

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
GARY RHINES, a/k/a Robert Camby,	:	
a/k/a Derrick Upshaw and Gary Allen,	:	
	:	
Appellant	:	No. 727 MDA 2012

Appeal from the Order entered on March 26, 2012  
in the Court of Common Pleas of Lycoming County,  
Criminal Division, No. CP-41-CR-0001651-1994

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
GARY RHINES, a/k/a Robert Camby,	:	
a/k/a Derrick Upshaw and Gary Allen,	:	
	:	
Appellant	:	No. 728 MDA 2012

Appeal from the Order entered on March 26, 2012  
in the Court of Common Pleas of Lycoming County,  
Criminal Division, No. CP-41-CR-0000781-1996

BEFORE: MUSMANNO, BENDER and COLVILLE\*, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: March 11, 2013

Gary Rhines, a/k/a Robert Camby, a/k/a Derrick Upshaw and Gary Allen ("Rhines"), *pro se*, appeals from the Order dismissing as untimely filed

\*Retired Senior Judge assigned to the Superior Court.

his Petition for relief filed pursuant to the Post Conviction Relief Act (“PCRA”).<sup>1</sup> We affirm.

In its Opinion, the PCRA court summarized the relevant history underlying Rhines’s appeal as follows:

On January 13, 1997, [Rhines] pled guilty to Delivery of a Controlled Substance[,] Possession with Intent to Deliver,<sup>[2]</sup> and Simple Assault.<sup>[3]</sup> On that same date, [the trial court] sentenced [Rhines] to eleven (11) to twenty-three (23) months [of] incarceration in the Lycoming County Prison followed by a one (1) year period of probation.[footnote omitted]

On January 13, 1997, [Rhines] pled guilty to Delivery of a Controlled Substance and Possession with Intent to Deliver. On February 18, 1997, [Rhines] was sentenced to twenty-six (26) to forty-six (46) months in a state correctional institution. Once again[, Rhines] did not appeal his sentence. [Rhines] was then paroled and later detained on August 23, 2001[,] for a parole violation stemming from an indictment on federal drug distribution charges in the Middle District of Pennsylvania. Subsequently, [Rhines] was convicted in a federal court and was sentenced to a life sentence.

On May 13, 2011, [Rhines] filed a *pro se* Petition for Writ of Error *Coram Nobis*, which the [c]ourt treated as a PCRA Petition. The [PCRA c]ourt appointed Attorney [Edward J.] Rymsza [“Attorney Rymsza”] to represent [Rhines] on his PCRA Petition .... Following several extensions of time for counsel to file an amended PCRA Petition or a **Turner-Finley**<sup>[4]</sup> letter, Attorney Rymsza filed a Petition to Withdraw along with a **Turner-Finley** letter on November 22, 2011. In an Opinion and

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<sup>1</sup> 42 Pa.C.S.A. §§ 9541-9546.

<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> 18 Pa.C.S.A. § 2701.

<sup>4</sup> **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988) (setting forth the requirements that PCRA counsel must follow in order to be permitted to withdraw from representation); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*) (same).

Order dated February 27, 2012, the [PCRA c]ourt found that [Rhines's] PCRA Petition was untimely and proposed dismissal of the Petition within twenty (20) days. [Rhines] submitted *pro se* objections to the [PCRA c]ourt's proposed dismissal, which argued that [Rhines's] Petition was timely because he is actually innocent and that his counsel failed to file a Notice of Appeal or a PCRA [petition] when he was requested to do so. On May 26, 2012, the [PCRA c]ourt, considering the objections by [Rhines], dismissed [Rhines's] PCRA [Petition] and notified [him] of his appellate rights.

PCRA Court Opinion, 6/19/12, at 1-2 (one footnote omitted; three footnotes added). Rhines timely filed a *pro se* Notice of appeal from the denial of his PCRA Petition, followed by a court-ordered Concise Statement of matters complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

Rhines now presents the following claims for our review:

I. Whether the [PCRA court] violated [] Rhines'[s] 14<sup>th</sup> Amendment Due Process rights when it failed to allow equitable tolling of the [PCRA's] one[-]year time limit based upon [Rhines] being actually innocent and/or newly discovered evidence[?]

II. Whether *Martinez v. Ryan*, [132 S.Ct. 1309, 182 L. Ed. 2d 272 (2012),] warrants equitable tolling of the one[-]year time limit[?]

Brief for Appellant at 2.

This Court's standard of review regarding a PCRA court's order is whether the determination of the PCRA court is supported by evidence of record and is free of legal error. *Commonwealth v. Donaghy*, 33 A.3d 12, 15 (Pa. Super. 2011).

In this case, the PCRA court denied Rhines's Petition as untimely filed. Our General Assembly has mandated that a petition for PCRA relief must be

filed within one year of the date the petitioner's judgment of sentence became final. 42 Pa.C.S.A. § 9545(b)(3). The one-year time limitation is jurisdictional and a trial court has no power to address the substantive merits of an untimely petition. *Commonwealth v. Abu-Jamal*, 833 A.2d 719, 723-24 (Pa. 2003); *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 783 (Pa. 2000). The PCRA recognizes three exceptions to the one-year filing requirement: after-discovered facts, interference by a government official, and a newly-recognized constitutional right. 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any petition asserting one of these exceptions must also establish that the exception was raised within sixty days of the date the claim could have been first presented. 42 Pa.C.S.A. § 9545(b)(2).

As such, when a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the [PCRA] court has no power to address the substantive merits of a petitioner's PCRA claims.

*Gamboa-Taylor*, 753 A.2d at 783.

In this case, Rhines's judgment of sentence for his convictions became final in 1996 and 1998. Rhines filed his PCRA Petition in May 2011, over a decade after his judgment of sentence became final. Therefore, Rhines's PCRA Petition is facially untimely. Rhines argues that the PCRA's time bar should not apply where there has been a colorable showing of actual innocence. Brief for Appellant at 12. Comparing the PCRA to federal statutes for post-conviction collateral relief, and arguing in favor of the

equitable tolling of the PCRA's time limitation, Rhines asserts that the PCRA's time limitation violates his right to due process. *Id.*

Rhines also argues that his direct appeal counsel rendered ineffective assistance by failing to file a requested direct appeal. *Id.* Rhines also claims that his PCRA counsel rendered ineffective assistance by failing to raise this claim before the PCRA court. *Id.* at 13. Finally, Rhines directs our attention to the United States Supreme Court's holding in *Martinez* as support for his claim that, upon establishing PCRA counsel's ineffectiveness, he is entitled to a review of the merits of his claim of ineffective assistance of trial counsel for failing to file a requested direct appeal. *Id.*

In its Opinion filed on June 19, 2012, the PCRA court addressed Rhines's claims and concluded that they lack merit. PCRA Court Opinion, 6/19/12, at 2-5. Upon our review of the record and the claims raised in Rhines's *pro se* appellate brief, we agree with the sound reasoning of the PCRA court, as set forth in its Opinion, and affirm on this basis.

Order affirmed.