

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JOHN GANTZ,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 689 WDA 2013

Appeal from the PCRA Order entered March 28, 2013  
in the Court of Common Pleas of Warren County,  
Criminal Division, at No(s): CP-62-CR-0000313-2005  
CR 313 of 2005

BEFORE: FORD ELLIOTT, P.J.E., WECHT, J., and STRASSBURGER,\* J.

MEMORANDUM BY STRASSBURGER, J.:

**FILED DECEMBER 12, 2013**

John Gantz (Appellant) appeals *pro se* from the order dismissing his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm.

On August 16, 2005, Appellant pled guilty to theft by unlawful taking in case number 313 of 2005. On September 9, 2005, Appellant was sentenced in that case to, *inter alia*, five years of probation, which was to run consecutive to his sentences in several other cases. Appellant did not file a direct appeal. In 2012, following the appropriate hearings, Appellant pled guilty to violating the terms of his probation. As a result, Appellant's probation was revoked, and he was sentenced to nine months to five years of imprisonment. Again, Appellant did not file a direct appeal.

\*Retired Senior Judge assigned to the Superior Court.

On October 5, 2012, Appellant filed a PCRA petition *pro se*. Counsel was appointed and instructed to file an amended petition. Instead, counsel filed a petition to withdraw and no merit letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). On February 4, 2013, the PCRA court entered orders granting counsel's petition and informing Appellant, pursuant to Pa.R.Crim.P. 907, of its intention to dismiss the PCRA petition without a hearing. Appellant filed objections to the Rule 907 notice, which the PCRA court reviewed and nonetheless dismissed Appellant's PCRA petition by order of March 28, 2013.

On April 18, 2013, Appellant filed, *inter alia*, a notice of appeal, concise statement of errors complained of on appeal, and application for the assignment of counsel. By orders of April 22, 2013, the PCRA court denied the application for counsel and instructed Appellant to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant made no further filings before the PCRA court filed its Pa.R.A.P. 1925(a) opinion on May 28, 2013.

In its opinion, the PCRA court indicates that Appellant waived all issues on appeal by failing to comply with its order directing him to file a Rule 1925(b) statement within 21 days of April 22, 2013. PCRA Court Opinion, 5/28/2013, at 3. We disagree. Appellant filed his statement simultaneous

with his notice of appeal, and did not waive the issues raised therein by not re-filing it a few days later.

Appellant's Rule 1925(b) statement, *verbatim*, is as follows: "P.C.R.A. filed in lower court was not given due consideration and handled by a Judge and Attorney who were prejudicial. Case was dismissed out of malice and the claims involved were never given due considerations." Concise Statement of Matters Complained of on Appeal, 4/18/2013.

In his appellate brief, Appellant presents the following questions to this Court.

1. Whether [Appellant's] attorney at his original sentencing on September 5, 2005, was ineffective for not investigating [Appellant's] mental incompetence?

2. Whether the Court of Common Pleas of Warren County, Pennsylvania erred or abused its discretion by accepting a plea agreement and sentencing [Appellant], when the court was aware of [Appellant's] mental incompetence?

3. Whether [Appellant's] long history of mental incompetence, prior to and after his sentencing, is a defense to any "time bar" raised by [the] Commonwealth?

4. Whether the re-sentencing of [Appellant] in 2013 is a defense against any time bar to raising [Appellant's] claim that since his mental incompetence continues his appeal was "always timely"?

Appellant's Brief at 5 (some capitalization omitted).

Because none of these questions can be found in his Rule 1925(b) statement, the questions presented to us are waived. **See** Pa.R.A.P.

1925(b)(4)(vii) (“Issues not included in the Statement ... are waived.”).<sup>1</sup> Further, because Appellant fails to argue in his brief on appeal the issues raised in his 1925(b) statement, those issues are waived. **See Commonwealth v. Heggins**, 809 A.2d 908, 912 n.2 (Pa. Super. 2002) (“[A]n issue identified on appeal but not developed in the appellant’s brief is abandoned and, therefore, waived.”).

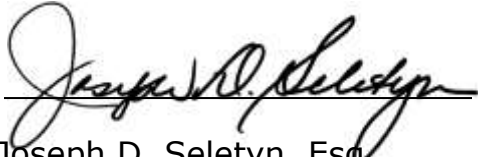
Order affirmed.

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<sup>1</sup> Even if these claims were not waived, we would agree with the PCRA court that Appellant is entitled to no relief. Appellant’s challenge is to his 2005 sentence, not his 2012 sentence. Because the PCRA petition was not filed within one year of his 2005 sentence’s becoming final, and he did not allege a timeliness exception, the PCRA court was without jurisdiction to entertain the merits of the petition. **See** 42 Pa.C.S. § 9545(b); **Commonwealth v. Robinson**, 837 A.2d 1157, 1161 (Pa. 2003) (“[T]he PCRA timeliness requirements are jurisdictional in nature and, accordingly, a PCRA court cannot hear untimely PCRA petitions.”) (quotation omitted). Appellant’s claim that his sentence was illegal, and the challenge thereto thus not subject to waiver, does not render his claim reviewable: “when a petitioner files an untimely PCRA petition raising a legality-of-sentence claim, the claim is not waived, but the jurisdictional limits of the PCRA itself render the claim incapable of review.” **Commonwealth v. Jones**, 932 A.2d 179, 182 (Pa. Super. 2007). Finally, Appellant’s claims of having an “equitable defense against being time barred on PCRA from presenting these claims,” Appellant’s Brief at 11, is meritless: “the statute confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar in addition to those exceptions expressly delineated in the Act.” **Commonwealth v. Watts**, 23 A.3d 980, 983 (Pa. 2011) (internal quotation omitted).

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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: 12/12/2013