

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
KENNETH A. SENOSKI,	:	No. 57 WDA 2012
	:	
Appellant	:	

Appeal from the PCRA Order, December 27, 2011,  
in the Court of Common Pleas of Allegheny County  
Criminal Division at No. CP-02-CR-0007565-1995

BEFORE: FORD ELLIOTT, P.J.E., BOWES AND DONOHUE, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.:

Filed: March 19, 2013

Appellant, Kenneth A. Senoski, brings this *pro se* appeal from the order denying appellant's third petition brought pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. § 9541 *et seq.* Finding that this petition is untimely, we will affirm.

On May 19, 1997, appellant was convicted by jury trial of aggravated assault, criminal attempt (rape), and recklessly endangering another person. The conviction arose from a stabbing and attempted rape at the victim's home in Bridgeville on April 28, 1995. The victim recognized appellant as being one of the moving men who had moved property to the victim's home about a week earlier. Appellant was initially sentenced to 25 to 50 years' imprisonment, but on November 17, 1997, following a motion for modification, the court re-sentenced appellant to 12½ to 25 years'

imprisonment. This court affirmed the judgment of sentence on August 2, 1999, and our supreme court denied appeal on November 23, 1999. ***Commonwealth v. Senoski***, 745 A.2d 46 (Pa.Super. 1999) (unpublished memorandum), ***appeal denied***, 560 Pa. 743, 747 A.2d 367 (1999).

On August 20, 1999, appellant filed, ***pro se***, his first petition pursuant to the PCRA.<sup>1</sup> Counsel was appointed on May 4, 2000, and on August 17, 2001, an amended petition was filed. On September 3, 2002, the PCRA court issued notice of its intent to dismiss the petition without hearing, pursuant to Pa.R.Crim.P., Rule 907, 42 Pa.C.S.A. On December 4, 2002, the PCRA court dismissed the petition. This court affirmed the decision on April 7, 2004, and our supreme court denied appeal on December 29, 2004. ***Commonwealth v. Senoski***, 852 A.2d 1254 (Pa.Super. 2004) (unpublished memorandum), ***appeal denied***, 581 Pa. 699, 864 A.2d 1204 (2004).

On October 6, 2008, appellant filed his second petition pursuant to the PCRA ***pro se***. Counsel was appointed, but ultimately filed a “no-merit” brief pursuant to ***Turner-Finley*** practice on December 4, 2008. ***See Commonwealth v. Turner***, 518 Pa. 491, 544 A.2d 927 (1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa.Super. 1988) (***en banc***). On January 8, 2009, the PCRA court dismissed appellant’s petition.

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<sup>1</sup> We note that this petition was filed while appellant’s direct appeal was still pending before our supreme court. The PCRA court apparently held the petition in abeyance until the supreme court concluded its review.

Appellant filed his third PCRA petition *pro se* on June 30, 2010. On August 2, 2010, the PCRA court issued Rule 907 notice that it intended to dismiss appellant's petition without hearing. Appellant filed a notice of appeal from this order on August 11, 2010, together with a fourth PCRA petition. On July 11, 2011, the PCRA court dismissed appellant's fourth PCRA petition. This court quashed the appeal from appellant's third PCRA petition on December 27, 2011, as being taken from an interlocutory order. On December 27, 2011, the PCRA court denied appellant's third PCRA petition as untimely.<sup>2</sup> This timely appeal followed.

Our standard of review for an order denying post-conviction relief is whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. ***Commonwealth v. Franklin***, 990 A.2d 795, 797 (Pa.Super. 2010). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***Id.***

A PCRA petition must be filed within one year of the date that the judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1). This time requirement is mandatory and jurisdictional in nature, and the court may not ignore it in order to reach the merits of the petition. ***Commonwealth v.***

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<sup>2</sup> We note in passing that on several occasions appellant has also pursued relief in federal court.

*Taylor*, 933 A.2d 1035, 1038 (Pa.Super. 2007), **appeal denied**, 597 Pa. 715, 951 A.2d 1163 (2008).

Appellant's judgment of sentence became final on February 21, 2000, 90 days after the supreme court affirmed this court and the time for filing a petition for writ of **certiorari** before the United States Supreme Court expired. **See** 42 Pa.C.S.A. § 9545(b)(3); Rule 13, Rules of the United States Supreme Court. The instant petition, filed June 30, 2010, is manifestly untimely, and cannot be reviewed unless appellant invokes a valid exception to the time bar of the PCRA. **See** 42 Pa.C.S.A. § 9545(b)(1)(i-iii).

Although appellant claims to have new evidence, he does not expressly invoke any time of filing exception, such as the one that pertains to after-discovered facts. **See** 42 Pa.C.S.A. § 9545(b)(1)(ii). In point of fact, it is difficult to distill anything from appellant's 159-page brief.<sup>3</sup> Appellant's brief on appeal is a rambling, incoherent discourse. Appellant makes bald assertions supported by little legal argument and cites case authority with no meaningful discussion. Nonetheless, even if appellant had properly invoked the after-discovered facts exception, his petition is untimely.

At page 36 of his brief, appellant cryptically identifies his new evidence as DNA sequence numbers from his DNA test that match the victim. Appellant states in his brief that this evidence was discovered on July 29,

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<sup>3</sup> Only 89 pages consist of argument; the remainder consists of exhibits. We note that either page number violates the 70-page briefing limit. **See** Pa.R.A.P., Rule 2135(a)(1), 42 Pa.C.S.A.

2009. The PCRA requires that any petition invoking an exception must be filed within 60 days of the time the claim could first have been raised. **See** 42 Pa.C.S.A. § 9545(b)(2). Since appellant discovered his new evidence on July 29, 2009, he only had until Monday, September 28, 2009 to file a petition invoking an exception based upon this evidence.<sup>4</sup> The instant petition, filed June 30, 2010, is untimely to raise this exception based upon this evidence.

Accordingly, having found that appellant's PCRA petition was untimely filed, and that he has failed to timely raise any exception, we will affirm the order below.

Order affirmed.<sup>5</sup>

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<sup>4</sup> The actual 60<sup>th</sup> day, September 27, 2009, fell on a Sunday. Consequently, appellant had until the following Monday to file his petition. 1 Pa.C.S.A. § 1908.

<sup>5</sup> We note in passing that the trial court found all of appellant's issues to be waived essentially because the concise statement of errors complained of on appeal was written in the same rambling, incoherent discourse as was the brief on appeal. (Trial court opinion, 9/7/11 at 11-13; 15-17.) While we could find the issues raised on appeal to be waived on a similar basis, we believe the proper analysis must address the jurisdictional problem before the waiver issue can be reached. To the extent then that our rationale differs from that of the PCRA court, we note that we are not bound by that rationale, but may affirm on any basis. ***Commonwealth v. Doty***, 48 A.3d 451, 456 (Pa.Super. 2012).