

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

HECTOR LUIS SOLARES-ACOSTA,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1694 MDA 2012

Appeal from the PCRA Order August 22, 2012
In the Court of Common Pleas of Lancaster County
Criminal Division at No.: CP-36-CR-0001298-2009

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

FILED JULY 26, 2013

Appellant, Hector Luis Solares-Acosta, appeals from the order dismissing his first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We quash.

On May 17, 2010, after a written and oral colloquy, Appellant pleaded guilty to one count each of rape of a child¹, statutory sexual assault², involuntary deviate sexual intercourse with a child³, involuntary deviate

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 3121(c).

² 18 Pa.C.S.A. § 3122.1(a).

³ 18 Pa.C.S.A. § 3123(b).

sexual intercourse with a person less than sixteen years of age⁴, sexual assault⁵, aggravated indecent assault of a child⁶, aggravated indecent assault of a person less than sixteen years of age⁷, indecent exposure⁸, corruption of minors⁹, and three counts each of indecent assault of a person less than thirteen years of age¹⁰, and indecent assault of a person less than sixteen years of age.¹¹ The charges stemmed from Appellant's sexual abuse of his stepdaughter, S.R., over an approximate three-year period, while S.R. was eleven to fourteen years old. The trial court directed preparation of a pre-sentence investigation report and ordered Appellant to undergo an evaluation by the Sexual Offenders Assessment Board prior to sentencing.

On August 23, 2010, the trial court held a hearing and determined that Appellant met the criteria for sexually violent predator status. On August 27, 2010, the court sentenced Appellant to an aggregate term of not less

⁴ 18 Pa.C.S.A. § 3123(a)(7).

⁵ 18 Pa.C.S.A. § 3124.1.

⁶ 18 Pa.C.S.A. § 3125(b).

⁷ 18 Pa.C.S.A. § 3125(a)(8).

⁸ 18 Pa.C.S.A. § 3127(a).

⁹ 18 Pa.C.S.A. § 6301(a)(1).

¹⁰ 18 Pa.C.S.A. § 3126(a)(7).

¹¹ 18 Pa.C.S.A. § 3126(a)(8).

than twenty-three nor more than fifty years' incarceration following a hearing. On September 8, 2010, Appellant filed a motion for reconsideration of his sentence, which the court denied on October 6, 2010. Appellant did not file a direct appeal.

On August 5, 2011, Appellant, acting *pro se*, filed a first PCRA petition. The PCRA court appointed counsel to represent him, and on December 16, 2011, counsel filed an amended petition. The court held a hearing on March 29, 2012, and entered its opinion and order denying Appellant's PCRA petition on August 22, 2012. Appellant, through counsel, filed a notice of appeal from the PCRA court's order on September 24, 2012.¹²

Appellant raises three issues for our review:

[1.] Did the [PCRA] court err by ruling that Appellant's claims regarding the sexually violent predator hearing are not cognizable under the [PCRA]?

[2.] Did trial counsel fail to provide effective assistance of counsel by not perfecting Appellant's direct appeal rights despite Appellant's specific communication that he wanted to appeal his sentence?

¹² We note with disapproval that Appellant filed his Rule 1925(b) statement of errors on October 19, 2012, two days beyond the twenty-one day deadline set by the PCRA court. **See** Pa.R.A.P. 1925(b)(2). He also filed a "request to file [a 1925(b) statement] *nunc pro tunc*" contemporaneous with his Rule 1925(b) statement, acknowledging the statement's untimeliness and asserting "failure to have timely filed the concise statement will not hinder . . . [this] appeal." (**See** Appellant's Request to file Rule 1925(b) statement, 10/19/12, at 2). The PCRA court filed a Rule 1925(a) opinion on October 22, 2012, referring this Court to its August 22, 2012 opinion for a discussion of Appellant's issues. **See** Pa.R.A.P. 1925(a).

[3.] Did trial counsel fail to provide effective assistance of counsel by not presenting an expert witness to rebut the Commonwealth's evidence that [Appellant] is a sexually violent predator and by failing to advise [Appellant] of his right to call such a witness prior to entering his guilty plea?

(Appellant's Brief, at 4 (footnote omitted)).

Before we may consider the merits of Appellant's issues, we must first address whether his appeal is properly before this Court. "It is well settled that the timeliness of an appeal implicates our jurisdiction and may be considered *sua sponte*." **Commonwealth v. Crawford**, 17 A.3d 1279, 1281 (Pa. Super. 2011) (citation omitted).

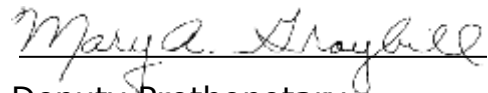
"Jurisdiction is vested in the Superior Court upon the filing of a timely notice of appeal." **Id.** (citation omitted). "In order to preserve the right to appeal a final order of the [PCRA] court, a notice of appeal must be filed within thirty days after the date of entry of that order. Pa.R.A.P. 903(a)." **Commonwealth v. Moir**, 766 A.2d 1253, 1254 (Pa. Super. 2000) (case citations omitted). Pennsylvania Rule of Appellate Procedure 105 provides, in relevant part, that this Court "may not enlarge the time for filing a notice of appeal[.]" Pa.R.A.P. 105(b); **see also Commonwealth v. Valentine**, 928 A.2d 346, 349 (Pa. Super. 2007) (citation omitted) (stating that "[t]ime limitations on the taking of appeals are strictly construed and cannot be extended[.]").

Here, the PCRA court entered its order denying Appellant's PCRA petition on August 22, 2012. Therefore, the deadline for filing a timely notice of appeal was thirty days later, on Friday, September 21, 2012. **See**

Pa.R.A.P. 903(a); **Moir, supra** at 1254. Appellant did not comply with this deadline, and instead filed his notice of appeal on Monday, September 24, 2012. Accordingly, because Appellant's notice of appeal was untimely, we quash this appeal. **See Crawford, supra** at 1281 (quashing appeal where appellant failed to file a timely notice of appeal from order dismissing PCRA petition).

Appeal quashed.

Judgment Entered.


Deputy Prothonotary

Date: 7/26/2013