

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CHARLES J. GOLDBLUM

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 769 WDA 2014

Appeal from the PCRA Order April 14, 2014  
In the Court of Common Pleas of Allegheny County  
Criminal Division at Nos: CP-02-CR-0001267-1976  
CP-02-CR-0003198-1976  
CP-02-CR-0004826-1976  
CP-02-CR-0004830-1976

BEFORE: PANELLA, J., LAZARUS, J., and STRASSBURGER, J.\*

MEMORANDUM BY PANELLA, J.:

**FILED JULY 31, 2015**

Appellant, Charles J. Goldblum, seeks review of the order entered by the Allegheny County Court of Common Pleas that denied as untimely his *third* petition filed pursuant to the Post Conviction Relief Act ("PCRA").<sup>1</sup> We affirm.

In 1977 a jury convicted Goldblum of first-degree murder, conspiracy to commit theft by deception, solicitation to commit arson, and arson in connection with the February 1975 murder of George Wilhelm in Pittsburgh.

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 42 Pa.C.S.A. §§ 9541-9546.

“Goldblum struck Wilhelm on the head with a wrench, and then stabbed him repeatedly.”<sup>2</sup> ***Commonwealth v. Goldblum***, 447 A.2d 234, 238 (Pa. 1982). The trial court sentenced him to a term of life imprisonment for the murder conviction. Our Supreme Court affirmed his judgment of sentence on July 2, 1982. ***See id.*** Goldblum did not seek a writ of *certiorari* from the United States Supreme Court; his judgment of sentence thus became final on August 31, 1982—60 days after our Supreme Court affirmed the judgment of sentence. ***See*** U.S. Sup. Ct. R. 20.

On July 1, 2013, Goldblum filed his third PCRA Petition, which is the subject of this appeal. The PCRA court appointed Scott Coffey, Esquire, to represent him, but shortly thereafter Coffey filed a “no merit” letter and a motion to withdraw. The PCRA court granted Coffey’s motion to withdraw, and gave notice of its intent to dismiss without a hearing. The PCRA court then dismissed the petition as patently untimely. Goldblum through privately retained counsel timely appealed.

“On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court’s findings are supported by the record and without legal error.” ***Commonwealth v. Edmiston***, 65 A.3d 339, 345 (Pa. 2013) (citation omitted), *cert. denied*, ***Edmiston v. Pennsylvania***, 134 S. Ct. 639 (2013). A PCRA petitioner is not

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<sup>2</sup> We direct the reader to our Supreme Court’s decision for a further summary of the underlying facts.

automatically entitled to a hearing. It is within the PCRA court's discretion to grant or deny a hearing. **See Commonwealth v. Roney**, 79 A.3d 595, 604 (Pa. 2013), *cert. denied*, 135 S.Ct. 56 (2014). We review the denial of a petition without a hearing for an abuse of discretion. **See id.**

Before we address the merits of a PCRA petition, we must first consider the petition's timeliness. "The PCRA timeliness requirements are jurisdictional in nature and, accordingly, a court cannot hear untimely PCRA petitions." **Commonwealth v. Flanagan**, 854 A.2d 489, 509 (Pa. 2004) (citation omitted). A petitioner must file a PCRA petition within one year of the date that his or her judgment becomes final. **See** 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 review. **See Commonwealth v. Fahy**, 737 A.2d 214 (Pa. 1999).

The 1995 amendments to the PCRA provide that if the judgment of sentence became final before the effective date of the amendments (*i.e.*, January 16, 1996), a PCRA petition could be filed within one year, or by January 16, 1997. However, this grace period does not apply to second or subsequent petitions, regardless of when the first petition was filed. **See Commonwealth v. Fairiror**, 809 A.2d 396, 398 (Pa.Super. 2002).

As noted, Goldblum's judgment of sentence became final on August 31, 1982. He filed his first PCRA petition in 1986, and his second in 1996. This *third* PCRA petition, filed July 1, 2013, is facially untimely.

Goldblum contends that the instant petition falls within two exceptions to the PCRA's time-bar, governmental interference and after-discovered facts or evidence. **See** 42 Pa.C.S.A. § 9545(b)(1)(i) and (ii). With respect to the PCRA's governmental interference exception of § 9545(b)(1)(i), our Supreme Court has noted that

[a]lthough a **Brady**<sup>[3]</sup> violation may fall within the governmental interference exception, the petitioner must plead and prove that the failure to previously raise these claims was the result of interference by government officials, and that information could not have been obtained earlier with the exercise of due diligence. [**Commonwealth v. Breakiron**, [781 A.2d 94,] 98 [(Pa. 2001).] The newly discovered evidence exception requires that the facts upon which the **Brady** claim is predicated were not previously known to the petitioner and could not have been ascertained through due diligence. **Commonwealth v. Lambert**, 884 A.2d 848, 852 (Pa. 2005); **see also Commonwealth v. Chester**, 895 A.2d 520, 523 (Pa. 2006).

**Commonwealth v. Hawkins**, 953 A.2d 1248, 1253 (Pa. 2008) (OAJC).

To succeed on an after-discovered evidence claim, a petitioner must establish that: (1) the evidence was discovered after trial and could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict. **See**

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<sup>3</sup> **Brady v. Maryland**, 373 U.S. 83 (1963).

***Commonwealth v. D'Amato***, 856 A.2d 806, 823 (Pa. 2004). If exceptions to the PCRA time-bar apply, a petitioner must assert them within sixty days of discovering the facts comprising the exception. **See** 42 Pa.C.S.A. § 9545(b)(2).

Goldblum contends, "it has only recently been ascertained that there may have been pictures taken of the blood spatter inside of Wilhelm's car." Appellant's Brief at 24. He avers that the Commonwealth concealed and/or destroyed files containing the blood spatter photographs, and failed to disclose "exculpatory evidence," *i.e.*, the photographs, to the defense at or before trial in violation of ***Brady. Id.*** He also avers that he had "just recently (within 60 days of the filing of his PCRA petition) been apprised of the circumstances under which [photographs of blood spatter] disappeared." ***Id.***

Contrary to Goldblum's contention, he has known since his trial that photographs had been taken of blood spatter. Police Officer Salvatore S. Crisanti testified at Goldblum's trial that he had taken photographs of the dashboard, but that he had no recollection at all of a pattern of blood spatter. **See** Notes of Testimony Trial, 8/25/77, at 1902-1904. Detective Ronald B. Freeman testified at trial and at a deposition regarding photographs of "blood spatter on the dashboard and gave a detailed

description of same at trial.” Appellant’s Brief at 17 (citing RR-718A).<sup>4</sup> In August 27, 1996, Officer Crisanti, testified at a deposition that the blood spatter photographs would have been stored by the homicide unit. Other police officers testified about having seen blood spatter photographs in the case file. ***See id.*** at 18. Thus, Goldblum was aware well before he filed this latest PCRA petition in July 2013 that photographs of blood spatter on the dashboard had been taken.

Alternatively, Goldblum avers that he did not learn that the photographs had gone missing from the police files until Dr. Joshua Perper compiled a report in 2013 summarizing certain record evidence.<sup>5</sup> Goldblum asserts that “Dr. Perper’s *confirmation* of these missing records in his report, in the very least, provides grounds to grant a hearing to determine how the records disappeared and to what extent they contain exculpatory evidence of which Appellant was previously unaware.” Appellant’s Brief at 25 (emphasis added). Goldblum’s statement indicates that he knew before 2013 that the

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<sup>4</sup> Goldblum’s pinpoint citation corresponds with only the cover page of a transcript of a deposition taken in April 2008.

<sup>5</sup> In that report, Dr Perper, the coroner who performed the autopsy of Golblum’s victim, reviewed all of the evidence produced at trial and post-trial before opining that it had most likely been Goldblum’s accomplice, not Goldblum, who had committed the murder. Dr. Perper did not present any new evidence that would warrant a hearing on Goldblum’s third PCRA petition.

records had existed and had disappeared, and Dr. Perper simply confirmed it.

Because Goldblum has known since 1977 that photographs had been taken, his attempt—38 years later—to raise an issue as to their existence, represents the polar opposite of diligence. **See Amato. See also Commonwealth v. Brown**, 111 A.3d 171, 178 (Pa. Super. 2015) (concluding that the appellant failed to meet new facts exception to establish jurisdiction due to lack of diligence). Moreover, a “PCRA hearing is not meant to function as a fishing expedition[.]” **Roney**, 79 A.3d at 605.

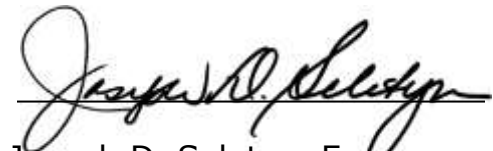
We conclude that Goldblum’s claims of government interference and after-discovered evidence are untimely. Accordingly, neither the PCRA nor this Court has jurisdiction to address his petition, and the PCRA court did not err in dismissing the petition without a hearing.

Order affirmed.

Judge Lazarus joins the memorandum.

Judge Strassburger concurs in the result.

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: 7/31/2015