

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RYAN LYNN ANDERSON

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 455 MDA 2013

Appeal from the Order Dated February 13, 2013  
In the Court of Common Pleas of York County  
Criminal Division at No.: CP-67-CR-0003450-2007

BEFORE: BENDER, J., WECHT, J., and FITZGERALD, J.\*

MEMORANDUM BY WECHT, J.:

**FILED DECEMBER 19, 2013**

Ryan Anderson ("Appellant") appeals *pro se* from the order entered on February 13, 2013. That order denied his motion for new trial filed on December 27, 2012. We affirm.

The instant petition is Appellant's fourth motion for a new trial filed after his conviction. In an earlier appeal, we summarized the underlying procedural history of this case as follows:

[O]n October 24, 2007, Appellant was convicted of driving under the influence ["DUI"] (high rate of alcohol) 75 Pa.C.S.A. § 3802(b), and was sentenced to [forty-eight] hours to six months in jail. After we affirmed Appellant's judgment of sentence, the Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal on September 1, 2009.

---

\* Former Justice specially assigned to the Superior Court.

Thereafter, Appellant reported to jail and satisfied his penalty on December 1, 2009.

***Commonwealth v. Anderson***, 1045 MDA 2012 at 1-2 (Pa. Super. Dec. 14, 2012) (unpublished memorandum) (hereinafter "***Anderson***").

On December 27, 2012, Appellant filed a "Motion for New Trial." following the denial of his first three petitions. On February 13, 2013, the trial court dismissed Appellant's motion. On March 8, 2013, Appellant filed a timely notice of appeal and a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).<sup>1</sup>

Before we can reach the merits of Appellant's issues, we must determine whether the Court should treat Appellant's motion as a petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46,. "[I]f the underlying substantive claim is one that could potentially be remedied under the PCRA, that claim is *exclusive* to the PCRA," and subject to the jurisdictional requirements of the PCRA. ***Commonwealth v. Pagan***, 864 A.2d 1231, 1233 (Pa. Super. 2004) (emphasis in original); ***see Commonwealth v. Eller***, 807 A.2d 838, 846 (Pa. 2002). In his motion, Appellant sought a new trial based upon newly-discovered evidence. Such relief is available under the PCRA. 42 Pa.C.S.A. § 9543(a)(2)(vi). Therefore, Appellant's post-conviction filing is cognizable under the PCRA, and we will consider it to be a PCRA petition.

---

<sup>1</sup> Appellant was not ordered to file a concise statement.

Having determined that Appellant's petition is to be treated as a PCRA petition, we next must determine whether Appellant is eligible under the PCRA. To be eligible for relief, a PCRA petitioner currently must be serving a sentence in the case at issue. 42 Pa.C.S.A. § 9543(a)(1)

The PCRA provides that:

To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

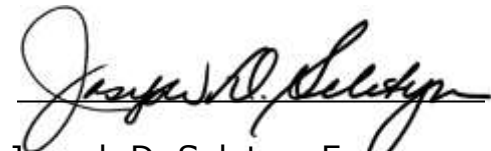
(i) currently serving a sentence of imprisonment, probation or parole for the crime . . . .

42 Pa.C.S.A. § 9543(a)(1).

When Appellant filed his motion, he was no longer serving a sentence for his October 24, 2007 DUI conviction. **Anderson**, at 2; Notes of Testimony, 2/13/2013, at 6. Consequently, Appellant is not eligible for PCRA relief.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/19/2013