

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JAMES SCARBROUGH,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 714 WDA 2013

Appeal from the PCRA Order entered April 9, 2013
in the Court of Common Pleas of Washington County,
Criminal Division, at No(s): CP-63-CR-0000040-1995

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

MEMORANDUM BY STRASSBURGER, J.: FILED: November 27, 2013

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

Our standard of review of the denial of a PCRA petition is limited to examining whether the court's rulings are supported by the evidence of record and free of legal error. ***Commonwealth v. Nero***, 58 A.3d 802, 805 (Pa. Super. 2012). Appellant bears the burden of persuading this Court that the PCRA court erred and that relief is due. ***Commonwealth v. Feliciano***, 69 A.3d 1270, 1275 (Pa. Super. 2013).

Appellant filed, *pro se*, the instant PCRA petition (his third) on January 12, 2011. Appellant's judgment of sentence became final in 1995. The

*Retired Senior Judge assigned to the Superior Court.

instant petition was thus facially untimely. **See** 42 Pa.C.S.A. § 9545(b)(1) (providing that, generally, a PCRA petition should be filed within one year of the date on which the judgment becomes final). No court has jurisdiction to address the substantive claims of an untimely PCRA petition.¹ **Commonwealth v. Lewis**, 63 A.3d 1274, 1281 (Pa. Super. 2013).

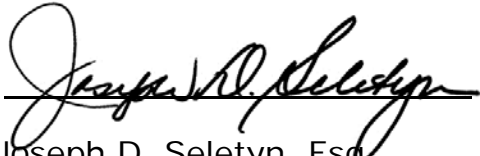
Appellant fails to present any argument challenging the PCRA court's ruling on untimeliness.² Accordingly, Appellant has failed to persuade us that his petition was improperly dismissed.

Order affirmed.

¹ Appellant's filing is entitled "Petition for Writ of Habeas Corpus Ad Subjiciendum." However, "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, 466 (Pa. Super. 2013). "Issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a habeas corpus petition." **Id.** Because Appellant's issues may be addressed under the PCRA, **see** 42 Pa.C.S. § 9543(a)(2) (providing that PCRA relief is available, *inter alia*, for convictions resulting from ineffective assistance of counsel and unlawfully-induced pleas, and for illegal sentences), the PCRA court properly treated Appellant's petition as an untimely PCRA petition.

² Appellant claims that his challenge to the legality of his sentence must be addressed because it is "not subject to the waiver provisions of the PCRA." Appellant's Brief at 8. This does not save Appellant's claim: "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).

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: 11/27/2013