Super. 2010) (internal citation omitted).

Keeling contends that his claims are properly raised in a state *habeas corpus* proceeding and therefore the PCRA court erred in treating his petition as if it were filed pursuant to the PCRA. Appellant’s Brief at 1. For the following reasons, we find no error with the PCRA court’s determination.

“[B]oth the PCRA and the state *habeas corpus* statute contemplate that the PCRA subsumes the writ of *habeas corpus* in circumstances where the PCRA provides a remedy for the claim.” ***Commonwealth v. Hackett***, 598 Pa. 350, 362, 956 A.2d 978, 985 (2008) (citation omitted). Section 9543 of the PCRA addresses eligibility for relief under its provisions. It provides, in relevant part, as follows:

§ 9543. Eligibility for relief

(a) General rule.--To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a

meritorious appealable issue existed and was properly preserved in the trial court.

(v) Deleted.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

42 Pa.C.S.A. § 9543(a)(2).

In his *habeas corpus* petition, Keeling raises three allegations of violations of his constitutional rights and one claim that the trial court lacked jurisdiction over him. **See** Petition for Writ of Habeas Corpus, 8/9/12, at 4-15. Pursuant to section 9543(a)(2), these claims are cognizable under the PCRA. The PCRA court therefore properly treated Keeling's petition as if it were a PCRA petition. We further agree with the PCRA court that the petition was untimely.

The PCRA has strict timeliness requirements that 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. Copenhefer**, 596 Pa. 104, 108, 941 A.2d 646, 648-49 (2007). The PCRA provides:

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;
- (ii) 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; or
- (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa. Cons. Stat. Ann. § 9545(b)(1).

“[A] judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.” 42 Pa.C.S.A. § 9545(b)(3). The Pennsylvania Supreme Court denied Keeling’s petition for allowance of appeal, and so his judgment of sentence became final 90 days later, at the expiration of the period of time in which he could have petitioned the United States Supreme Court for review. **See** U.S.Sup.Ct.R. 13. Accordingly, Keeling’s judgment of sentence became final on or about December 30, 2000. The petition at issue in this appeal was filed in August 2012, almost 12 years beyond this deadline.

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Keeling failed to allege, much less prove, any of the exceptions to the PCRA's time-bar as set forth above in his petition. Accordingly, we agree with the PCRA court's determination that it was without jurisdiction to entertain Keeling's petition.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Sambitt", written over a horizontal line.

Prothonotary

Date: 9/13/2013