

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
JAMES M. BUTTON,	:	No. 662 MDA 2012
	:	
Appellant	:	

Appeal from the Order, February 27, 2012,
in the Court of Common Pleas of Tioga County
Criminal Division at No. 67-67A 1982

BEFORE: FORD ELLIOTT, P.J.E., PANELLA AND ALLEN, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: Filed: February 4, 2013

Appellant, James M. Button, appeals the order dismissing as untimely his third petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. § 9541 *et seq.* Finding no merit, we affirm.

On July 12, 1982, appellant pleaded guilty to two counts of homicide generally, two counts of robbery, and one count of criminal conspiracy. The charges arose from the murder of two handicapped men, aged 59 and 74, for whom appellant worked. Appellant and his brother bludgeoned the men to death on February 11, 1982 in order to steal a large sum of money appellant had observed them carrying.

On July 13, 1982, the trial court conducted a degree of guilt hearing as to the homicide pleas. Among the witnesses who testified was Albert Smith, a "jailhouse snitch" who claimed that appellant admitted the crimes to him.

(Notes of testimony, 7/13/82 at 108-109.) Smith testified that no deal was offered to him in return for his testimony. (*Id.* at 109.) On July 15, 1982, the trial court determined the degree of guilt as to each homicide to be first degree murder. On July 20, 1982, appellant was sentenced to two consecutive life sentences. Appellant took a direct appeal from this sentence and on August 3, 1984, this court affirmed the judgment of sentence and remanded for sentencing on the robbery and conspiracy convictions. ***Commonwealth v. Button***, 481 A.2d 342 (Pa.Super. 1984).

On October 18, 1984, the trial court sentenced appellant to consecutive terms of 10 to 20 years' imprisonment for each count of robbery and a concurrent term of 10 to 20 years' imprisonment for conspiracy. Appellant filed a direct appeal from this sentence also and on October 25, 1985, this court affirmed the judgment of sentence. ***Commonwealth v. Button***, 504 A.2d 360 (Pa.Super. 1985) (unpublished memorandum).

On May 22, 1990, appellant filed his first PCRA petition. Counsel was appointed, and on August 12, 1994, filed an amended petition. On December 29, 1995, the trial court entered an order dismissing appellant's petition. This court affirmed the decision on August 6, 1996, and our supreme court denied appeal on January 21, 1997. ***Commonwealth v. Button***, 685 A.2d 1040 (Pa.Super. 1996) (unpublished memorandum), ***appeal denied***, 547 Pa. 713, 688 A.2d 170 (1997).

Appellant filed a second PCRA petition on June 16, 2010. This petition was dismissed on August 9, 2010. This court affirmed the decision on August 16, 2011, and on December 30, 2011, our supreme court denied appeal. ***Commonwealth v. Button***, 32 A.3d 835 (Pa.Super. 2011) (unpublished memorandum), ***appeal denied***, ___ Pa. ___, 34 A.3d 81 (2011).

On December 11, 2011, appellant filed the instant PCRA petition, his third. On February 28, 2012, the petition was dismissed as untimely and appellant now brings this timely appeal.

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 judgments of sentence became final on September 2, 1984 and November 24, 1985, 30 days after this court affirmed the judgments of sentence, and the time for seeking further appeal with the supreme court expired. **See** 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P., Rule 1113(a), 42 Pa.C.S.A. The instant petition, filed December 11, 2011, 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).

In his PCRA petition, appellant asserted exceptions under the governmental interference and the after-discovered facts exceptions:

(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;

42 Pa.C.S.A. § 9545(b)(1)(i) and (ii).

Specifically, appellant asserts that he has discovered a court order appointing his own trial counsel, Robert Dalton, Esq., as counsel for jailhouse snitch Albert Smith on an unrelated criminal case that was proceeding at the same time as appellant's case. Appellant claims that Attorney Dalton arranged a deal for Smith in his case in exchange for Smith's testimony against appellant in appellant's case. Appellant argues that Dalton's obvious conflict of interest resulted in an involuntary plea. As for governmental interference, appellant asserts that his counsel, the prosecution, and the trial court all committed governmental interference in raising this claim because these entities failed to reveal to appellant the existence of the order appointing Attorney Dalton to represent Smith. We find that no relief is due.

Simply stated, appellant litigated this very issue during the prosecution of his first PCRA petition. **See** "Brief for Petitioner/Defendant" (Record Document No. 43, Record for No. 109 HBG 1996) at 1-3. Therein, appellant's counsel specifically complained of trial counsel's conflict of interest in the dual representation of Smith and appellant. The issue was also reviewed on appeal. **Commonwealth v. Button**, No. 109 HBG 1996 (filed August 6, 1996), slip memorandum at 3-4. This completely refutes appellant's claims of after-discovered facts and governmental interference. More importantly, the PCRA categorically prohibits revisiting matters previously litigated. **See** 42 Pa.C.S.A. §§ 9543(a)(3); 9544(a)(3).

J. S78011/12

Accordingly, having found that appellant's PCRA petition is untimely and no valid time of filing exception applies, we will affirm the order below.

Order affirmed.