

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ARTHUR McCONNELL,	:	
	:	
Appellant	:	No. 790 WDA 2012

Appeal from the PCRA Order April 18, 2012,
Court of Common Pleas, Mercer County,
Criminal Division at No. 41 CRIMINAL 1968

BEFORE: DONOHUE, MUNDY and PLATT*, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 11, 2013

Arthur McConnell (“McConnell”) appeals from the order entered on April 18, 2012, denying his petition filed pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546. For the reasons that follow, we affirm.

In a prior appeal, our Supreme Court summarized the procedural history as follows:

On September 16, 1968, Arthur McConnell, while represented by counsel, entered a plea of guilty to an indictment charging him with murder and also pleas of guilty to two indictments charging him with rape. After an evidentiary hearing continuing for six days in connection with the guilty plea to murder, a three-judge court found McConnell guilty of murder in the first degree and imposed a sentence of life imprisonment. On each of the rape convictions, a prison sentence of 10 to 20 years was imposed. Appeals were not entered.

*Retired Senior Judge assigned to the Superior Court.

In February 1970, McConnell filed a petition seeking post conviction relief which the trial court denied after an evidentiary hearing.

Commonwealth v. McConnell, 449 Pa. 68, 295 A.2d 336 (1972) (footnote omitted). In its opinion, our Supreme Court affirmed the order denying post conviction relief. ***Id.***

Over the years, McConnell filed various petitions for relief. On January 12, 2012, McConnell filed the instant *pro se* PCRA petition. In his *pro se* petition, McConnell alleged that (1) his plea attorney scared him into pleading guilty to avoid the death penalty; (2) he was deprived of effective assistance of counsel; (3) at the time of the proceedings in 1968, there was no jurisdiction because no savings clause existed in the constitution; and (4) the evidence was insufficient to support his conviction. *Pro Se* PCRA Petition, 1/12/2012, at 3, 7. The PCRA court appointed counsel, and on April 3, 2012, the Commonwealth filed a motion to dismiss the PCRA petition. On April 18, 2012, following a hearing on the motion to dismiss, the PCRA court dismissed McConnell's petition because it was patently untimely and not within an exception to the PCRA's jurisdictional time bar.

McConnell filed a timely notice of appeal followed by a court-ordered Pa.R.A.P. 1925(b) statement. The PCRA court filed its Pa.R.A.P. 1925(a) opinion on July 3, 2012.

On appeal, McConnell raises the following issue for our review: "Did the [PCRA] court err[] in dismissing [McConnell's] PCRA petition as

untimely?" Appellant's Brief at 4. "Our standard of review in PCRA appeals is limited to determining whether the findings of the PCRA court are supported by the record and free from legal error." ***Commonwealth v. Johnson***, 600 Pa. 329, 345, 966 A.2d 523, 532 (2009) (citation omitted). "We must accord great deference to the findings of the PCRA court, and such findings will not be disturbed unless they have no support in the record." ***Commonwealth v. Scassera***, 965 A.2d 247, 249 (Pa. Super. 2009) (citation omitted), *appeal denied*, 603 Pa. 709, 985 A.2d 219 (2009).

As the PCRA court found that it was without jurisdiction over McConnell's untimely petition, we likewise must first determine if we have jurisdiction to decide this appeal. With respect to jurisdiction under the PCRA this Court has stated:

Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition. The most recent amendments to the PCRA, effective January 16, 1996, provide a PCRA petition, including a second or subsequent petition, shall be filed within one year of the date the underlying judgment becomes final. A judgment is deemed 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.'

Commonwealth v. Monaco, 996 A.2d 1076, 1079 (Pa. Super. 2010) (citations omitted), *appeal denied*, 610 Pa. 607, 20 A.3d 1210 (2011). "Although there is a grace period for filing petitions in cases where the judgment of sentence was final prior to the effective date of the time-bar,

there is no such period for second or subsequent petitions. *Commonwealth v. Crews*, 581 Pa. 45, 50, 863 A.2d 498, 501 (2004) (internal citations omitted).

In the instant case, it is undisputed that McConnell's petition is untimely, as the trial court sentenced him over 43 years ago, on October 1, 1968. Thus, we proceed to examine whether McConnell's claim falls within one of the following three statutory exceptions:

(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 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.

42 Pa.C.S.A. § 9545(b)(1). Even if the petition alleges and proves one of the three exceptions listed above, the petition will not be considered unless

it is "filed within 60 days of the date the claim could have been presented."
42 Pa.C.S.A. § 9545(b)(2).

Our review of McConnell's PCRA petition reveals that he has failed to articulate one of the PCRA's timeliness exceptions. It is well settled that "[i]t is the appellant's burden to allege and prove that one of the timeliness exceptions applies." **Commonwealth v. Hawkins**, 598 Pa. 85, 93, 953 A.2d 1248, 1253 (2006) (citation omitted). Furthermore, in his appellate brief, McConnell claims that "there were facts that were unknown to him and that he exercised due diligence in uncovering constitutional violations in his conviction." Appellant's Brief at 7. However, he fails to assert the facts and the purported constitutional violation in support of his newly discovered fact claim. Because McConnell has failed to allege and prove that one of the timeliness exceptions applies, this Court lacks jurisdiction to review his claim. **See Commonwealth v. Williamson**, 21 A.3d 236, 243 (Pa. Super. 2011) (holding that this Court lacks jurisdiction to reach the merits of an appeal from the dismissal of an untimely PCRA petition not falling within any exception to the PCRA time-bar).¹

¹ In an effort to understand McConnell's claim, we have also reviewed the transcript from the hearing on the Commonwealth's motion to dismiss McConnell's PCRA petition. From our review, it would seem that McConnell was relying on case law as his newly discovered "fact." N.T., 4/18/2012, at 8. In **Commonwealth v. Watts**, 611 Pa. 80, 23 A.3d 980 (2011), however, our Supreme Court specifically held that "subsequent decisional law does not amount to a new 'fact' under section 9545(b)(1)(ii) of the PCRA." **Id.** at ____, 23 A.3d at 987. Thus, even if McConnell properly pled

McConnell further contends that assuming the constitution was violated, this Court should excuse the untimeliness of his petition for the sake of equity. Appellant's Brief at 17. However, we cannot do as McConnell requests. As our Supreme Court has observed, the PCRA "confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar in addition to those exceptions expressly delineated in the Act." **Watts**, 611 Pa. at ___, 23 A.3d at 983 (quoting **Commonwealth v. Robinson**, 575 Pa. 500, 508, 837 A.2d 1157, 1161 (2003)). Thus, no relief is due.

Order affirmed.

that his claim fell within Section 9545(b)(1)(ii), he would not be entitled to relief.