

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CHRIS BROKENBOUGH

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 892 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-0304401-1990

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

MEMORANDUM BY WECHT, J.:

Filed: March 18, 2013

Chris Brokenbough ("Appellant") appeals a February 17, 2012 order that denied as untimely his petition for relief under the Post-Conviction Relief Act ("PCRA").¹ We affirm.²

The trial court set forth the case history as follows:

¹ 42 Pa.C.S.A. § 9541 *et seq.*

² Appellant also filed a motion to strike the Commonwealth's brief as untimely. The Commonwealth requested an extension to file its brief. On August 3, 2012, we granted the Commonwealth's request, setting a new filing deadline of October 9, 2012. We also stated that no further extensions would be granted. On November 2, 2012, without seeking or being granted a further extension, the Commonwealth filed its brief. This was untimely by nearly one month. We grant Appellant's motion, and we strike the Commonwealth's brief. ***Cf. Commonwealth v. Stokes***, 38 A.3d 846, 858 n.7 (Pa. Super. 2011) (refusing to consider the Commonwealth's untimely brief). We have not considered the Commonwealth's brief.

[Appellant] was found guilty of murder, voluntary manslaughter, robbery, burglary and criminal conspiracy after a jury trial. On February 25, 1992, [Appellant] was sentenced [by the Honorable Michael R. Stiles] to serve life imprisonment for murder, ten to twenty years for robbery and five to ten years for criminal conspiracy.... [Appellant's] application to appeal *Nunc Pro Tunc* was granted on March 20, 1997. On direct appeal, the Superior Court affirmed the Judgment of Sentence on April 15, 1998 and the Supreme Court denied *allocatur* on September 10, 1998. [Appellant] filed his first post[-]conviction relief petition and the petition was denied on April 26, 2000. The Superior Court dismissed his appeal of the lower court denial for failure to file a brief on January 14, 2002.^[3] Prior to the dismissal, [Appellant] filed two requests for extension of time to file a brief that were both granted, and filed two writs of mandamus that were both denied. [Appellant] filed a Request for Review of the April 26, 2000 PCRA court denial on May 10, 2002. The Superior Court denied the Application for Permission to file *Nunc Pro Tunc* appeal on June 10, 2002.

[Appellant] filed his current post[-]conviction petition, his second, on November 19, 2008.^[4] After conducting an extensive and exhaustive review of the record and applicable case law, this Court finds that [Appellant's] petition for post[-]conviction collateral relief is untimely filed. Therefore, this court does not have jurisdiction to consider [Appellant's] second PCRA petition.

Trial Court Memorandum & Order, 2/17/2012, at 1-2 (unpaginated).

On January 13, 2012, the trial court issued a notice of intent to dismiss Appellant's petition pursuant to Pa.R.Crim.P. 907. On February 17, 2012, the court issued a memorandum and order dismissing the petition.

³ ***Commonwealth v. Brokenbough***, 1582 EDA 2000 (Pa. Super. 2002) (unpublished).

⁴ Appellant's petition is date-stamped October 9, 2008. It was not entered on the docket until November 19, 2008.

On March 16, 2012, Appellant mailed his notice of appeal, which was filed on March 19, 2012.⁵ The trial court did not order a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant did not file one.

Appellant's petition was titled "habeas corpus ad subjiciendum" [*sic*]. However, the trial court treated Appellant's filing as a petition seeking relief under the PCRA. We must first determine if that was proper, because PCRA petitions are subject to a statutory time limitation. The PCRA subsumes requests for habeas corpus relief except when there is no remedy available under the PCRA. ***Commonwealth v. Fahy***, 737 A.2d 214, 223-24 (Pa. 1999). Alleged violations of constitutional law that undermine the truth-determining process, penalty phase claims, and ineffective assistance of counsel claims are examples of claims for which a PCRA remedy exists and for which a writ of habeas corpus is no longer available. ***Commonwealth v. Breakiron***, 781 A.2d 94, 96 n.2 (Pa. 2001); ***Fahy***, 737 A.2d at 224.

Appellant's petition alleges constitutional violations. Specifically, Appellant asserts that the criminal statutes under which he was convicted were enacted in violation of the Pennsylvania and United States

⁵ According to the prisoner mailbox rule, we deem a document filed when the prisoner places it in the hands of prison authorities for mailing. ***Commonwealth v. Wilson***, 911 A.2d 942, 944 n.2 (Pa. Super. 2006). Appellant's notice of appeal is post-marked March 16, 2012, so we deem it filed as of that date. Appellant's notice of appeal was timely.

Constitutions. Petition, 11/19/2008, at 1-2. Because these are constitutional claims which can be remedied under the PCRA, Appellant's filing appropriately was treated as a PCRA petition. **See Breakiron; Fahy, supra.**

Next, we must determine whether we have jurisdiction over Appellant's PCRA petition. The PCRA provides that:

(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.

42 Pa.C.S.A. § 9545(b)(1).

"The PCRA's time restrictions are jurisdictional in nature. Thus, [i]f 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) (quoting **Commonwealth v.**

Chester, 895 A.2d 520, 522 (Pa. 2006)). Statutory time limitations “are mandatory and interpreted literally; thus, a court has no authority to extend filing periods except as the statute permits.” **Fahy**, 737 A.2d at 222.

Appellant’s judgment of sentence was entered on February 25, 1992. His direct appeal was affirmed on April 15, 1998.⁶ The Pennsylvania Supreme Court denied *allocatur* on September 10, 1998.⁷ Appellant’s judgment of sentence became final on or about December 10, 1998, ninety days after the Pennsylvania Supreme Court’s September 10, 1998 order denying *allocatur*, when the time for filing for a writ of *certiorari* in the United States Supreme Court expired. U.S. Sup. Ct. R. 13.

Pursuant to 42 Pa.C.S.A. § 9545(b)(1), Appellant had until December 10, 1999 to file a timely PCRA, unless he alleged one of the enumerated exceptions. Appellant does not address the time bar, nor does he allege that any of the exceptions apply. Petition, 11/19/2008, at 1-2. His PCRA petition is untimely. We are without jurisdiction to consider his claims.

Order affirmed. Jurisdiction relinquished.

⁶ **Commonwealth v. Brokenbough**, 1383 Phila. 1997 (Pa. Super. 1998) (unpublished memorandum).

⁷ **Commonwealth v. Brokenbaugh**, 727 A.2d 1116 (Pa. 1998) (table).