

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
ANTHONY D. KEELS,	:	No. 757 MDA 2012
	:	
Appellant	:	

Appeal from the Order Dated April 4, 2012,
in the Court of Common Pleas of Lycoming County
Criminal Division at No. CP-41-CR-0000268-2007

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

MEMORANDUM BY FORD ELLIOTT, P.J.E.:

Filed: March 5, 2013

Appellant appeals, *pro se*, the order dismissing his first petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546, which was based, in part, upon untimeliness, and, in part, upon lack of merit. Finding no error, we affirm.¹

On August 6, 2007, appellant pleaded guilty to one count of possession of a controlled substance with intent to deliver. Immediately after the verdict, appellant was sentenced to five years' intermediate punishment with the first 10 months to be served at the Lycoming County Prison. At appellant's request, the sentencing order deferred reporting to

¹ To the extent that our disposition differs from that of the trial court, we note that we may affirm on any basis. *Commonwealth v. Doty*, 48 A.3d 451, 456 (Pa.Super. 2012).

prison until August 13, 2007. Thereafter, appellant absconded. Ultimately, appellant was apprehended on December 5, 2010 during a traffic stop in Philadelphia.

On December 17, 2010, appellant's intermediate punishment was revoked and he was resentenced to a term of two to five years' imprisonment. No direct appeal was taken.

On August 29, 2011, appellant filed the instant PCRA petition *pro se*. Although counsel was initially appointed, appellant was permitted to proceed *pro se* following a *Grazier* hearing on November 3, 2011. **See *Commonwealth v. Grazier***, 552 Pa. 9, 713 A.2d 81 (1998). A video conference was held February 6, 2012, and appellant filed a brief on February 15, 2012. On April 5, 2012, the trial court issued a preliminary opinion and notice pursuant to Pa.R.Crim.P., Rule 907, 42 Pa.C.S.A., of its intention to dismiss the petition without hearing. Appellant filed a response on April 18, 2012, and the petition was dismissed on April 26, 2012. This timely *pro se* appeal followed.²

² Appellant initially improperly filed his notice of appeal from the April 5, 2012 Rule 907 order. This court issued a Rule to Show Cause on May 2, 2012 as to why this appeal should not be quashed because the April 5, 2012 order was not a final order. On May 10, 2012, this court issued an order discharging the show-cause order after appellant informed this court that the PCRA court had subsequently dismissed his petition on April 26, 2012. Thus, we may review appellant's appeal as if it had properly been taken from the April 26, 2012 order.

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.***

Moreover, 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).

Because appellant had his original sentence of intermediate punishment revoked and a new sentence imposed, his PCRA rights are subject to two different time limits. ***See Commonwealth v. Anderson***, 788 A.2d 1019, 1021-1022 (Pa.Super. 2001), ***appeal denied***, 568 Pa. 732, 798 A.2d 1286 (2002). As to his original guilty plea and matters stemming from his conviction, appellant's PCRA rights are measured from the date of his original sentence. ***Id.*** Appellant's judgment of sentence as to these matters became final on September 6, 2007, 30 days after the judgment of sentence was entered and the time for filing a direct appeal expired. 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P., Rule 903(a), 42 Pa.C.S.A. Thus,

appellant actually had until September 6, 2008 to file a PCRA petition as to issues arising from his plea.

As for issues arising from the revocation proceedings on his former sentence and issues arising from his new sentence, appellant's PCRA rights run from the imposition of his new sentence on December 17, 2010. *Id.* Again, appellant's judgment of sentence became final 30 days after this judgment of sentence was entered and the time for filing a direct appeal expired. Thus, appellant had until January 16, 2012 to file a PCRA petition challenging his revocation hearing and revocation sentence. The instant petition, filed August 29, 2011, is manifestly untimely to attack appellant's plea, 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). On the other hand, the petition is timely as to appellant's revocation hearing and subsequent sentence.

We begin our analysis by noting that appellant's brief on appeal is a rambling discourse, at times incoherent. Appellant makes bald assertions supported by little legal argument and cites case authority with no meaningful discussion. Nonetheless, we are able to discern two classes of issues: those for which appellant's petition is untimely and those for which appellant's petition is timely.

Appellant challenges the validity of his plea on various bases including that there was no plea colloquy and that it was based on tainted evidence.

Appellant also maintains that his sentence is illegal because the plea was invalid. Finally, appellant also raises a claim of ineffective assistance of counsel in relation to his plea and for failing to file a post-sentence motion. Appellant's PCRA petition is untimely filed as to all of these issues. Appellant does baldly assert either an after-discovered facts exception or an after-recognized constitutional right exception, but fails to identify any particular fact or constitutional right to which he is referring.³ We are without jurisdiction to address these issues.

On the other hand, appellant also argues that his revocation sentence was both excessive and improper. Appellant claims it was improper on two grounds. First, appellant asserts that the wrong prior record score was used. Second, appellant claims that the revocation sentence was improper because a different judge than his original plea judge imposed it. Appellant's PCRA petition is timely to raise issues pertaining to his revocation sentence. Nonetheless, although timely raised, the issues are waived. Appellant could have raised these issues by filing a direct appeal from his

³ **See** 42 Pa.C.S.A. § 9545(b)(1)(ii) and (iii). Appellant invoked an after-discovered fact exception, subsection (b)(1)(ii), in his February 15, 2012 brief. **See** Defendant's PCRA Argument at page 2, paragraph 5 (the record contains two documents with this title, but only one raises this exception). On appeal, appellant contends that he never raised an exception under subsection (b)(1)(ii); rather, he asserts that the exception he is raising falls under (b)(1)(iii), an after-recognized constitutional right. We further note that the summary of appellant's argument references subsection (b)(1)(iii) as the "newly discovered evidence rule." (Appellant's brief at 8.)

judgment of sentence, but failed to do so. Under the PCRA, the failure to raise these issues in a direct appeal results in their waiver now. **See** 42 Pa.C.S.A. §§ 9543(a)(3); 9544(b).

Finally, on December 7, 2012, appellant filed a Motion to Grant Appeal which effectively argued that his conviction should be vacated because the Commonwealth failed to file a brief opposing his appeal. Appellant cites no legal authority for such a proposition, undoubtedly because there is none. The merits of appellant's appeal must stand on their own before appellant is entitled to relief. As we have just examined, all of appellant's claims on appeal are either untimely or waived. Appellant is entitled to no relief regardless of whether the Commonwealth decides to respond. Thus, we will also deny the Motion to Grant Appeal.

Accordingly, having found that appellant's petition is untimely as to some issues, and that the remaining issues have been waived, we will affirm the order below.

Order affirmed. Motion to Grant Appeal denied.