

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

SHAWN CONLEY

Appellant

No. 774 WDA 2013

Appeal from the PCRA Order of February 27, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at Nos.: CP-02-CR-0004013-1994
CP-02-CR-0013631-1998

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and WECHT, J.

MEMORANDUM BY WECHT, J.: FILED: February 20, 2014

Shawn Conley appeals the February 27, 2013 order dismissing his third petition for relief pursuant to the Post-Conviction Relief Act ("PCRA")¹ as untimely. We affirm.

On November 13, 1995, at CP-02-CR-0004013, Conley was convicted by a jury of two counts of robbery, and one count each of aggravated assault, carrying a concealed firearm without a license, and criminal conspiracy.² In an earlier opinion in this case, the trial court (now PCRA court), summarized the facts underlying these convictions as follows:

¹ 42 Pa.C.S. §§ 9541-46.

² 18 Pa.C.S. §§ 3701, 2702, 6106, and 903, respectively.

On October 21, 1993, the victim, John Napper, was visiting a friend's house in the Homewood [neighborhood] of the City of Pittsburgh. When he left to run errands[,] Napper saw three black males sitting on a nearby porch, and recognized all three as being members of the local community. The victim knew Sedric Boyd and Shawn Conley by their full names and recognized the co-defendant by his nickname "Los[," whose full name was Carlos Coulton]. When Napper went to get into his car[,] he was forced into the car at gunpoint. He testified that Coulton grabbed him around the neck while the others pointed guns at his head and his eyes. Napper further testified that Boyd was driving his car and Coulton and Conley were sitting in the back seat, flanking him. Conley was pistol whipping Mr. Napper while Coulton was holding his hands down, constantly asking Napper for money and cocaine. At one point[,] Mr. Napper asked "why are you doing this to me?" to which Conley responded "because you know I shot Tom Mitchell." At some point[,] Mr. Napper was able to jump out of the car and while he was halfway out of the car[,] he was shot by Conley and Coulton. Conley shot Mr. Napper in the stomach while Coulton shot him in the legs. Mr. Napper fell to the street and[,] when the vehicle started to move[,] it backed over him. The vehicle ran over his pelvis and started dragging him down the street and around the corner. Mr. Napper was eventually flung loose and the car sped off with the three black males inside. An ambulance responded to the scene and Mr. Napper was transported to the hospital where he was hospitalized for four months, followed by a period of rehabilitation of two months for his broken pelvis, seven bullet [wounds], and several broken ribs. These injuries required two surgeries[,] which will leave him permanently in a wheelchair. Mr. Napper also lost a piece of his finger during the attack. Mr. Napper had no doubt about the identification of the assailants, including Conley. A few weeks after the attack[,] he was shown a photo array[,] which included [Conley,] and identified him in the array.

Garreth Davis, a Pennsylvania State Constable, testified that he was serving warrants in the area where the crime took place, driving his van. Mr. Davis' attention was drawn to Napper's car when he saw Conley and the co-defendants trying to pull Napper back into the vehicle. He heard gun shots as he approached the car and chased it when it sped away from the scene. After a brief chase[,] the car containing the three black males came to rest, after it ran into another car and the three occupants exited.

The witness, Garreth Davis, chased them on foot but all three fled into the nearby woods and were able to [] escape. Mr. Davis later was able to identify Shawn Conley.

Pittsburgh Police later searched the wooded area and found a .380 handgun; and a spent .380 automatic casing. The crime lab tests later matched the spent casing with the .380 handgun. Warrants were issued for all three of the [men], and they were arrested.

Trial Court Opinion ("T.C.O."), 6/9/1997, at 3-4 (citations to notes of testimony omitted). On November 6, 1995, Conley was sentenced to an aggregate term of twenty-seven and one-half to fifty-five years' imprisonment.

On January 26, 1998, we affirmed the judgment of sentence. **See Commonwealth v. Conley**, No. 313 Pitts. 1997, slip op. at 3 (Pa. Super. Jan. 26, 1998). Conley did not seek allowance of appeal from the Pennsylvania Supreme Court.

On February 16, 1999, Conley filed his first PCRA petition, which was dismissed without a hearing on June 11, 2001. Initially, we remanded the case for the preparation of a proper Pa.R.A.P. 1925(a) opinion. **See Commonwealth v. Conley**, 1089 WDA 2001, slip op. at 1, 4 (Pa. Super. Aug. 21, 2002). Upon return to this Court, we affirmed the PCRA court's order dismissing Conley's PCRA petition. **See Commonwealth v. Conley**, 1089 WDA 2011, slip op. at 1, 5 (Pa. Super. March 21, 2005). Conley filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which the Court denied on September 29, 2005. **See Commonwealth v. Conley**, 885 A.2d 532 (Pa. 2005) (*per curiam*).

On January 3, 2011, Conley filed a second PCRA petition. The PCRA court issued two notices of its intention to dismiss the petition without a hearing pursuant to Pa.R.Crim.P. 907(1), dated February 22, 2011 and January 6, 2012. On January 25, 2012, Conley filed a written response to the PCRA court's notice. On February 28, 2012, the PCRA court dismissed Conley's petition without a hearing. Conley appealed the order, but we dismissed that appeal on July 24, 2012 because Conley failed to file a docketing statement pursuant to Pa.R.A.P. 3517.³ **See *Commonwealth v. Conley***, No. 821 WDA 2012 (Pa. Super. July 24, 2012) (*per curiam*).

On January 31, 2000, while his PCRA proceedings at CP-02-CR-0004013-1994 were ongoing, Conley pleaded guilty to third-degree murder⁴ at CP-02-CR-0013631-1998 for his involvement in the November 5, 1993, murder of Troy Miller. At his guilty plea hearing, Conley stipulated to the following facts, as summarized by the Commonwealth:

³ Rule 3517 provides as follows:

Whenever a notice of appeal to the Superior Court is filed, the Prothonotary shall send a docketing statement form which shall be completed and returned within ten (10) days in order that the Court shall be able to more efficiently and expeditiously administer the scheduling of argument and submission of cases on appeal. Failure to file a docketing statement may result in dismissal of the appeal.

Pa.R.A.P. 3517.

⁴ 18 Pa.C.S. § 2502(c).

[Sedene Woodson and Thomas Woodson] would have testified that on November 5, 1993, that around 2:30 in the afternoon they came into contact with their other cousin, the deceased in this case, Troy Miller. The Woodsons would have testified that all three of them wanted to go down to the Sparkle Car Wash on North Braddock Avenue to clean up two cars. Sedene Woodson would have testified that the three cousins went down to the Sparkle Car Wash and were cleaning up the car. Sedene would have testified that around 3:00 in the afternoon he observed a car traveling down North Braddock Avenue toward Penn Avenue. He would have testified he observed four individuals inside, two in the front seat, two in the back seat. All four he would have testified were wearing masks that he could not see through. He would have testified at that point shooting broke out and that when he turned and attempted to get down he was struck in the back. Sedene Woodson would have testified that while he was laying on the ground bleeding he heard his cousin Tom Woodson telling Troy Miller to stay down. At that point he would have testified he was in and out of consciousness.

Now, Thomas Woodson would have testified substantially in the same fashion, that once the shooting started he was on the telephone getting ready to make a phone call. He would have testified that he hit the ground to take cover when he heard the shots go off. He heard a shotgun blast first then gunfire that erupted and lasted about a minute. Thomas Woodson would have testified he saw Sedene Woodson bleeding profusely from the abdomen and also observed his other cousin, Troy Miller, shot and trying to get up in a panic. He would have testified that he told Troy to stay down and keep undercover and that once the car disappeared the paramedics were summoned to the scene.

[Cletus Prince] would have testified that he observed the four-door car traveling on North Braddock, that he observed two semi-automatic handguns being pointed from the passengers' side window and he estimated about 35 rounds were fired. Mr. Prince would also have testified that one of the individuals in the back seat had a sawed-off shotgun and blew out the back window of the car before firing one or two rounds from the shotgun in the direction of the car wash.

[William Hawthorne] would have testified that he was driving on North Braddock Avenue near the intersection of Meade Street when he observed a light green car come speeding around the

corner at a high rate of speed and abruptly stopping in front of the food co-op store on Meade Street. He would have testified he observed four black males jump out of the car. Three went behind his car. One came in front of his car. Mr. Hawthorne would have testified that each of the individuals had blue bandanas rolled down over their mouths and around their necks. He would have testified that one individual appeared to be carrying what appeared to be a semi-automatic handgun as the four individuals went through the parking lot to Penn Avenue where he lost sight of them.

[Special Agent Thomas Carter and Detective George Ciganik] would have testified that on July 17, 1998, after Mr. Conley was read his **Miranda** Warnings and agreed to waive them, that he gave, in essence, the following summary of the on-goings on the date in question. They would have testified Mr. Conley indicated that it was a warm day when he and his three friends, Andre Colton, Rashod Clark and Shawn Nickles, got together and talked about doing a drive-by shooting. Mr. Conley would have testified that the intended victim of the shooting, the target, was an individual named Pink, otherwise he believed known as Keith Hammond. Mr. Conley indicated that these individuals – that the reason he was going to do this drive-by shooting is because this Pink, who was a member of the Tioga Street 76 rival gang, had threatened to shoot Mr. Conley in the past and that Mr. Conley feared for his life. Mr. Conley then told the detectives that he got together with his three friends, they agreed to ride along with him and help him. Whereupon, Mr. Conley was able to obtain a .45 caliber handgun which he wielded, a .380 handgun which he gave to Andre Colton[,] and Shawn Nickles was given the twelve-gauge shotgun, whereas Rashod Clark was dispatched, stole a car, returned with a green vehicle he had taken and agreed to drive for the group.

At that point, Mr. Conley told the detectives that everybody put blue bandanas on their faces and got into the car and circled a couple of times around the car wash. There was a police car there. And on the second or third pass he observed the individual named Pink. At that point he told the detectives that the individuals in the car, himself include, began to open fire trying to hit this Pink who had tried to kill him in the past and that as result he found out later that Troy Miller had been shot and killed. Mr. Conley told the detectives that he did not particularly know Troy Miller, that he did not mean to kill him, but that Troy Miller was an innocent bystander.

Shawn Nickles . . . would have testified that he, in fact, participated in this drive-by shooting. He would have corroborated everything that Mr. Conley said, indicating that these members of this 76 gang were members of a rival gang and corroborating what Mr. Conley said that Troy Miller was not the intended target of this drive-by shooting.

Dr. Leon Rozin who performed a post-mortem examination of the victim in this case . . . would have testified that the victim suffered [a] gunshot entrance wound on the right side of his abdomen and he also found [a] gunshot exit wound on his lower back. Dr. Rozin would have testified that the gunshot wound hit the liver, the spleen and the aorta and that the bullet that killed him was either a .380 or .45. It was definitely not a twelve-gauge shotgun blast. Dr. Rozin would have testified the cause of death was the gunshot wound to the trunk and the manner of death was homicide. Identification was provided by a member of Mr. Miller's family. Dr. Rozin would have testified to these facts to a reasonable degree of medical certainty.

[M]embers of the night felony unit [] would have testified that they responded to the scene at Sparkle Car Wash and also recovered the stolen vehicle down on Meade Street. They would have testified that they obtained approximately 15 shell casings. Dr. Robert Levine of the Allegheny County Crime Lab would have testified that the bulk of these casings were .45 caliber and they were all discharged from the same weapon. He would have testified that the remaining shell casings were a .380 caliber shell casing, that [] two were fired from the same weapon. He also would have testified that the three shotgun wads were discharged from the same weapon.

[A]t the time that this incident occurred the defendant, Shawn Conley, was not licensed to carry a firearm.

Notes of Testimony ("N.T."), 1/31/2000, at 10-18. Pursuant to a plea agreement, Conley was sentenced to ten to twenty years' incarceration, which was ordered to run consecutively to the sentence being served at CP-02-CR-0004013-1994. Conley did not appeal that judgment of sentence.

On July 27, 2012, Conley filed a *pro se* PCRA petition at both case number CP-02-CR-0004013-1994 and case number CP-02-CR-0013631-1998. Counsel was appointed. Following a comprehensive review of the cases, counsel submitted a “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*), as well as a motion to withdraw as counsel. On November 28, 2012, the PCRA court granted counsel’s motion to withdraw. On January 10, 2013, the PCRA court issued a Rule 907 notice of its intention to dismiss Conley’s PCRA petition without a hearing. On February 27, 2013, the PCRA court dismissed the petition.

On March 26, 2013, Conley filed a notice of appeal. In response, the PCRA court directed Conley to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Conley timely complied. On June 3, 2013, the PCRA court issued an opinion pursuant to Pa.R.A.P. 1925(a).

In his principal brief, Conley raises three issues for our consideration:

- I. Whether the juvenile defendant has the constitutional right to be treated differently than [an] adult for the purposes of sentencing?
- II. Does the brain science and social science cited in ***Miller [v. Alabama]***, 132 S.Ct. 2455 (2012),] constitute after[-]discovered evidence that could have changed the outcome of both criminal case [numbers] had this evidence been available at trial for purposes of raising legal insanity as the proper defense?

- III. Whether it was proper for the court to impose four separate sentencing enhancements for four crimes, which occurred during the same criminal episode?

Brief for Conley at 7, 7k, and 7q (punctuation modified).

By leave of this Court, Conley filed a supplemental brief. In that brief, he raises two additional issues for our review:

- I. Whether the trial court and/or appellate courts can consider an illegal sentence finalized, when our United States Supreme Court has ruled that no court has jurisdiction to impose an illegal sentence?
- II. Whether the trial court violated the laws of the *Ex Post Facto* clause of Article I, Section 9, Clause 2 of the United States Constitution, by not applying the guidelines in effect on the date of the offense when the guidelines recommended a significantly less harsher penalty?

Supplemental Brief for Conley at 2.

Although Conley presents five questions, our focus is on only one: whether Conley, in his PCRA petition, pleaded and proved one of the enumerated exceptions to the PCRA's time bar, and, therefore, has established jurisdiction in our courts to review his substantive claims. For the reasons that follow, we conclude that he has not.

It is well-established that the PCRA time limits are jurisdictional, and are meant to be both mandatory and applied strictly by the courts to all PCRA petitions, regardless of the potential merit of the claims asserted. ***Commonwealth v. Murray***, 753 A.2d 201, 202-03 (Pa. 2000); ***Commonwealth v. Leggett***, 16 A.3d 1144, 1145 (Pa. Super. 2011). "[N]o court may properly disregard or alter [these filing requirements] in order to

reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner.” **Murray**, 753 A.2d at 203; **see Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000).

Any PCRA petition, including second or subsequent petitions, must be filed within one year of the date the judgment of sentence becomes final. 42 Pa.C.S. § 9545(b)(1). Here, at CP-02-CR-0004013-1994, Conley’s judgment of sentence became final on or about February 26, 1998, at the expiration of the time period during which Conley could have sought allowance of appeal with the Pennsylvania Supreme Court on direct appeal. **See** 42 Pa.C.S. § 9545(b)(3) (“For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.”); Pa.R.A.P. 1113(a) (“[A] petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days after the entry of the order of the Superior Court or the Commonwealth Court sought to be reviewed.”). Therefore, at CP-02-CR-0004013-1994, a timely PCRA petition had to have been filed before February 26, 1999. At CP-02-CR-0013631-1998, Conley’s judgment of sentence became final on March 2, 2000, at the expiration of the time period during which Conley could have filed a direct appeal. **See** 42 Pa.C.S. § 9545(b)(3), *supra*; Pa.R.A.P. 903(a) (“[T]he notice of appeal . . . shall be filed within 30 days after the entry of the order from which the appeal is taken.”). Thus, at CP-02-CR-0013631-1998, a

timely PCRA petition had to have been filed on or before March 2, 2001. The instant petition, which was jointly submitted at both case numbers, was not filed until July 27, 2012. Thus, the petition is patently untimely at both cases unless Conley has pleaded and proved one of the following statutory exceptions to the PCRA's strict time limit:

(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; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 Pa.C.S. § 9545(b); **see Commonwealth v. Perrin**, 947 A.2d 1284, 1285 (Pa. Super. 2008).

In his PCRA petition, Conley raised the following issue: “[Do] **Jackson v. Hobbs** and **Miller v. Alabama** apply to petitioner since the United States Supreme Court ruled that any sentencing court must take mitigating factors

into consideration when sentencing a juvenile defendant?”⁵ PCRA petition, 7/27/2012, at 3. Regarding the timeliness of the petition, Conley asserted that the issuance of **Miller** (not the medical and scientific information contained therein) constituted a newly-discovered fact pursuant to 42 Pa.C.S. § 9545(b)(1)(ii), and that **Miller** recognized a new constitutional right that applied to him retroactively, as provided by 42 Pa.C.S. § 9545(b)(1)(iii). Conley filed a memorandum of law in support of his PCRA petition, wherein he advocated the same.

We begin with Conley’s allegation that the **Miller** decision, wherein the United States Supreme Court held that the mandatory imposition of a life sentence without parole upon a juvenile violates the Eighth Amendment to the United States Constitution, **Miller**, 132 S.Ct. at 2460, constitutes a newly-discovered fact under subsection 9545(b)(1)(ii). Recently, in **Commonwealth v. Cintora**, 69 A.3d 759 (Pa. Super. 2013), we rejected a nearly identical attempt to utilize the **Miller** decision in such a way. We began by reciting the parameters of the newly-discovered fact exception:

[T]he exception set forth in subsection (b)(1)(ii) does not require any merits analysis of the underlying claim. Rather, the exception merely requires that the facts upon which such a claim is predicated must not have been known to appellant, nor could they have been ascertained by due diligence. Therefore, . . . the plain language of subsection (b)(1)(ii) is not so narrow as to

⁵ **Jackson** is the companion case to **Miller**. The matters were decided in a single opinion. Because **Miller** is the lead opinion, we will consolidate our references solely to **Miller**.

limit itself to only claims involving after-discovered evidence. Rather, subsection (b)(1)(ii) has two components, which must be alleged and proved. Namely, the petitioner must establish that: 1) the facts upon which the claim was predicated were unknown and 2) could not have been ascertained by the exercise of due diligence. If the petitioner alleges and proves these two components, then the PCRA court has jurisdiction over the claim under this subsection.

Cintora, 69 A.3d at 763 (citing **Commonwealth v. Bennett**, 930 A.2d 1264, 1271-72 (internal quotations and citations omitted)). We then explained our well-established rule that judicial opinions do not constitute newly-discovered facts for the purposes of subsection 9545(b)(1)(ii):

Our courts have expressly rejected the notion that judicial decisions can be considered newly-discovered facts which would invoke the protections afforded by [sub]section 9545(b)(1)(ii). **See Commonwealth v. Watts**, 23 A.3d 980, 986 (Pa. 2011) (holding[that] a judicial opinion does not qualify as a previously unknown “fact” capable of triggering the timeliness exception set forth in [sub]section 9545(b)(1)(ii) of the PCRA; “section 9545(b)(1)(ii) applies only if the petitioner has uncovered facts that could not have been ascertained through due diligence, and judicial determinations are not facts”); **Commonwealth v. Brandon**, 51 A.3d 231, 235 (Pa. Super. 2012) (same).

Cintora, 69 A.3d at 763 (citation modified). In light of this well-established precedent to the contrary, Conley’s reliance upon **Miller** as a newly-discovered fact for purposes of subsection 9545(b)(1)(ii) purposes is unavailing.

Conley also asserted that the **Miller** Court recognized a newly-created, and retroactively applied, constitutional right applicable to him for purposes of subsection 9545(b)(1)(iii). Conley’s claim fails for two reasons. First, in **Commonwealth v. Cunningham**, 81 A.3d 1 (Pa. 2013), our Supreme

Court recently held that the constitutional right announced by the United States Supreme Court in **Miller** does not apply retroactively. 81 A.3d at _____. Thus, on that basis alone, Conley cannot satisfy subsection 9545(b)(iii), which contains the essential element that the newly-created right must have been held to apply retroactively by either the United States or Pennsylvania Supreme Court.

Second, even if we ignore the non-retroactivity of **Miller**, the holding of that case simply does not apply to Conley. It is undisputed that Conley was a juvenile at the time that he committed the crimes at issue in the matters *sub judice*.⁶ The holding in **Miller** is that the Eighth Amendment to the United States Constitution prohibits the **mandatory imposition of life sentences** for juveniles who commit murder. **Miller**, 132 S.Ct. at 2460. For purposes of the application of subsection 9545(b)(1)(iii), we are bound to consider only the holding of a case recognizing a new constitutional right, not the rationale employed by the court to reach that holding. **See Commonwealth v. Chambers**, 35 A.3d 34, 42-44 (Pa. Super. 2011). Thus, applying the specific holding in **Miller** to this case, it is abundantly clear that Conley cannot satisfy subsection 9545(b)(1)(iii). In both criminal cases, Conley was sentenced to a term of years, not a mandatory life

⁶ Conley was born on August 28, 1976. Conley shot Napper on October 21, 1993, and Miller on November 5, 1993, when Conley was seventeen years old.

sentence: at CP-02-CR-0004013-1994, Conley was sentenced to twenty-seven and one-half to fifty-five years' incarceration and, at CP-02-CR-0013631-1998, Conley was sentenced to ten to twenty years' incarceration. Therefore, **Miller's** specific holding, that mandatory life sentences for juvenile murders, does not apply to either case. Hence, Conley's attempt to establish jurisdiction through subsection 9545(b)(1)(iii) necessarily fails.

We make two other observations regarding Conley's attempt to establish jurisdiction over his substantive claims: First, Conley argues to this Court that the "brain science and social science cited in **Miller**" constitute newly-discovered facts for purposes of subsection 9545(b)(1)(ii). Conley did not raise this argument either in his initial PCRA petition or the memorandum of law that he submitted in support of that petition. Rather, Conley raised it for the first time in his March 26, 2013 notice of appeal to this Court. The failure to allege a timeliness exception in the PCRA petition itself precludes a petitioner from raising it on appeal. **See Commonwealth v. Blackwell**, 936 A.2d 497, 500 (Pa. Super. 2007) (citing **Commonwealth v. Williams**, 899 A.2d 1060, 1066 n.5 (Pa. 2006) (citing **Commonwealth v. Wallace**, 724 A.2d 916, 921 n.5 (Pa. 1999))). Thus, this argument is waived.

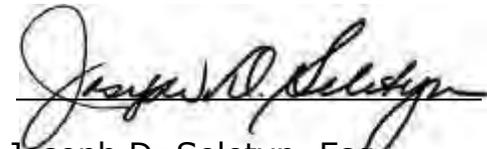
Second, Conley raises several arguments pertaining to the legality of his sentence. Although "not technically waivable, a legality [of sentence] claim may nevertheless be lost should it be raised for the first time in an untimely PCRA petition for which no time-bar exception applies, thus

depriving the court of jurisdiction over the claim.” **Commonwealth v. Slotcavage**, 939 A.2d 901, 903 (Pa. Super. 2007) (citing **Commonwealth v. Fahy**, 737 A.2d 214, 223 (Pa. 1999) (“Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA’s time limits or one of the exceptions thereto.”)). As we explained above, Conley has not satisfied any of the exceptions to the PCRA’s time-bar. Thus, we lack jurisdiction over all of his substantive claims, even those related to a non-waivable challenge to the legality of his sentence.

Order affirmed.

Ford Elliott, P.J.E. recuses.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/20/2014