

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DONALD MESSINA,	:	
	:	
Appellant	:	No. 996 WDA 2012

Appeal from the Order May 10, 2012  
 In the Court of Common Pleas of Clarion County  
 Criminal Division No(s): CP-16-CR-0000528-2004

BEFORE: STEVENS, P.J., MUNDY, and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: February 25, 2013

Appellant, Donald Messina, appeals *pro se* from the order dismissing, as untimely, his fourth petition filed under the Pennsylvania Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541–9456. We affirm.

This Court previously summarized the relevant procedural history to this appeal as follows:

On April 28, 2005, a jury found [Appellant] guilty of four counts of Statutory Sexual Assault and one count of Corruption of Minors for having sexual intercourse with a fourteen year old female. The court sentenced [Appellant] to eighteen to thirty-six months on each charge of Sexual Assault resulting in an aggregate term of incarceration of seventy-two to one hundred and forty-four months on the Statutory

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\* Former Justice specially assigned to the Superior Court.

Sexual Assault charges and a consecutive five year probationary sentence on the Corruption of Minors charge.

PCRA Ct. Op., 9/16/05, at 1. Appellant filed a direct appeal, and this Court affirmed the judgment of sentence on August 28, 2006. ***Commonwealth v. Messina***, No. 1831 WDA 2005 at 9 (Pa. Super. unpublished memorandum filed Aug. 28, 2006).

***Commonwealth v. Messina***, No. 168 WDA 2011 at 1–2 (Pa. Super. unpublished memorandum filed Aug. 30, 2011). Appellant’s third PCRA petition, which was filed on December 8, 2010, was dismissed by the trial court as untimely. This Court affirmed the dismissal of that petition on August 30, 2011. ***Id.***

Four months later, on December 27, 2011, Appellant filed the *pro se* PCRA petition giving rise to this appeal. Appellant asserted a claim identical to one previously set forth in his third petition, specifically: “A defective arrest warrant, dated August 17, 2004, now the signature on this, defective arrest warrant, does not, match the signature’s on the affidavit of probable cause and on the State Police criminal complaint.” PCRA Pet., 12/27/11 at 3. On April 30, 2012, Appellant filed yet another PCRA petition alleging the ineffectiveness of trial counsel. On May 1, 2012, the PCRA court entered a Pa.R.Crim.P. 907 notice of intent to dismiss the petition, stating that Appellant failed to plead or prove any exception to the PCRA time-bar. Order, 5/1/12. Appellant filed a response to the Rule 907 notice on May 10, 2012, alleging that his conviction constituted a miscarriage of justice. That

same day, the PCRA court, after considering Appellant's response, dismissed the petition without a hearing. This appeal timely followed.<sup>1</sup>

Appellant, in the *pro se* brief submitted in support of this appeal, asserts that the arrest warrant was defective. Appellant also presents multiple claims of ineffective assistance of counsel.

However, Appellant again fails to argue the threshold issue of whether this most recent attempt at post conviction relief is timely under the PCRA. Therefore, we need only repeat:

[W]hen reviewing the propriety of an order dismissing a PCRA petition on timeliness grounds, [this Court] determines whether the decision of the trial court is supported by the evidence of record and is free of legal error. The trial court's findings with regard to the timeliness of a PCRA petition will not be disturbed unless there is no support for those findings in the certified record.

***Commonwealth v. Williamson***, 21 A.3d 236, 240 (Pa. Super. 2011) (citations omitted).

As a prefatory matter, we determine whether Appellant's PCRA petition is timely. We note:

"If the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed without a hearing because Pennsylvania courts are without jurisdiction to consider the merits of the petition."

***Id.*** at 241 n.4 (citation omitted).

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<sup>1</sup> The PCRA court did not order Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

The time requirements for filing a PCRA petition are as follows:

- (1) Any petition under [the PCRA], 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.
- (3) For purposes of this subchapter, a judgment 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.

42 Pa.C.S. § 9545(b)(1)-(3).

This Court affirmed Appellant's judgment of sentence on direct appeal on August 28, 2006. Appellant did not seek review in our Supreme Court. Therefore, his judgment of

sentence became final on September 27, 2006, when the time to seek allowance of appeal with our Supreme Court expired. **See** 42 Pa.C.S. § 9545(b)(3); **see also** *Commonwealth v. Rojas*, 874 A.2d 638, 643 (Pa. Super. 2005) (noting that appellant had thirty days to seek direct review in Supreme Court). Accordingly, Appellant had until September 27, 2007 to file his PCRA petition. **See** 42 Pa.C.S. § 9545(b)(1).

***Commonwealth v. Messina***, No. 168 WDA 2011 at 2–4.

In the present appeal, Appellant did not file the PCRA petition giving rise to this appeal until December 27, 2011, nor did he plead or prove any of the statutory exceptions to the PCRA's filing deadlines in his myriad *pro se* filings in the PCRA court. Moreover, Appellant failed to demonstrate to this Court how the trial court erred in dismissing the instant petition as untimely in his *pro se* brief to this Court.<sup>2</sup> Therefore, the order of the PCRA court is affirmed.

Order affirmed.

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<sup>2</sup> We further note that, although Appellant is proceeding *pro se*, his brief did not conform to the Pennsylvania Rules of Appellate Procedure that govern the form and content of an appellate brief. **See** Pa.R.A.P. 2101, 2111–2133.