

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ARTHUR JAMES A/K/A
ANTHONY THOMPSON A/K/A
ANTHONY SEABROOK,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 834 EDA 2012

Appeal from the PCRA Order entered February 24, 2012,
in the Court of Common Pleas of Philadelphia County,
Criminal Division, at No(s): CP-51-CR-0230651-1994, CP-51-CR-0606871-
1993, CP-51-CR-0611321-1993, CP-51-CR-0717991-1993, CP-51-CR-
0719671-1993, CP-51-CR-0719681-1993 & CP-51-CR-1133561-1993.

BEFORE: ALLEN, STABILE, and STRASSBURGER,* JJ.

MEMORANDUM BY ALLEN, J.:

FILED FEBRUARY 07, 2014

Arthur James a/k/a Anthony Thompson a/k/a Anthony Seabrook ("Appellant") appeals from the order denying his fourth petition for relief under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. sections 9541-46. We affirm.

The pertinent facts and prolonged procedural history are as follows:

[Appellant] participated in a robbery, which resulted in the victim's death. In 1994, [he] entered a negotiated guilty plea to five counts of receiving stolen property, three counts of receiving stolen property, three counts of conspiracy to receive stolen property, one count of possession with intent to deliver, one count of robbery and one count of conspiracy to commit robbery. Pursuant to

*Retired Senior Judge assigned to the Superior Court.

his bargain with the Commonwealth, [Appellant] agreed to testify in the robbery/homicide prosecution of James Fiers ["Fiers"]. The Commonwealth agreed not to bring additional charges against [Appellant] and to inform the sentencing court of the nature and extent of [Appellant's] cooperation during Fier[s]' trial. However, [Appellant's] testimony exonerated Fiers, which directly led to a verdict of acquittal.

[Appellant] appeared for sentencing on January 31, 1996. At the sentencing hearing, the prosecutor informed the court that [Appellant] was in breach of his plea agreement. Noting [Appellant's] extensive criminal history, the sentencing court found [Appellant] to be a chronic liar and held that he was incapable of rehabilitation. The sentencing court subsequently imposed an aggregate term of imprisonment of forty-three to eighty-six years [of imprisonment]. This Court affirmed the judgment of sentence on May 5, 1997. **Commonwealth v. Thompson**, 695 A.2d 441 (Pa. Super. 1997) (unpublished memorandum). [Appellant] filed a petition for reargument, which was denied [on] May 13, 1997. [Appellant] did not file a petition for allowance of appeal with [our] Supreme Court.

[Appellant] filed a *pro se* PCRA petition on March 3, 1998, and counsel was duly appointed. Counsel filed a "no-merit" letter pursuant to the dictates of **Commonwealth v. Turner**, 518 Pa. 491, 544 A.2d 927 (1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988). The PCRA court provided notice of its intent to dismiss the PCRA petition, and [Appellant] filed a timely response. The PCRA court directed prior counsel to supplement the record for the benefit of PCRA counsel. On May 29, 1999, PCRA counsel filed an amended "[n]o-merit" letter. The PCRA court provided proper notice of its intent to dismiss the petition, and [Appellant] timely responded. Upon review, the PCRA court concluded [that Appellant's] contentions were non-meritorious and dismissed the petition on July 14, 1999. [Appellant] filed a notice of appeal from the PCRA court's order, but the appeal was dismissed on April 14, 2000, for failure to file a brief.

On July 18, 2000, [Appellant] filed a second PCRA petition followed by a supplemental counseled petition filed December 27, 2000. [Appellant] alleged he is the victim of an illegal sentence imposed in violation of due process of law. [Appellant] alternatively advanced his sentencing claims under color of a petition for writ of *habeas corpus*. The PCRA court determined that [Appellant's] petition was untimely, that it was not saved by any of the exceptions to the timing requirements of the PCRA, and that [Appellant] is not eligible for *habeas corpus* relief. **See** PCRA Court Opinion, 9/28/01, at 5-7 (explaining the rationale for dismissing [Appellant's] petition).

On August 8, 2001, the PCRA court provided notice of its intent to dismiss [the petition] without a hearing. [Appellant] did not respond. Accordingly, on September 7, 2001, the PCRA court dismissed the petition.

Commonwealth v. James, 928 A.2d 1123 (Pa. Super. 2007), unpublished memorandum at 1-3.

Appellant filed a timely appeal to this Court. On August 14, 2001, this Court affirmed the PCRA court's order dismissing Appellant's second PCRA petition as untimely. ***Commonwealth v. James***, 809 A.2d 958 (Pa. Super. 2002) (unpublished memorandum). On January 28, 2003, our Supreme Court denied Appellant's petition for allowance of appeal. ***Commonwealth v. James***, 816 A.2d 1102 (Pa. 2003).

On August 4, 2004, Appellant filed his third PCRA petition. On July 25, 2005, the PCRA court issued Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's PCRA petition without a hearing. On August 19, 2005, the PCRA court dismissed Appellant's petition. Appellant filed a timely appeal to this Court. On April 12, 2007, we affirmed the PCRA court's denial of Appellant's serial request for post-conviction relief because the petition was untimely,

and Appellant failed to establish an exception to the PCRA's time bar. **See James, supra**, unpublished memorandum at 8-9. On September 26, 2007, our Supreme Court denied Appellant's petition for allowance of appeal. **Commonwealth v. James**, 932 A.2d 1286 (Pa. 2007).

On October 27, 2009, Appellant filed the PCRA petition at issue, and the PCRA court appointed counsel. On February 8, 2013, PCRA counsel filed a motion to withdraw and 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*). Thereafter, PCRA counsel withdrew his **Turner/Finley** letter and, on May 31, 2011, filed an amended petition in which Appellant claimed that his trial counsel was ineffective for filing a pre-sentence motion to withdraw his guilty plea. Although Appellant acknowledged that his latest PCRA petition was untimely, he claimed that the PCRA's time bar is unconstitutional. By order entered January 24, 2012, the PCRA court denied Appellant's petition as untimely. This appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

This Court's standard of review regarding an order dismissing a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. **Commonwealth v. Halley**, 870 A.2d 795, 799 n.2 (Pa. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **Commonwealth v. Carr**, 768 A.2d 1164,

1166 (Pa. Super. 2001). Moreover, a PCRA court may decline to hold a hearing on the petition if the PCRA court determines that the petitioner's claim is patently frivolous and is without a trace of support in either the record or from other evidence. ***Commonwealth v. Jordan***, 772 A.2d 1011 (Pa. Super. 2001). Because this is Appellant's fourth petition for post-conviction relief, he must meet a more stringent standard. "A second or any subsequent post-conviction request for relief will not be entertained unless a strong prime facie showing is offered to demonstrate that a miscarriage of justice may have occurred." ***Commonwealth v. Burkhardt***, 833 A.2d 233, 236 (Pa. Super. 2003) (*en banc*) (citations omitted). "A petitioner makes a prime facie showing if he demonstrates that either the proceedings which resulted in his conviction were so unfair that a miscarriage of justice occurred which no civilized society could tolerate, or that he was innocent of the crimes for which he was charged." ***Id.***

Before addressing the issue Appellant presents on appeal, we must first consider whether the PCRA court properly determined that Appellant's latest petition for post-conviction relief was untimely. The timeliness of a post-conviction petition is jurisdictional. ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010) (citation omitted). Thus, if a PCRA petition is untimely, neither an appellate court nor the PCRA court has jurisdiction over the petition. ***Id.*** "Without jurisdiction, we simply do not have the legal authority to address the substantive claims" raised in an untimely petition. ***Id.***

Generally, 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, an exception to the time for filing the petition. ***Commonwealth v. Gamboa-Taylor***, 753 A.2d 780, 783 (Pa. 2000); 42 Pa.C.S.A. § 9545(b)(1). Under these exceptions, the petitioner must plead and prove that: “(1) there has been interference by government officials in the presentation of the claim; or (2) there exists after-discovered facts or evidence; or (3) a new constitutional right has been recognized.” ***Commonwealth v. Fowler***, 930 A.2d 586, 591 (Pa. Super. 2007) (citations omitted). A PCRA petition invoking one of these statutory exceptions must “be filed within sixty days of the date the claim first could have been presented.” ***Id.*** at 783. ***See also*** 42 Pa.C.S.A. § 9545(b)(2). Moreover, exceptions to the time restrictions of the PCRA must be pled in the petition, and may not be raised for the first time on appeal. ***Commonwealth v. Burton***, 936 A.2d 521, 525 (Pa. Super. 2007); ***see also*** Pa.R.A.P. 302(a) (“Issues not raised before the lower court are waived and cannot be raised for the first time on appeal.”).

This Court previously determined that Appellant’s judgment of sentence became final in 1997. ***See James, supra***, unpublished memorandum at 5. Because Appellant filed the instant petition over ten years later, it is patently untimely unless he has satisfied his burden of pleading and proving that one of the enumerated exceptions applies. ***See Commonwealth v. Beasley***, 741 A.2d 1258, 1261 (Pa. 1999).

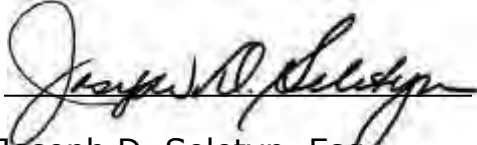
Appellant has failed to prove the applicability of any of the exceptions to the PCRA's time restrictions. Instead, he argues that "the exclusion of unreasonable omissions by defense counsel from [section 9545(b)(i) of the PCRA's] time bar exception, is clearly a denial of the fundamental right to counsel which does not fulfill any corresponding compelling state interest, rendering the entire [PCRA] statute unconstitutional under the Due Process Clause of the Fourteenth Amendment." Appellant's Brief at 12. According to Appellant, "judicial economy does not constitute a compelling state interest which justifies the prohibition of meritorious claims of ineffectiveness[.]" *Id.* at 14.

Pennsylvania appellate courts have repeatedly rejected constitutional challenges to the PCRA. *See e.g., Burton*, 936 A.2d at 527 (holding that jurisdictional time bar set forth in PCRA is constitutional). Appellant cites no authority to support his constitutionality claim. Thus, we will not consider this undeveloped claim further. *See Commonwealth v. Tielsch*, 934 A.2d 81, 93 (Pa. Super. 2007) (holding that undeveloped claims will not be considered on appeal).

In sum, Appellant's PCRA petition is facially untimely, and he has failed to meet his burden of proof with regard to any exception to the timeliness requirements of the PCRA. The PCRA court properly dismissed Appellant's latest petition for post-conviction relief.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/7/2014