

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

YUSUF COPELAND,

Appellant

IN THE SUPERIOR COURT
OF
PENNSYLVANIA

No. 1651 EDA 2013

Appeal from the PCRA Order May 28, 2013
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0002554-2007

BEFORE: SHOGAN, J., JENKINS, J., and PLATT, J.*

MEMORANDUM BY JENKINS, J.

FILED APRIL 22, 2014

Yusuf Copeland appeals from an order denying his third petition for relief under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. § 9541 *et seq.* We affirm.

On December 8, 2006, Copeland was charged with firearms offenses based on the seizure of a handgun from his van during a warrantless search. On February 25, 2009, the trial court conducted a bench trial sitting without a jury. On March 4, 2009, the court found Copeland guilty of persons not to possess firearms¹, possession of

* Retired senior judge assigned to the Superior Court.

¹ 18 Pa.C.S. § 6105.

firearms without a license², and related offenses. The court sentenced Copeland to an aggregate of 5-10 years imprisonment. Copeland filed a timely direct appeal. On March 22, 2010, this Court affirmed at 1543 EDA 2009. Copeland did not file a petition for allowance of appeal.

On April 5, 2010, Copeland filed a timely PCRA petition accusing trial counsel of ineffective assistance for failing to call Copeland's wife as a witness during trial. On May 3, 2011, trial counsel testified about his reasons for not calling Copeland's wife as a witness. The court observed that Copeland's wife would have been subject to prosecution if she had testified at Copeland's trial that she had placed the firearm in Copeland's van without possessing a license to carry the firearm. After a recess, Copeland's PCRA attorney advised the court that Copeland wanted to withdraw his PCRA petition. The court colloquied Copeland on the record and informed him that if he withdrew the petition, any future PCRA petitions likely would be untimely and unsuccessful. N.T., 5/3/11, pp. 36-37. The court also advised that Copeland could not maintain any future PCRA petitions concerning issues raised in the petition before the court. N.T., 5/3/11, p. 39. Copeland stated on the record that he fully understood this advice. *Id.* He elected to withdraw the petition.

² 18 Pa.C.S. § 6106.

Despite withdrawing the petition, on June 6, 2011, Copeland appealed to the Superior Court. On July 11, 2012, the Superior Court affirmed the dismissal of his petition at 1647 EDA 2011. On July 23, 2012, Copeland filed a second PCRA petition. This petition was dismissed as moot because the docket did not yet reflect that the Superior Court had decided the first appeal.

On September 14, 2012, Copeland filed the present petition, his third PCRA petition. He claimed therein that the PCRA court coerced him into withdrawing his first PCRA petition. On May 28, 2013, the court dismissed the petition as untimely. Copeland filed a timely appeal to this Court and the following statement of matters complained of on appeal:

1. Did the PCRA court commit plain error in denying relief where the petitioner pled and proved an exception to the one-year timeliness requirement?
2. Was the petitioner denied the effective assistance of counsel on his initial PCRA [petition] where he was entitled to such in raising an ineffectiveness of trial counsel claim?
3. Did the Commonwealth attorney commit prosecutorial misconduct by knowingly using false evidence and testimony to obtain a conviction?
4. Was trial counsel ineffective for failing to investigate the validity of the alleged outstanding warrant that served as the probable cause for the petitioner's arrest?

Our standard of review of an order denying PCRA relief is whether the record supports the PCRA court's findings of fact, and

whether the PCRA court's determination is free of legal error. ***Commonwealth v. Phillips***, 31 A.3d 317, 319 (Pa. Super. 2011) (citing ***Commonwealth v. Berry***, 877 A.2d 479, 482 (Pa. Super. 2005)), *appeal denied*, 615 Pa. 784, 42 A.3d 1059 (2012). A PCRA petitioner must establish the claim by a preponderance of the evidence. ***Commonwealth v. Gibson***, 592 Pa. 411, 415, 925 A.2d 167, 169 (2007).

In this case, the PCRA court held that Copeland's third petition was untimely and that he failed to prove at least one of the three exceptions to the PCRA's one year statute of limitations. PCRA Court Opinion, pp. 3-4. We agree.

Section 9545 of the PCRA requires that "[a]ny petition under this subchapter, 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). 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 timeliness requirement is "mandatory and jurisdictional in nature." ***Commonwealth v. McKeever***, 947 A.2d 782, 784-85 (Pa. Super. 2008) (citing ***Commonwealth v. Davis***, 916 A.2d 1206, 1208 (Pa. Super. 2007)). "No court may properly disregard or alter [this

requisite] in order to reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner.” ***Id.***

The court may review a petition filed more than one year after the date the judgment becomes final only when the petition alleges, and the petitioner proves, any of the three narrow exceptions to the one year time bar set forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii). ***Commonwealth v. Hernandez***, 79 A.3d 649, 651 (Pa. Super. 2013). These three exceptions are:

(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.

Id. at n.1 (citing 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii)). The petitioner must file a petition raising an exception “within 60 days of the date the claim could have been presented.” ***Commonwealth v. Perrin***, 947 A.2d 1284, 1285 (Pa. Super. 2008) (citing 42 Pa.C.S.A. § 9545(b)(2)).

Copeland's third PCRA petition is untimely on its face. His judgment of sentence became final on April 21, 2010, the thirtieth day after the Superior Court affirmed his judgment of sentence on direct appeal. He had until April 21, 2011 to file a timely PCRA petition. He filed the present petition on September 14, 2012, more than sixteen months after the statute of limitations expired.

Nor do any issues in Copeland's appeal satisfy the exceptions in § 9545(b)(1)(i)-(iii). Exceptions to timeliness "must be specifically pleaded or they may not be invoked." ***Commonwealth v. Liebensperger***, 904 A.2d 40, 46 (Pa. Super. 2006) (citing ***Commonwealth v. Beasley***, 559 Pa. 604, 609, 741 A.2d 1258, 1261 (1999)). Our review of the record supports the PCRA court's determination that Copeland fails to satisfy this requirement.

In Copeland's first issue on appeal, he argues that his third PCRA petition fits within the "governmental interference" exception in § 9545(b)(1)(i), because a government actor (the court) "coerced" him into withdrawing the his first PCRA petition. Even if Copeland's claim of coercion had merit³, it is patently untimely under § 9545(b)(2). The alleged coercion took place during the evidentiary hearing on May 3,

³ It has no merit. Copeland raised the claim of judicial coercion in his appeal following his withdrawal of his first PCRA petition. This Court held that there was no factual support in the record for a claim of coercion. ***Commonwealth v. Copeland***, 1647 EDA 2011, slip op., pp. 7-10.

2011, but Copeland did not file his third petition until September 14, 2012. Obviously, he failed to raise this argument within sixty days of the date he first could have presented it. ***Commonwealth v. Edmiston***, -- Pa. --, 65 A.3d 339, 350 (2013) (government interference exception to timeliness requirements for postconviction relief petition did not apply to petitioner's untimely claim alleging that Commonwealth interfered with presentation of his claim by failing to provide him with coroner's photographs of victim, as record supported conclusion that defense counsel knew about coroner's photographs at time of trial, and defendant could have, with exercise of due diligence, presented claims within sixty days of discovery but failed to raise claims until sixteen years later).

Copeland's second, third and fourth issues on appeal are also untimely under § 9545(b)(2). In his second issue, he argues that PCRA counsel provided ineffective assistance during proceedings on the first PCRA petition. The proceedings on the first PCRA petition ended in July 2011, yet he failed to raise his claim of ineffective assistance until his third PCRA petition in September 2012, far more than sixty days later. Therefore, this claim is untimely. ***Edmiston, supra***.

In his third issue, Copeland contends that the prosecutor knowingly used false evidence during trial. Trial, however, took place

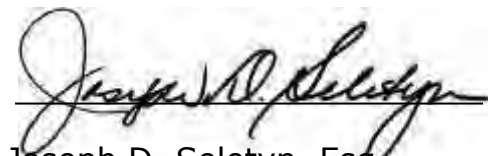
in early 2009, more than three years before his September 2012 PCRA petition. Copeland fails to explain why he waited until his September 2012 PCRA petition before alleging prosecutorial misconduct in his 2009 trial. He failed to raise this argument within sixty days of the date he first could have presented it. Once again, this claim is untimely. ***Edmiston, supra.***

In his fourth and final issue, Copeland argues that trial counsel was ineffective for failing to investigate the outstanding warrant that served as probable cause for his arrest. Trial counsel represented Copeland in early 2009, years before Copeland's third PCRA petition. Copeland fails to explain why he waited until his September 2012 petition before raising this claim of ineffective assistance. Once again, this claim is untimely. ***Edmiston, supra.***

For these reasons, we hold that the PCRA court properly dismissed Copeland's third 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