

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ROBERT BRUCE McKINLEY,	:	
	:	
Appellant	:	No. 906 MDA 2013

Appeal from the PCRA Order entered on May 7, 2013  
in the Court of Common Pleas of Cumberland County,  
Criminal Division, No. CP-21-CR-0002553-2008

BEFORE: DONOHUE, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED DECEMBER 24, 2013**

Robert Bruce McKinley (“McKinley”) appeals, *pro se*, from the Order dismissing his Petition for relief pursuant to the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A §§ 9541-9546. We affirm.

On August 12, 2009, McKinley was found guilty of possession of a controlled substance (heroin) with intent to deliver, simple possession of a controlled substance (heroin) and unlawful possession of drug paraphernalia. On October 6, 2009, the trial court sentenced McKinley to five to ten years in prison. On July 14, 2010, this Court affirmed the judgment of sentence. **See Commonwealth v. McKinley**, 6 A.3d 561 (Pa. Super. 2010) (unpublished memorandum).

McKinley subsequently filed a Motion to Reconsider and/or Modify Sentence *Nunc Pro Tunc* on April 12, 2011. The Motion was treated as

McKinley's first PCRA Petition, which the PCRA Court denied on August 11, 2011. McKinley thereafter filed an application to file a *nunc pro tunc* appeal of his judgment of sentence, which was denied on April 4, 2012.

McKinley filed the instant PCRA Petition on January 28, 2013. The PCRA Court dismissed McKinley's Petition on May 7, 2013. McKinley filed a timely Notice of appeal.<sup>1</sup>

On appeal, McKinley raises the following questions for our review:

1. Did [the PCRA] court abuse its discretion by dismissing [McKinley's] PCRA [Petition] as untimely?
2. Was [McKinley] denied due process by the trial court ordering Act 84 on his [bank] account?
3. Was [McKinley] not given the opportunity to testify at his sentencing as was required by law?
4. [Were McKinley's] Sixth Amendment rights violated when he was sentenced to a mandatory sentence?

Brief for Appellant at VII.

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error.

***Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

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<sup>1</sup> Also on January 28, 2013, McKinley filed a separate Motion for Modification/Suspension of Court Costs and Fines. This Motion was denied on May 29, 2013. McKinley did not appeal this denial.

Initially, under the PCRA, any PCRA petition “*including a second or subsequent petition*, shall be filed within one year of the date the judgment becomes final[.]” 42 Pa.C.S.A. § 9545(b)(1) (emphasis added). A judgment of sentence becomes 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.” **Id.** § 9545(b)(3). The PCRA’s timeliness requirements are jurisdictional in nature, and a court may not address the merits of the issues raised if the PCRA petition was not timely filed. **Commonwealth v. Albrecht**, 994 A.2d 1091, 1093 (Pa. 2010).

Here, McKinley’s judgment of sentence became final on August 16, 2010, when the period of time to file an appeal with our Supreme Court expired. **See** 42 Pa.C.S.A. § 9545(b)(3); **Commonwealth v. Rojas**, 874 A.2d 638, 643 (Pa. Super. 2005).<sup>2</sup> McKinley had until August 16, 2011, to file the instant PCRA Petition, but did not do so until January 28, 2013. Thus, McKinley’s Petition is facially untimely under the PCRA.

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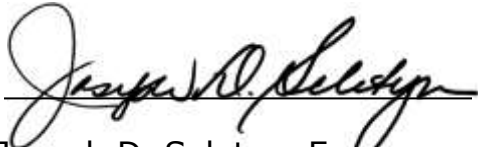
<sup>2</sup> McKinley contends that the April 4, 2012 Order denying his application to file a *nunc pro tunc* appeal of his judgment of sentence constitutes the date on which his judgment of sentence became final. McKinley thus argues that, because the instant Petition was filed within one year of the April 4, 2012 Order, it was timely filed. McKinley further argues that, because the April 4, 2012 Order denying his application to file a *nunc pro tunc* appeal of his judgment of sentence indicated that such denial was without prejudice to McKinley to file a PCRA petition, his right to file a PCRA petition was preserved. McKinley has not cited to any relevant case law to support these arguments. **See** Pa.R.A.P. 2119(a). Further, as noted above, McKinley’s judgment of sentence became final on August 16, 2010.

Pennsylvania courts may consider an untimely PCRA petition if the appellant can explicitly plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1). Any PCRA petition invoking one of these exceptions “shall be filed within 60 days of the date the claim could have been presented.” **Id.** § 9545(b)(2); **Albrecht**, 994 A.2d at 1094.

Here, McKinley superficially pled that the exceptions set forth in 42 Pa.C.S.A. § 9545(b)(1)(ii) and (iii) apply to his Petition, but failed to identify any facts or case law to prove the applicability of any of the exceptions to the PCRA timeliness requirements. **See** 42 Pa.C.S.A. § 9545(b)(1); **Albrecht**, 994 A.2d at 1094. Accordingly, McKinley has failed to overcome the untimeliness of his Petition.<sup>3</sup>

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/24/2013

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<sup>3</sup> McKinley’s claim that he was denied due process by the trial court ordering Act 84 on his bank account is not an issue that was raised by McKinley in this PCRA Petition. This issue was raised in a separate Motion filed by McKinley, which was denied in a separate Order dated May 29, 2013. Because McKinley did not appeal this Order, we need not consider that issue.