

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
NOEL CARLOS RIVERA, JR.,	:	
	:	
Appellant	:	No. 1319 MDA 2013

Appeal from the PCRA Order July 1, 2013,
 Court of Common Pleas, Lancaster County,
 Criminal Division at No(s): CP-36-CR-0004301-2000,
 CP-36-CR-0004302-2000, CP-36-CR-0004303-2000,
 CP-36-CR-0004304-2000 and CP-36-CR-0004305-2000

BEFORE: BENDER, P.J.E., DONOHUE and STRASSBURGER*, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED APRIL 11, 2014

Noel Carlos Rivera, Jr. ("Rivera") appeals from the order of court dismissing his second petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In 2001, Rivera pled guilty to multiple counts of robbery, one count of aggravated assault, and one count of resisting arrest. He was sentenced to 20 to 40 years of imprisonment. This Court affirmed the judgment of sentence on March 27, 2002. Rivera filed his first PCRA petition on January 15, 2003, which the PCRA court dismissed on July 7, 2003. Rivera filed the PCRA petition at issue in this appeal on April 2, 2013. The trial court issued notice of its intent to dismiss the petition without a hearing pursuant to Pa.R.Crim.P. 907 ("Rule 907") based upon its conclusion that the petition

*Retired Senior Judge assigned to the Superior Court.

was patently untimely. The PCRA court subsequently entered an order dismissing the petition on July 1, 2013. This appeal follows.

We begin by noting that our review of an order denying post-conviction relief “is limited to the findings of the PCRA court and the evidence of record and we [will] not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error.” ***Commonwealth v. Rigg***, 84 A.3d 1080, 1084 (Pa. Super. 2014) (citation omitted).

It is firmly established that “[t]he 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. Copenhefer***, 596 Pa. 104, 108, 941 A.2d 646, 648-49 (2007). The PCRA provides that “any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final” unless one of three exceptions applies. 42 Pa.C.S.A. § 9545(b). The relevant PCRA provision provides as follows:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, ***unless the petition alleges and the petitioner proves that:***

(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)(emphasis added).

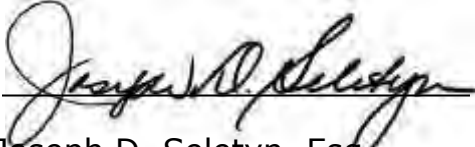
The PCRA petition at issue, filed in 2013, was filed more than one year after Rivera's conviction became final;¹ therefore, it was incumbent on him to establish one of the three exceptions to the timeliness requirement contained in § 9545(b)(1). Rivera did not allege, much less prove, any of these exceptions in his PCRA petition or in the document he submitted to the PCRA court in response to the Rule 907 notice. Similarly, Rivera fails to even so much as mention the timeliness exceptions contained in § 9545(b)(1) in his appellate brief. Accordingly, Rivera's petition is untimely on its face and he has failed to establish an exception to the PCRA's time-bar. We therefore find no error in the PCRA court's determination.

¹ "[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.A. § 9545(b)(3). This Court affirmed Rivera's judgment of sentence on March 27, 2002, after which Rivera had 30 days in which to seek further review by the Supreme Court of Pennsylvania. **See** Pa.R.A.P. 1113(a) ("Except as otherwise prescribed by this rule, a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days after the entry of the order of the Superior Court ... sought to be reviewed."). Thus, Rivera's sentence became final on April 26, 2002.

J-S16025-14

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: 4/11/2014