

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

BERNARD FIELDING

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 823 EDA 2012

Appeal from the PCRA Order of February 17, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-1036801-1992

BEFORE: PANELLA, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

Filed: March 5, 2013

Bernard Fielding [“Appellant”] appeals *pro se* the denial of his petition for relief pursuant to the Post-Conviction Relief Act [“PCRA”].¹ Because Appellant’s petition is untimely, we affirm the trial court’s order denying relief.

The trial court summarized the procedural and factual history as follows:

Petitioner was convicted of second degree murder, burglary, robbery, criminal conspiracy and possession of an instrument of crime after a jury trial. On April 18, 1994, Petitioner was sentenced to life imprisonment for second degree murder and other various sentences for his remaining charges presided over by the Honorable Judge James Fitzgerald III. On direct appeal, the Superior Court affirmed the judgment of sentence on

¹ 42 Pa.C.S.A. §§ 9541, *et seq.*

December 26, 1995 and the Supreme Court denied allocatur on August 9, 1996. Petitioner filed his first post conviction relief petition on September 2, 1997 and the petition was dismissed after counsel filed a Finley/Turner² letter. Petitioner did not appeal. Petitioner filed his second post conviction relief petition on December 19, 2001 and the petition was dismissed. The Superior Court affirmed the denial on May 29, 2003. Petitioner filed his third post conviction relief petition on May 26, 2004 and the petition was dismissed as untimely. The Superior Court affirmed the denial on July 13, 2006.

Petitioner filed his current post conviction petition, his fourth, on July 12, 2010. After conducting an extensive and exhaustive review of the record and applicable case law, this Court finds that Petitioner's petition for post conviction collateral relief is untimely filed. Therefore, this Court does not have jurisdiction to consider Petitioner's fourth PCRA petition.

² ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988).

Trial Court Opinion, 2/17/12, at 1-2. This timely appeal followed.

In his brief to this Court, Appellant failed to set forth a statement of the questions raised on appeal, in violation of Pa.R.A.P. 2116(a). We may quash or dismiss Appellant's appeal for this reason alone. **See** Pa.R.A.P. 2101. However, we decline to do so, because the lack of compliance with our appellate rules in this instance does not impede our ability to determine whether Appellant's PCRA petition was untimely. **See *Commonwealth v. Wheaton***, 598 A.2d 1017, 1018 n.1 (Pa. Super. 1991) (when failure to comply with Pa.R.A.P. 2116(a) does not impede appellate review, we decline to dismiss or quash).

A PCRA petitioner must file a PCRA petition within one year of the date that his judgment of sentence becomes final pursuant to 42 Pa.C.S.A.

§ 9545(b)(1). If a petitioner fails to file a petition within the required time frame, the petitioner must plead and prove an exception to the timeliness requirements as set forth in sections 9545(b), as follows:

(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).

Appellant's judgment of sentence became final on November 7, 1996, ninety days after the Pennsylvania Supreme Court's August 9, 1996 order denying *allocatur*, when the time for filing for a writ of *certiorari* to the United States Supreme Court expired. U.S. Sup. Ct. R. 13. Thus, Appellant had until November 7, 1997 to file a timely PCRA petition. The present PCRA petition was filed over twelve years later, on July 12, 2010.

“The PCRA's time restrictions are jurisdictional in nature. Thus, if a PCRA petition is untimely, neither this Court nor the trial court has jurisdiction over the petition. Without jurisdiction, we simply do not have the legal authority to address the substantive claims.” ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010) (citing ***Commonwealth v. Chester***, 895 A.2d 520, 522 (Pa. 2006)) (citations, brackets, and quotation marks omitted). Statutory time limitations “are mandatory and interpreted literally; thus, a court has no authority to extend filing periods except as the statute permits.” ***Commonwealth v. Fahy***, 737 A.2d 214, 222 (Pa. 1999).

While Appellant does mention the time requirements of the PCRA, Appellant does not set forth any of the exceptions to the timeliness requirements or argue that any of the exceptions apply. Appellant’s Brief at 14. Appellant has failed properly to plead or prove an exception to the time bar. Accordingly, the PCRA court properly dismissed Appellant’s petition as untimely filed.

Order affirmed. Jurisdiction relinquished.