

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

GEORGE A. STROLL

Appellant

No. 79 MDA 2013

Appeal from the PCRA Order December 14, 2012
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0000683-1994

BEFORE: GANTMAN, J., ALLEN, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

FILED AUGUST 26, 2013

Appellant, George A. Stroll, appeals from the December 14, 2012 order dismissing his second petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

The PCRA court has set forth the relevant facts and procedural history.

On November 17, 1994, a jury found [Appellant] guilty of first[-]degree murder as an accomplice and of conspiracy. [The trial] court sentenced [Appellant] to life imprisonment on the charge of criminal conspiracy. [Appellant] appealed. [The] Superior Court affirmed the judgment of sentence on October 11, 1996.

On February 11, 1998, [Appellant] filed, *pro se*, his first petition under the Post Conviction Relief Act (PCRA). [The PCRA Court] appointed counsel. [The PCRA court] dismissed [Appellant]'s first PC[R]A petition by order dated December 18, 1998.

[Appellant] appealed. [The] Superior Court affirmed [the PCRA] court's denial of post-conviction relief on June 10, 1999.

PCRA Court Opinion, 9/28/12, at 1.

On June 12, 2012, Appellant filed the instant *pro se* PCRA petition asserting, *inter alia*, that PCRA counsel was ineffective "for failure to raise that trial counsel was ineffective for failure to object to the trial court's accomplice liability instruction that failed to inform the jury that the accomplice must harbor a shared specific intent to kill." Appellant's *Pro Se* PCRA Petition, 6/12/12, at 3. On September 28, 2012, the PCRA court filed a memorandum opinion and order apprising Appellant of its intention to dismiss his PCRA petition as untimely. Appellant did not file a response, and on December 14, 2012, the PCRA court dismissed Appellant's petition. On January 10, 2013, Appellant filed a timely notice of appeal.¹

On appeal, Appellant raises the following issue for our review.

- I. Whether the PCRA court erred by failing to consider the application of ***Martinez v. Ryan***, [132 S. Ct. 1309 (2012),] which explains that PCRA counsel could be used [sic] for ineffectiveness where state court provided for such assistance in the initial collateral proceeding which is the only forum to raise a Sixth Amendment violation against trial counsel?

Appellant's Brief at 5.

¹ Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

We begin by noting our well settled standard of review. “Our review of a PCRA court’s decision is limited to examining whether the PCRA court’s findings of fact are supported by the record, and whether its conclusions of law are free from legal error.” **Commonwealth v. Koehler**, 36 A.3d 121, 131 (Pa. 2012) (citation omitted). “[Our] scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the PCRA court level.” **Id.** “The PCRA court’s credibility determinations, when supported by the record, are binding on this Court.” **Commonwealth v. Spatz**, 18 A.3d 244, 259 (Pa. 2011) (citation omitted). “However, this Court applies a *de novo* standard of review to the PCRA court’s legal conclusions.” **Id.**

Before we may address the merits of Appellant’s claim, we must first consider the timeliness of his PCRA petition because it implicates the jurisdiction of both this Court and the PCRA court. **Commonwealth v. Williams**, 35 A.3d 44, 52 (Pa. Super. 2011) (citation omitted), *appeal denied*, 50 A.3d 121 (Pa. 2012). “Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition.” **Id.** The PCRA “confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar[.]” **Commonwealth v. Watts**, 23 A.3d 980, 983 (Pa. 2011) (citation omitted). This is to “accord finality to the collateral review process.” **Id.** “A petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment

becomes final unless the petition alleges, and the petitioner proves, that an exception to the time for filing the petition, set forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii), is met.” ***Commonwealth v. Harris***, 972 A.2d 1196, 1199-1200 (Pa. Super. 2009). The act provides as follows.

§ 9545. Jurisdiction and proceedings

...

(b) Time for filing petition.—

(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.A. § 9545(b).

As noted above, Appellant's judgment of sentence was affirmed by this Court on October 11, 1996. Therefore, Appellant's judgment of sentence became final 90 days later, when Appellant failed to petition our Supreme Court for review. The instant petition was not filed until June 12, 2012, therefore, it was facially untimely.

Nevertheless, Appellant purports to argue that his petition is timely pursuant to section 9545(b)(1)(ii) for the following reasons.

On April 30, 2012 (2 days after the reporter was received) [Appellant] learned that the U.S. Supreme Court ruled that defendants can raise PCRA counsel's ineffectiveness for failure to raise claims in a timely PCRA petition, which is the only forum provided by the state to raise a Sixth Amendment violation as to trial counsel or appellate counsel's ineffectiveness.

This fact was not known to [Appellant] prior to this date and could not have ascertained any due diligence due to the fact that such a decision or remedy did not exist prior to the date the U.S. Supreme Court made such a decision and the date it arrived in the published reporters.

Appellant's *Pro Se* PCRA Petition, 6/12/12, at 2.

It is clear that in actuality, Appellant is asserting a claim that his petition is timely pursuant to section 9545(b)(1)(iii). Specifically, Appellant argues that in ***Martinez***, the United States Supreme Court created a new right when it explained "that where the state PCRA proceedings are the only forum to raise constitutional violations within the state law, defendants

should have effective counsel during that phase.” **Id.**; Appellant’s *Pro Se* PCRA Petition, 6/12/12, at 4. Appellant asserts that “[p]rior to that decision Pennsylvania state courts did not care if PCRA counsel failed to raise a meritorious [sic] claim and defendants would have to suffer the consequences of losing out because of PCRA counsel’s failure.” **Id.** at 5.

In response the PCRA court accurately asserts the following argument.

The Pennsylvania Superior Court held, on January 13, 2013, that “[w]hile **Martinez** represents a significant development in federal habeas corpus law, it is of no moment with respect to the way Pennsylvania Courts apply the plain language of the time bar set forth in section 9545[(b)(1)] of the PCRA.” **Commonwealth v. Saunders**, [60 A.3d 162 (Pa. Super. 2013).]

PCRA Court Opinion, 1/30/13, at 2.

In **Saunders**, the appellant raised the identical claim Appellant raises herein, specifically, “[w]hether **Martinez** [] should supply an exception to 42 Pa.C.S. § 9545 to the extent of allowing state defendants to raise PCRA counsel’s ineffectiveness from the initial PCRA proceedings for waiving claims that could have been raised in that first initial phase?” **Saunders, supra** at 163. In analyzing this claim, this Court held that **Martinez** did not create an exception to the PCRA time-bar.

Martinez recognizes that for purposes of federal habeas corpus relief, “[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance of trial counsel.” **Martinez, supra** at 1315. While **Martinez** represents a significant development in

federal habeas corpus law, it is of no moment with respect to the way Pennsylvania courts apply the plain language of the time bar set forth in section 9545(b)(1) of the PCRA.

Here, the trial court correctly held that Saunders failed to establish any of the exceptions to the PCRA's requirement that all petitions be filed within one year of the date a petitioner's judgment of sentence became final.

Id. at 165.

Accordingly, for the same reasons, the PCRA court correctly determined Appellant's petition was untimely. Furthermore, in his brief, Appellant also appears to concede that ***Martinez*** does not apply, noting the following.

Clearly, there is a need for change because prisoners suffer from state appointed PCRA counsels who fail to present meritorious Sixth Amendment violations of trial counsel's ineffectiveness. The ***Martinez*** court based their decision in part on, most defendants don't know the law and or don't know how to present claims and it is that of counsel who knows these procedures.

...

The Appellant believes that ***Martinez*** provides guidance and opportunity for states to create a procedure to raise PCRA counsel's ineffectiveness.

Appellant's Brief at 8.

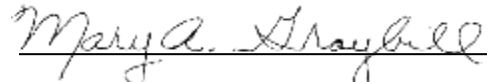
After careful review of the certified record, we agree with the PCRA court that Appellant's "petition is untimely and [the PCRA] court lack[ed] jurisdiction to review [Appellant]'s claims." PCRA Court Opinion, 9/28/12, at 3; ***see also Williams, supra*** at 52; ***Harris, supra***. Accordingly, we affirm

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the PCRA court's December 14, 2012 order dismissing Appellant's second PCRA petition as untimely.

Order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 8/26/2013