

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

JAMES REUBEN ROBINSON

Appellant

No. 610 MDA 2013

Appeal from the PCRA Order March 11, 2013
In the Court of Common Pleas of Cumberland County
Criminal Division at No(s): CP-21-CR-0080008-1986

BEFORE: LAZARUS, J., OTT, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

FILED APRIL 10, 2014

James Reuben Robinson (“Appellant”) appeals from the order dismissing his petition filed pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

On May 16, 1986, a jury convicted Appellant of first degree murder¹ for killing David G. McBride during a gas station robbery on January 2, 1986, when Appellant was 19 years old. On February 3, 1987, the sentencing court imposed a sentence of life imprisonment for the first degree murder conviction.

Appellant filed the instant PCRA petition on August 8, 2012. The PCRA court appointed counsel and conducted a hearing on the petition on

¹ 18 Pa.C.S. § 2502(a).

November 19, 2012. The PCRA court denied the PCRA petition on March 11, 2013. Appellant timely appealed.² The PCRA court did not order Appellant to file a Statement of Errors Complained of On Appeal pursuant to Pa.R.A.P. 1925(b), and did not issue a Pa.R.A.P. 1925(a) opinion.

On appeal, Appellant presents the following issue for our review: “Did the PCRA court err in denying appellant’s petition for relief when it held **Miller v. Alabama**, 132 S.Ct. 2455 (2012) does not apply to the Appellant, and therefore, Appellant’s statutory sentence of life in prison was unconstitutional?” Appellant’s Brief at 7.

In reviewing an order denying PCRA relief, our well-settled standard of review is “to determine whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record.” **Commonwealth v. Barndt**, 74 A.3d 185, 191-192 (Pa.Super.2013) (internal quotations and citations omitted).

“It is undisputed that a PCRA petition must be filed within one year of the date that the judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1).” **Commonwealth v. Hernandez**, 79 A.3d 649, 651 (Pa.Super.2013). “This time requirement is mandatory and jurisdictional in

² On April 8, 2013, the Appellant filed both counseled and *pro se* Notices of Appeal that were docketed as 610 MDA 2013 and 611 MDA 2013, respectively. On May 29, 2013, this Court dismissed 611 MDA 2013 as duplicative of 610 MDA 2013.

nature, and the court may not ignore it in order to reach the merits of a petition.” **Id.** (citing **Commonwealth v. Murray**, 753 A.2d 201, 203 (Pa.2000)). A judgment of sentence “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 seeking the review.” 42 Pa.C.S.A. § 9545(b)(3). However, a facially untimely petition may be received where any of the PCRA’s three limited exceptions to the time for filing the petition are met. **Hernandez**, 79 A.3d at 651 (footnote omitted). These exceptions include:

(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.A. § 9545(b)(1)(i)-(iii). As our Supreme Court has repeatedly stated, the petitioner maintains the burden of pleading and proving that one of these exceptions applies. **Commonwealth v. Abu-Jamal**, 941 A.2d 1263, 1268 (Pa.2008), *cert. denied*, 555 U.S. 916 (2008). Further,

[a] petition invoking one of these exceptions must be filed within sixty days of the date the claim could first have been presented. 42 Pa.C.S.A. § 9545(b)(2). In order to be entitled to the exceptions to the PCRA's one-year filing deadline, the petitioner must plead and prove specific facts that demonstrate his claim was raised within the sixty-day time frame under section 9545(b)(2).

Hernandez, 79 A.3d at 651-652 (internal quotations omitted).

On June 27, 1988, our Supreme Court denied Appellant's direct appeal petition for allowance of appeal from this Court's affirmation of his judgment of sentence on January 11, 1988. Appellant's sentence became final on November 28, 1988, when the Supreme Court of the United States denied his petition for writ of certiorari. Accordingly, Appellant had until November 28, 1989 to timely file a PCRA petition. Appellant filed the instant petition on August 14, 2012, nearly 23 years after the expiration of his PCRA time limitation. Accordingly, Appellant's petition is facially untimely. Thus, he must plead and prove that his petition falls under one of the Section 9545 exceptions set forth in the PCRA. See 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii).

To overcome the PCRA's time bar, Appellant argues that the Supreme Court of the United States' decision in **Miller v. Alabama** created a new, retroactive constitutional right, which constitutes a timeliness exception pursuant to § 9545(b)(1)(iii). See Appellant's Brief, at 11-16. Appellant concedes he was 19, and therefore not a minor, when he committed his crimes. See P.C.R.A. Petition, at 3; Appellant's Brief, at 8. However, he contends that this Court should extend the **Miller** holding to his circumstances because he will serve a longer sentence than older offenders

and because scientific studies indicate the human brain continues to develop into an individual's twenties. **See** Appellant's Brief, at 8.

Appellant filed his PCRA petition on August 8, 2012, within sixty days after June 25, 2012, the date the Supreme Court decided **Miller**. Therefore, Appellant satisfies the Section 9545(b)(2) requirement that a petition must invoke a Section 9545(b)(1)(iii) exception within sixty days after the claim first could have been presented. Nevertheless, Appellant's **Miller** argument fails for other reasons. In **Commonwealth v. Cintora**, 69 A.3d 759 (Pa.Super.2013), this Court declined to extend **Miller** to defendants under the age of 25. The **Cintora** appellants³ contended:

[T]hat because Miller created a new Eighth Amendment right, that those whose brains were not fully developed at the time of their crimes are free from mandatory life without parole sentences, and because research indicates that the human mind does not fully develop or mature until the age of 25, it would be a violation of equal protection for the courts to treat them or anyone else with an immature brain, as adults. Thus, they conclude that the holding in **Miller** should be extended to them as they were under the age of 25 at the time of the murder and, as such, had immature brains.

Cintora, 69 A.3d at 764. This Court rejected this argument, concluding that "[a] contention that a newly-recognized constitutional right **should** be

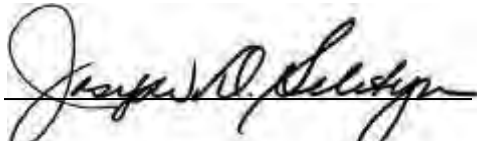
³ **Cintora** involved two defendants, aged 19 and 21 at the time of their underlying crimes.

extended to others does not render [a] petition timely pursuant to section 9545(b)(1)(iii).” **Id.** (emphasis in original).

Appellant now presents the same argument that the Court rejected in **Cintora**. As in **Cintora**, the Appellant’s claim that a newly-recognized constitutional right should be extended to cover his circumstances does not provide him with a § 9545(b)(1)(iii) timeliness exception. Further, even had Appellant actually been a minor at the time he committed these crimes, he would not be entitled to relief, as our Supreme Court has determined that the right recognized in **Miller** does not apply retroactively. **See Commonwealth v. Cunningham**, 81 A.3d 1, 11 (Pa.2013). Accordingly, the PCRA court did not err in denying this claim.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/10/2014