

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ALONZO HARRIS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 42 WDA 2012

Appeal from the PCRA Order of December 2, 2011,
in the Court of Common Pleas of Allegheny County,
Criminal Division at Nos. CP-02-CR-0006412-1993,
CP-02-CR-0007016-1993

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: January 15, 2013

This is a *pro se* appeal from the order dismissing Appellant's serial petition filed pursuant to the Post Conviction Relief Act ("PCRA") as untimely. Although Appellant's *pro se* brief is disjointed, we have discerned two relevant appellate arguments: (1) a challenge to the constitutionality of the PCRA's time requirements; and (2) a claim that Appellant's PCRA petition successfully alleged an exception to the one-year PCRA time bar. We affirm.

The following legal principles are applicable:

To begin, we note that the standard of review for review of an order denying a PCRA petition is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record.

*Retired Senior Judge assigned to the Superior Court.

As a threshold jurisdictional matter, however, the timeliness of the PCRA petition must be addressed. 42 Pa.C.S. § 9545(b) sets forth the time limitations for filing of a PCRA petition as follows:

(b) Time for filing petition.—

(1) 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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

Petitioners must plead and prove the applicability of one of the three exceptions to the PCRA timing requirements. If the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed without a hearing because Pennsylvania courts are without jurisdiction to consider the merits of the petition.

Commonwealth v. Johnston, 42 A.3d 1120, 1126 (Pa. Super. 2012)
(citations omitted).

Appellant's PCRA petition was facially untimely, as it was filed nearly 15 years after his judgment of sentence became final.

Appellant first challenges the alleged conflict between the PCRA's time requirements and Article V, Section 10 of the Pennsylvania Constitution; however, our Supreme Court has rejected that argument. *In re Suspension of the Capital Unitary Review Act*, 722 A.2d 676, 679 n.1 (Pa. 1999) (explaining that 42 Pa.C.S.A. § 9545(b) does not pose a problem under Article V, Section 10, where it does not conflict with a pre-existing procedural rule of the Supreme Court.).

Appellant also claims that he established the requirements for the time-bar exception at 42 Pa.C.S.A. § 9545(b)(1)(ii), where he alleged his inability to obtain the statutes upon which he bases his PCRA claim due to difficulty in obtaining these materials in prison. As the exception provides, a petitioner seeking application of this exception is charged with a duty of due diligence in obtaining the facts upon which the claim is based; difficulty in obtaining a published statute cannot be the basis for the application of the exception.

Appellant has failed to persuade us that the PCRA court erred in dismissing his petition. Accordingly, we affirm the PCRA court order.

Order affirmed.

Judge Ott concurs in the result.