

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

RASHEED R. MYERS, EX REL.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
MIKE WENEROWICZ, SUPERINTENDENT:	:	
STATE CORRECTIONAL INSTITUTION	:	No. 597 WDA 2013
AT GRATERFORD; AND ATTORNEY	:	
GENERAL, STATE OF PENNSYLVANIA	:	

Appeal from the Order Entered March 27, 2013,  
in the Court of Common Pleas of Blair County  
Criminal Division at No. CP-07-CR-0002759-2002

BEFORE: FORD ELLIOTT, P.J.E., OTT AND WECHT, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED DECEMBER 18, 2013**

Appellant appeals from the order denying relief on his petition for writ of *habeas corpus*, his third collateral petition following two previous petitions brought pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546. Finding no error, we affirm.

On July 14, 2003, appellant pleaded guilty to eight counts of possession with intent to deliver a controlled substance (“PWID”) and four other related counts. The criminal complaint as to count 1 specifically stated that it pertained to a PWID offense “on or about December 1999 through May 2000.” Likewise, count 2 also stated the same. On August 21, 2003, appellant was sentenced to an aggregate sentence of 20 to 40 years’

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imprisonment. As to count 1, appellant received 18 to 36 months. As to count 2, appellant received 5 to 10 years. These sentences were imposed consecutively to appellant's other counts. No direct appeal was filed.

Previously, on November 13, 2000, appellant had pleaded guilty to PWID offenses occurring on January 28, 2000, and March 2, 2000. Appellant was sentenced to 9 to 18 months' imprisonment.

On April 6, 2004, appellant filed his first PCRA petition *pro se*. Counsel was appointed and an amended petition was filed. The petition was denied and dismissed on May 12, 2006. On March 21, 2007, this court affirmed the decision. ***Commonwealth v. Myers***, 927 A.2d 665 (Pa.Super. 2007) (unpublished memorandum). No further appeal was filed.

On November 30, 2011, appellant filed his second PCRA petition *pro se*. Counsel was appointed on December 8, 2011. In this second PCRA petition, appellant raised for the first time a contention that his sentences for counts 1 and 2 constituted double jeopardy because those counts covered PWID violations from December 1999 through May 2000 and he had previously been sentenced on November 13, 2000, for PWID violations occurring on January 28, 2000, and March 2, 2000.<sup>1</sup> On May 2, 2012, the court denied appellant's PCRA petition as untimely. On January 29, 2013,

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<sup>1</sup> Although we will not reach the merits of appellant's argument, we note that the Commonwealth contends that although the violations of January 28, 2000, and March 2, 2000, fall within the December 1999 through May 2000 window, they constituted distinct criminal offenses from those described by counts 1 and 2.

this court affirmed the decision. **Commonwealth v. Myers**, 64 A.3d 290 (Pa.Super. 2013) (unpublished memorandum). No further appeal was taken.

On March 26, 2013, appellant filed the instant petition for writ of **habeas corpus pro se**, raising the identical double jeopardy argument. The court denied the petition on March 27, 2013, on the basis that the issue had already been decided by this court. Appellant now brings this timely appeal.

Although appellant's petition is couched as a petition for writ of **habeas corpus**, it is treated as a PCRA petition because the PCRA subsumes all means of collateral relief where relief is available under the PCRA:

We agree that Appellant's writ of **habeas corpus** should be treated as a PCRA petition. It is well-settled that the PCRA is intended to be the sole means of achieving post-conviction relief. 42 Pa.C.S. § 9542; **Commonwealth v. Haun**, 613 Pa. 97, 32 A.3d 697 (2011). Unless the PCRA could not provide for a potential remedy, the PCRA statute subsumes the writ of **habeas corpus**. [**Commonwealth v. Fahy**, [558 Pa. 313, 331, 737 A.2d 214, 223 (1999)] **supra** at 223–224; **Commonwealth v. Chester**, 557 Pa. 358, 733 A.2d 1242 (1999). Issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a **habeas corpus** petition. **See Commonwealth v. Peterkin**, 554 Pa. 547, 722 A.2d 638 (1998); **see also Commonwealth v. Deaner**, 779 A.2d 578 (Pa.Super.2001) (a collateral petition that raises an issue that the PCRA statute could remedy is to be considered a PCRA petition). Phrased differently, a defendant cannot escape the PCRA time-bar by

titling his petition or motion as a writ of ***habeas corpus***.

***Commonwealth v. Taylor***, 65 A.3d 462, 465-466 (Pa.Super. 2013) (footnote omitted).

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. 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 Monday, September 22, 2003, when the time for filing a direct appeal expired.<sup>2</sup> ***See*** 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P., Rule 903, 42 Pa.C.S.A. The instant petition, filed March 26, 2013, is manifestly untimely and cannot be

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<sup>2</sup> The actual 30<sup>th</sup> day fell on Saturday, May 20, 2003. That day, as well as the following Sunday, are excluded from the computation of time. ***See*** 1 Pa.C.S.A. § 1908.

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). Appellant failed to invoke any exception.

Appellant's petition is untimely and was properly denied. On appeal, appellant appears to be operating under two misconceptions. First, appellant assumes that because relief is no longer available under the PCRA, then it no longer subsumes the writ of ***habeas corpus***. This is incorrect:

Finally, Appellant alternatively submits that if his petition is untimely, he is nonetheless entitled to a writ of ***habeas corpus***. However, the writ of habeas corpus has been subsumed into the PCRA for claims that are cognizable under the Act and is not available merely because an otherwise cognizable claim is jurisdictionally time-barred. **See Commonwealth v. Fahy**, 558 Pa. 313, 332, 737 A.2d 214, 224 (1999) (explaining that "Appellant confuses the issues of whether a claim satisfies the jurisdictional requirements of the PCRA, and whether the PCRA provides a remedy for such a claim."). Here, Appellant's claims would be cognizable if properly raised in a timely petition. Thus, he is not entitled to ***habeas corpus*** relief.

***Commonwealth v. Dickerson***, 900 A.2d 407, 412 (Pa.Super. 2006), ***appeal denied***, 590 Pa. 656, 911 A.2d 933 (2006). Thus, if relief were ever available under the PCRA, it forever subsumes the right of ***habeas corpus***.

Second, appellant assumes that where a petitioner is challenging the legality of sentence, the issue cannot be waived and must always be heard. This is only partially correct. While a question pertaining to the legality of

sentence cannot be waived, our supreme court has ruled that it cannot be reviewed pursuant to an untimely PCRA petition:

Appellant's fourth contention is that his petition cannot be barred as untimely because to do so would result in the execution of an illegal sentence of death. Appellant offers that even if untimely, a petitioner's claims will always be considered on the merits when the claims challenge the legality of the sentence. Appellant is mistaken. Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto. ***Commonwealth v. Chester***, 557 Pa. 358, 733 A.2d 1242 (1999). Thus, Appellant's contention is easily dismissed.

***Commonwealth v. Fahy***, 558 Pa. 313, 331, 737 A.2d 214, 223 (1999).

This court does not have jurisdiction to address the legality of sentence pursuant to an untimely PCRA petition.

Accordingly, having found that appellant's petition was untimely filed and that he has invoked no exception to the time bar, we will affirm the order of the court below.

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: 12/18/2013