

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY E. PROCTOR,	:	
	:	
Appellant	:	No. 1342 WDA 2013

Appeal from the PCRA Order entered on August 9, 2013
in the Court of Common Pleas of Erie County,
Criminal Division, No. CP-25-CR-0000862-2010

BEFORE: BOWES, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED: April 22, 2014

Anthony E. Proctor ("Proctor") appeals, *pro se*, from the dismissal of his second Petition for relief filed pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In September 2010, Proctor was convicted, following a jury trial, of simple assault and recklessly endangering another person. The trial court sentenced Proctor to one to two years in prison. On appeal, this Court affirmed Proctor's Judgment of Sentence. **See Commonwealth v. Proctor**, 34 A.3d 234 (Pa. Super. 2011) (unpublished memorandum).

In May 2012, Proctor timely filed his first *pro se* PCRA Petition. In response, Proctor's court-appointed PCRA counsel filed a "no merit" letter, pursuant to **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*), and

requested that the PCRA court grant her permission to withdraw as counsel. In response, the PCRA court issued a comprehensive Opinion and Order, dismissing Proctor's Petition without a hearing and granting PCRA counsel permission to withdraw. Proctor filed a *pro se* appeal, and this Court affirmed the dismissal. ***See Commonwealth v. Proctor***, 81 A.3d 1002 (Pa. Super. 2012) (unpublished memorandum).

In July 2013, Proctor filed the instant *pro se* PCRA Petition. Thereafter, the PCRA court gave Proctor Notice of its intent to dismiss his Petition without a hearing, based upon the court's determination that the Petition was untimely under the PCRA. Proctor filed a *pro se* response. By an Order entered on August 9, 2013, the PCRA court dismissed Proctor's PCRA Petition. Proctor timely filed a *pro se* Notice of Appeal.

On appeal, Proctor presents the following issues for our review:

1. Whether [Proctor] can successfully invoke the ["governmental interference" timeliness exception to the PCRA's time bar] through his claims that the government interfered with his ability to present his claims?
2. Whether the Pennsylvania Superior Court's Opinion ... regarding [Proctor's] first[,] timely PCRA [P]etition qualifies as a previously unknown "fact" capable of triggering the timeliness exception codified at section 9545(b)(1)(ii) of the Post Conviction Relief Act?

Brief for Appellant at 3.

Initially, we note that 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). 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).

Proctor filed the instant PCRA Petition over two years after his Judgment of Sentence became final. Thus, Proctor's Petition is facially untimely under the PCRA.

However, courts may consider an untimely PCRA petition if the appellant explicitly pleads and proves one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1). “[I]t is the petitioner’s burden to plead in the petition and prove that one of the exceptions applies. That burden necessarily entails an *acknowledgement by the petitioner that the PCRA petition under review is untimely* but that one or more of the exceptions apply.” **Commonwealth v. Crews**, 863 A.2d 498, 501 (Pa. 2004) (citations omitted, emphasis in original).

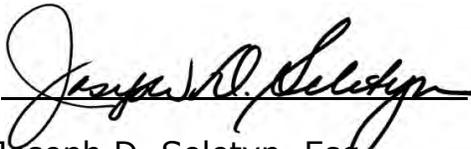
Here, in the instant *pro se* PCRA Petition, Proctor neither acknowledges that the Petition is untimely, nor pleads any of the three exceptions to the PCRA’s time bar. Proctor’s Petition only raises several ineffectiveness of counsel claims concerning his trial counsel and PCRA counsel. However, “allegations of ineffective assistance of counsel will not overcome the jurisdictional timeliness requirements of the PCRA.” **Commonwealth v. Wharton**, 886 A.2d 1120, 1127 (Pa. 2005).

Furthermore, although Proctor invokes two of the exceptions to the PCRA's time bar in his appellate brief, this is immaterial, as he did not plead any of the exceptions in his PCRA Petition. **See id.** at 1126 (stating that a PCRA petitioner may not raise one of the statutory exceptions for the first time on appeal); **see also** Pa.R.A.P. 302(a).

Accordingly, we conclude that the PCRA court properly dismissed Proctor's second PCRA Petition as untimely.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/22/2014