

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

EDWARD SCOTT YOUNG, JR.,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 345 EDA 2013

Appeal from the Order entered January 10, 2013,
in the Court of Common Pleas of Lehigh County,
Criminal Division, at No(s): CP-39-CR-0003508-2000.

BEFORE: ALLEN, COLVILLE,* and STRASSBURGER,* JJ.

MEMORANDUM BY ALLEN, J.:

FILED AUGUST 14, 2013

Edward Scott Young, Jr. ("Appellant") appeals *pro se* from the order denying his second petition for post-conviction relief filed pursuant to the Post Conviction Relief Act ("PCRA"). 42 Pa.C.S.A. §§ 9541-46. We affirm.

The pertinent facts and procedural history are as follows: On June 28, 2001, a jury convicted Appellant of first-degree murder and related offenses. On August 23, 2001, the trial court sentenced him to life in prison without the possibility of parole for the murder conviction. Appellant filed a timely appeal to this Court. In an unpublished memorandum filed on December 17, 2003, we affirmed Appellant's judgment of sentence. ***Commonwealth v. Young***, 844 A.2d 1291 (Pa. Super. 2003). On May 19, 2004, our Supreme

*Retired Senior Judge assigned to the Superior Court.

Court denied Appellant's petition for allowance of appeal. **Commonwealth v. Young**, 852 A.2d 312 (Pa. 2004).

On December 21, 2004, Appellant filed a *pro se* PCRA petition. The PCRA court appointed counsel, and PCRA counsel filed an amended petition. Following evidentiary hearings, by order entered June 30, 2006, the PCRA court denied relief. Appellant filed a timely appeal to this Court. In an unpublished memorandum filed on July 24, 2007, we affirmed the PCRA court's order denying Appellant's PCRA petition. **Commonwealth v. Young**, 932 A.2d 266 (Pa. Super. 2007). On December 24, 2007, our Supreme Court denied Appellant's petition for allowance of appeal. **Commonwealth v. Young**, 944 A.2d 758 (Pa. 2007).

On September 13, 2012, Appellant filed the PCRA petition at issue. On December 24, 2012, the PCRA court issued Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's petition without a hearing because it was untimely. Appellant filed a response on January 8, 2013. By order entered January 10, 2013, the PCRA court denied Appellant's second PCRA petition. This timely appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

This Court's standard of review regarding an order dismissing a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. **Commonwealth v. Halley**, 870 A.2d 795, 799 n.2 (Pa. 2005). The PCRA court's findings will not be disturbed unless there is no support for the

findings in the certified record. ***Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa. Super. 2001). Moreover, a PCRA court may decline to hold a hearing on the petition if the PCRA court determines that the petitioner's claim is patently frivolous and is without a trace of support in either the record or from other evidence. ***Commonwealth v. Jordan***, 772 A.2d 1011 (Pa. Super. 2001). Because this is Appellant's second petition for post-conviction relief, he must meet a more stringent standard. "A second or any subsequent post-conviction request for relief will not be entertained unless a strong *prime facie* showing is offered to demonstrate that a miscarriage of justice may have occurred." ***Commonwealth v. Burkhardt***, 833 A.2d 233, 236 (Pa. Super. 2003) (*en banc*) (citations omitted). "A petitioner makes a *prime facie* showing if he demonstrates that either the proceedings which resulted in his conviction were so unfair that a miscarriage of justice occurred which no civilized society could tolerate, or that he was innocent of the crimes for which he was charged." ***Id.***

Before addressing the issues Appellant presents on appeal, we must first determine whether the PCRA court properly found Appellant's latest petition for post-conviction relief to be untimely. The timeliness of a post-conviction petition is jurisdictional. ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010). Thus, if a PCRA petition is untimely, neither an appellate court nor the PCRA court has jurisdiction over the petition. ***Id.*** "Without jurisdiction, we simply do not have the legal authority to address the substantive claims" raised in an untimely petition. ***Id.***

Generally, a petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final unless the petition alleges, and the petitioner proves, an exception to the time for filing the petition. **Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000); 42 Pa.C.S.A. § 9545(b)(1). Under these exceptions, the petitioner must plead and prove that “(1) there has been interference by government officials in the presentation of the claim; or (2) there exists after-discovered facts or evidence; or (3) a new constitutional right has been recognized.” **Commonwealth v. Fowler**, 930 A.2d 586, 591 (Pa. Super. 2007) (citations omitted). A PCRA petition invoking one of these statutory exceptions must “be filed within sixty days of the date the claim first could have been presented.” *Id.* at 783. See also 42 Pa.C.S.A. § 9545(b)(2). Moreover, exceptions to the time restrictions of the PCRA must be pled in the petition, and may not be raised for the first time on appeal. **Commonwealth v. Burton**, 936 A.2d 521, 525 (Pa. Super. 2007); **see also** Pa.R.A.P. 302(a) (“Issues not raised before the lower court are waived and cannot be raised for the first time on appeal.”).

Appellant’s judgment of sentence became final on August 17, 2004, when the ninety-day period for filing a writ of certiorari with the United States Supreme Court expired. **See** U.S.Sup.Ct.R. 13; 42 Pa.C.S.A. § 9545(b)(3). Therefore, Appellant had to file his PCRA petition by August 17, 2005, in order for it to be timely. As Appellant filed the instant petition on

September 13, 2012, it is patently untimely unless he has satisfied his burden of pleading and proving that one of the enumerated exceptions applies. **See Commonwealth v. Beasley**, 741 A.2d 1258, 1261 (Pa. 1999).

Appellant has failed to prove the applicability of any of the exceptions to the PCRA's time restrictions. Within his Pa.R.A.P. 1925(b) statement, Appellant asserted that his second PCRA petition was timely based on the newly discovered evidence exception, section 9545(b)(1)(ii), and because the United States Supreme Court's rationale in **Miller v. Alabama**, 132 S.Ct. 2455 (2012), "extends to persons under the age of twenty-five (25)." PCRA Court Opinion, 2/25/13, at 3.

The PCRA court explained its reasons for rejecting these claims as follows:

[Appellant] is unable to benefit from any of these exceptions. His argument is, in essence, that the rationale or the "science" found in **Miller** should extend to persons under 25. However, the "rationale used by the Supreme Court is irrelevant to the evaluation of a [] timeliness exception to the PCRA." **Commonwealth v. Chambers**, 35 A.3d 34, 42 (Pa. Super. 2011). It is the holding of the case that is relevant for purposes of evaluating timeliness. **Id.** at 42-43. The **Miller** decision only extends to juveniles convicted of homicide offenses who are sentenced to life without parole, not to adults. [Appellant] was twenty (20) years of age at the time of the murder. Additionally, what is referred to as the newly discovered evidence exception, § 9545(b)(1)(ii), requires [Appellant] to allege and prove that there were "facts" unknown to him and the he could not have ascertained those "facts" by the exercise of due diligence. **Commonwealth v. Marshall**, 947 A.2d 714, 720 (Pa. 2008) **citing**

Commonwealth v. Bennett, 930 A.2d 1264, 1270-1272 (Pa. 2007). **See also Commonwealth v. Johnston**, 42 A.3d 1120, 1138 (Pa. Super. 2012). **Miller** has no relevance to this exception. Even so, the **Miller** decision is the last of a trilogy of Supreme Court decisions which recognized the differences between juveniles under eighteen (18) and adults. **Roper v. Simmons**, 543 U.S. 551 (2005); **Graham v. Florida**, 560 U.S. ___, 130 S.Ct. 2011 (2010). **See Commonwealth v. Chester**, 895 A.2d 520 (Pa. 2006) (Information does not constitute “newly discovered evidence” to avoid the time-bar, where the information is not unknown but a matter of public record).

A review of **Miller** and its progeny demonstrates that it only applies to juveniles under the age of (18). [Appellant], who was born on December 15, 1979, was over eighteen (18) when the crime occurred on or about August 11, 2000. Thus, [Appellant] is unable to demonstrate that the Supreme Court in **Miller** even contemplated extending [its holding] to adults. The few states that have addressed this issue have rejected it. **See Romero v. State**, 2012 WL 5680670 (Fla. Dist. Ct. App. November 16, 2012) (Life imprisonment for eighteen (18) year old convicted of murder did not violate Eighth Amendment); **State v. Berget**, 2013 WL 28400 (S.D. January 2, 2013) (Shift in moral tolerance for sentences of life without parole for juvenile offenders did not evidence any shift of tolerance for adult offenders). [Appellant’s] age was one (1) of the mitigating factors the jury found in sparing his life. He is not entitled to the benefits of **Miller**.

PCRA Court Opinion, 2/25/13, at 5-6.

Our review of the record in this case supports the PCRA court’s conclusions. Additionally, we note that this Court has recently rejected a PCRA petitioner’s claim that the **Miller** decision constitutes “newly discovered facts” and found similar arguments regarding “immature brain” and equal protection did not entitle the petitioner to post-conviction relief.

See generally, Commonwealth v. Cintora, 2013 PA Super 160 (Pa. Super. 2013), at *9-12.

Appellant's brief does not argue any exception to the PCRA's time bar, but rather, consists of a rambling discourse, replete with various historical references, in an attempt to establish how he is innocent of the murder charge. While Appellant does argue the exceptions in his reply brief, they are inapposite for the reasons explained by the PCRA court. Additionally, the record supports that **Miller** was decided on June 25, 2012, and Appellant did not file his second PCRA petition until September 13, 2012. Thus, the petition is untimely because it was not filed within sixty days of the **Miller** decision. **Fowler, supra**; 42 Pa.C.S.A. § 9545(b)(2).

In sum, Appellant's PCRA petition is facially untimely, and he has failed to meet his burden of proof with regard to any exception to the timeliness requirements of the PCRA. Thus, the PCRA court properly dismissed Appellant's second petition for post-conviction relief.

Order affirmed.

Judgment Entered.

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

Prothonotary

Date: 8/14/2013

