

**[J-25-2006]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 375 CAP
	:	
Appellee	:	
	:	Appeal from the Order entered on 4/8/02
	:	in the Court of Common Pleas, Criminal
v.	:	Division of Erie County denying the PCRA
	:	relief at No. 1325 A & B 1988
	:	
DAVID COPENHEFER,	:	
	:	
Appellant	:	SUBMITTED: January 24, 2006

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: December 28, 2007**

I agree with Mr. Justice Baer that the decision in Commonwealth v. Rizzuto, 566 Pa. 40, 777 A.2d 1069 (2001), has a constitutional dimension. See Dissenting Opinion, slip op. at 1. However, as the majority explains, the exception to the PCRA's one-year time bar set forth in Section 9545(b)(1)(iii) applies only where a constitutional right already has been determined by a court to be retroactive to cases pending on collateral review. See Majority Opinion, slip op. at 5-6 (citing Commonwealth v. Abdul-Salaam, 571 Pa. 219, 226, 812 A.2d 497, 501 (2002)). Since this circumstance is not present here, the jurisdictional one-year time bar facially applies. With regard to Appellant's equitable arguments, this Court has repeatedly reinforced that the jurisdictional time limitations are not subject to equitable exceptions. See Commonwealth v. Robinson, 575 Pa. 500, 508, 837 A.2d 1157, 1161 (2003). Thus, I believe that the only remaining

question concerns the constitutionality of the time bar as applied to Appellant's circumstance.<sup>1</sup>

Appellant argues that the time bar is not reasonable as applied to his circumstance, and that it therefore violates relevant constitutional norms. In this regard, Appellant observes that this Court has determined that, under the Pennsylvania Constitution, the Legislature may impose only reasonable restrictions on claims traditionally within the purview of state habeas corpus review. See Initial Brief for Appellant at 11-13 (citing Abdul-Salaam, 571 Pa. at 226-27, 812 A.2d at 501).

I recognize the paradoxical nature of Appellant's situation, given that he seeks application of a rule of law that overturned the holding of his own direct appeal. Nevertheless, in terms of the overall reasonableness of enforcing the time limitation on state collateral review, it bears mention that the sentencing jury did initially note the absence of prior offenses as a mitigating factor on the verdict slip, but subsequently rejected it by drawing a line through the words "first offense" in the mitigation category. It seems implausible that jurors who considered but rejected the notion that Appellant's lack of a criminal history represented meaningful mitigation would find that this factor offset the substantial aggravation that was established by the Commonwealth. Further, I remain of the view that the time bar is a rational and perhaps necessary legislative response to serial challenges raised by prisoners that undermine finality and tax government resources, and to effectively implement a limitation, exceptions by their nature must contain effective boundaries. See Bennett, \_\_\_ Pa. at \_\_\_, 930 A.2d at 1279 (Saylor, J., dissenting). As applied here, it forecloses a redundant effort to return

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<sup>1</sup> Recently, a majority of the Court reaffirmed that the timing provisions of the PCRA are subject to as-applied constitutional challenges based on claims of unreasonable application. See Commonwealth v. Bennett, \_\_\_ Pa. \_\_\_, \_\_\_, 930 A.2d 1264, 1273 (2007); see also Abdul-Salaam, 571 Pa. at 226-27, 812 A.2d at 501.

to state court to assert claims for relief from a twenty-year-old sentence upon which Appellant already has obtained relief in federal court, subject only to the remaining federal appellate review.

As I am unable to credit Appellant's argument that the one-year time bar is unreasonable as applied to him, I join the majority opinion, subject only to the above difference.