

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
KIERAN LOYD,	:	
	:	
Appellant	:	No. 1346 EDA 2013

Appeal from the PCRA Order April 4, 2013
 In the Court of Common Pleas of Philadelphia County
 Criminal Division No(s): CP-51-CR-0010966-2009

BEFORE: BENDER, P.J., SHOGAN, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED APRIL 22, 2014**

Appellant, Kieran Loyd, appeals *pro se* from the order entered in the Philadelphia County Court of Common Pleas dismissing his petition filed pursuant to the Post Conviction Relief Act¹ ("PCRA"). Appellant contends the court did not have subject matter jurisdiction to try his case because it was based upon an invalid law. We affirm.

The PCRA court summarized the procedural posture of this case as follows:

On March 9, 2010, [Appellant] entered a negotiated guilty plea to third degree murder and criminal conspiracy.

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

In accordance with the terms of the plea agreement, this court sentenced [him] to consecutive prison terms of twenty (20) to forty (40) years on the murder bill and five (5) to (10) years on the conspiracy bill. [Appellant] did not file a post-sentence Motion to Withdraw guilty plea. Nor did he file an appeal to the Pennsylvania Superior Court.

On April 13, 2011, [Appellant] filed a Writ of *Habeas Corpus*. This court denied the Writ of *habeas Corpus* for failing to state a cause of action on July 26, 2011. On August 18, 2011, [Appellant] filed a *pro se* PCRA petition challenging the legality of his prosecution and conviction. The court thereafter appointed PCRA counsel to represent petitioner. PCRA counsel filed a brief pursuant to ***Commonwealth v. Finley***, 379 Pa. Super. 390, 550 A.2d 213 (1988), stating that the issues raised in [Appellant's] *pro se* petition were without merit, and that there were no additional issues which could be raised in an amended PCRA petition.

On April 4, 2013, after reviewing the guilty plea record, PCRA counsel's ***Finley*** brief^[2] and [Appellant's] *pro se* PCRA filing, this court dismissed the PCRA petition for lack of merit.^[3] This timely *pro se* appeal followed.

PCRA Ct. Op., 5/20/13, at 1-2. Appellant was not ordered to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

Appellant raises the following issues for our review, which we reproduce verbatim:

² The PCRA court granted counsel's petition to withdraw. Order, 4/4/13.

³ We note that in the Pa.R.Crim.P. 907 form notice of intent to dismiss the PCRA petition, the court indicated, *inter alia*, that the petition was untimely filed pursuant to 42 Pa.C.S. § 9545(b). Notice Pursuant to Pa.R.Crim.P. 907, 2/1/13. The PCRA court dismissed the PCRA petition and stated that the petition was untimely. N.T., 4/4/13, at 2. In the May 20, 2013 opinion, however, the PCRA court addressed the merits of Appellant's claims.

A. Whether the trial court erred in denying plaintiff P.C.R.A. for lack of subject matter jurisdiction.

B. Whether the trial court tried this plaintiff under invalid laws that has no enacting clause.

C. Whether the trial court used fraudulent practices to create a triable issue for the invalid charging complaint.

Appellant's Brief at 5.

Before examining the merits of Appellant's claims, we consider whether the PCRA court had jurisdiction to entertain the underlying PCRA petition. On appellate review of a PCRA ruling, "we determine whether the PCRA court's ruling is supported by the record and free of legal error." ***Commonwealth v. Marshall***, 947 A.2d 714, 719 (Pa. 2008) (citation omitted).

We . . . turn to the time limits imposed by the PCRA, as they implicate our jurisdiction to address any and all of Appellant's claims. To be timely, a PCRA petition must be filed within one year of the date that the petitioner's judgment of sentence became final, unless the petition alleges and the petitioner proves one or more of the following statutory exceptions:

(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.

42 Pa.C.S. § 9545(b)(1).

We emphasize that it is the petitioner who bears the burden to allege and prove that one of the timeliness exceptions applies. In addition, a petition invoking any of the timeliness exceptions must be filed within 60 days of the date the claim first could have been presented. 42 Pa.C.S. § 9545(b)(2).

Id. at 719-20 (some citations omitted).

Appellant was sentenced on March 9, 2010 and he did not file a post-sentence motion or a direct appeal.⁴ “In a criminal case in which no post-sentence motion has been filed, the date of imposition of sentence in open court shall be deemed to be the date of entry of the judgment of sentence.” Pa.R.A.P. 108(d)(2). Under the PCRA, “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)(3). Hence, Appellant’s judgment of sentence became final on April 8, 2010, thirty days after it was imposed. **See id.; Commonwealth v. Pollard**, 911 A.2d 1005, 1007 (Pa. Super. 2006) (finding that where defendant did not file direct

⁴ On April 13, 2011, Appellant filed a *pro se* petition for writ of *habeas corpus*. The PCRA court considered the petition as a PCRA petition noting “the PCRA subsumes all *Habeas Corpus* petitions. **Commonwealth v. Peterkin**, [] 722 A.2d 638 at 640[; **s]ee also** 42 Pa.C.S. § 9542” PCRA Ct. Op. at 1 n.1.

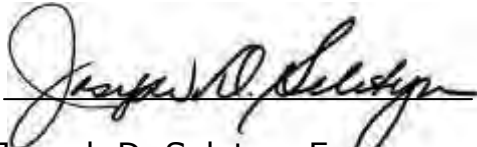
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appeal, his judgment of sentence became final thirty days after he was sentenced). Therefore, Appellant was generally required to file his PCRA petition by April 8, 2011. **See** 42 Pa.C.S. § 9545(b)(1). He filed his PCRA petition on August 18, 2011. Therefore, it is patently untimely.

In his PCRA petition, Appellant did not affirmatively plead or prove any of the three exceptions to the PCRA's timeliness requirement. **See Marshall**, 947 A.2d at 719. Thus, the PCRA court had no jurisdiction to address Appellant's claims.⁵ **See id.**

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/22/2014

⁵ "We may affirm the trial court on any ground." **Commonwealth v. Lynch**, 820 A.2d 728, 730 n.3 (Pa. Super. 2003).