

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

WILLIAM CLIFFORD BARTLETT

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1756 MDA 2013

Appeal from the PCRA Order August 26, 2013  
In the Court of Common Pleas of Huntingdon County  
Criminal Division at No(s): CP-31-CR-0000089-1985

BEFORE: PANELLA, J., DONOHUE, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

**FILED APRIL 15, 2014**

Appellant, William Clifford Bartlett, appeals from the August 26, 2013 order dismissing as untimely his second petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

The underlying facts of this case were summarized by a prior panel of this Court as follows.

On March 15, 1985, [Appellant] was serving a life sentence at SCI Huntingdon for a 1971 homicide conviction. That same day, [Appellant] took a curl bar, an iron bar used in weight lifting, and smashed the skull of a correctional officer. The officer survived the attack, but suffered a depressed skull fracture that required surgery to repair. [Appellant] also assaulted another correctional officer during the attack ....

***Commonwealth v. Bartlett***, 959 A.2d 957 (Pa. Super. 2008) (unpublished memorandum at 1-2), *appeal denied*, 964 A.2d 893 (Pa. 2009).

Appellant was charged with, *inter alia*, assault by life prisoner and aggravated assault<sup>1</sup> in connection with this incident, and proceeded to a jury trial on July 9, 1985. Following a three-day trial, Appellant was found guilty of the aforementioned offenses on July 11, 1985. Appellant filed post-trial motions for a new trial and an arrest of judgment, which were denied by the trial court on February 14, 1986. Thereafter, on June 10, 1986, Appellant was sentenced to an aggregate term of life imprisonment, to run consecutive to the term of life imprisonment he was serving for an unrelated homicide conviction. Appellant did not file a direct appeal with this Court.

On September 9, 1994, Appellant filed a *pro se* PCRA petition. The PCRA court appointed Michael S. Gingerich, Esquire (Attorney Gingerich) to represent Appellant, and on June 26, 1995, Attorney Gingerich filed an amended PCRA petition on Appellant's behalf. Following multiple evidentiary hearings, the PCRA court ultimately denied Appellant's PCRA petition on May 7, 2007. Appellant filed a timely notice of appeal, and on July 29, 2008, this Court affirmed the PCRA court's order dismissing Appellant's petition. **See *Bartlett, supra***. Thereafter, Appellant filed a petition for allowance of

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<sup>1</sup> 18 Pa.C.S.A. §§ 2704 and 2702, respectively.

appeal with our Supreme Court, which was denied on February 12, 2009.

***Id.***

On August 5, 2009, Appellant filed a *pro se* PCRA petition, his second, and the PCRA court appointed Ray A. Ghaner, Esquire (Attorney Ghaner) to represent Appellant. Attorney Ghaner filed an amended PCRA petition on Appellant's behalf on April 9, 2010. Following an evidentiary hearing, the PCRA court denied Appellant's PCRA petition on August 26, 2013. This timely appeal followed.<sup>2</sup>

On appeal, Appellant raises the following issues for our review.

1. Were [Appellant's] previous trial attorney and PCRA counsel ineffective for failing to raise Constitutional violations that occurred at the time of trial?
2. Given that these issues have never been raised by either previous counsel, have they been waived?

Appellant's Brief at 2.

"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*,

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<sup>2</sup> The PCRA court did not order Appellant to file a concise statement of errors complained of on appeal, in accordance with Pa.R.A.P. 1925(b), but did file an opinion in support of its August 26, 2013 order. **See** PCRA Court Order & Opinion, 8/26/13 (dated 8/20/13).

***Edmiston v. Pennsylvania***, 134 S. Ct. 639 (2013). “[Our] scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the PCRA court level.” ***Commonwealth v. Koehler***, 36 A.3d 121, 131 (Pa. 2012) (citation omitted). In order to be eligible for PCRA relief, a petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence arose from one or more of the errors listed at 42 Pa.C.S.A. § 9543(a)(2). These issues must be neither previously litigated nor waived. 42 Pa.C.S.A. § 9543(a)(3). “[T]his Court applies a *de novo* standard of review to the PCRA court’s legal conclusions.” ***Commonwealth v. Spatz***, 18 A.3d 244, 259 (Pa. 2011) (citation omitted).

Before we may address the merits of a PCRA petition, we must first consider the petition’s timeliness because it implicates the jurisdiction of both this Court and the PCRA court. ***Commonwealth v. Williams***, 35 A.3d 44, 52 (Pa. Super. 2011) (citation omitted), *appeal denied*, 50 A.3d 121 (Pa. 2012). We may raise issues concerning our appellate jurisdiction *sua sponte*. ***Commonwealth v. Patterson***, 940 A.2d 493, 497 (Pa. Super. 2007), *appeal denied*, 960 A.2d 838 (Pa. 2008). “Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition.” ***Id.*** The PCRA “confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar[.]” ***Commonwealth v. Watts***, 23 A.3d 980, 983 (Pa. 2011) (citation omitted). This is to “accord finality to the

collateral review process.” **Id.** “A petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final unless the petition alleges, and the petitioner proves, that an exception to the time for filing the petition, set forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii), is met.” **Commonwealth v. Harris**, 972 A.2d 1196, 1199-1200 (Pa. Super. 2009), *appeal denied*, 982 A.2d 1227 (Pa. 2009).

Section 9545 provides, in relevant part, as follows.

**(b) Time for filing petition.—**

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

...

42 Pa.C.S.A. § 9545(b).

In the instant matter, Appellant was sentenced to an aggregate term of life imprisonment on June 10, 1986. As noted, Appellant did not file a direct appeal with this Court. Thus, Appellant's judgment of sentence became final on July 10, 1986, when the 30-day period for Appellant to file a direct appeal in this Court expired. **See id.** § 9545(b)(3) (stating, "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[]"). Therefore, in order to be timely, Appellant's PCRA petition had to be filed by January 16, 1997.<sup>3</sup> Appellant filed the instant PCRA petition, his second, on August 5, 2009, well after the deadline. Accordingly,

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<sup>3</sup> The 1995 amendments to the PCRA initiated the current one-year time-bar. The 1995 amendments also granted prisoners whose judgment of sentence had become final more than one year before the implementation of the time-bar, one year from the effective date of the amendments to file their first PCRA petition. Act of November 17, 1995, P.L. 1118, No. 32 (Spec. Sess. No. 1), § 3(1). Under this provision "a petitioner's first PCRA petition, that would otherwise be considered untimely because it was filed more than one year after the judgment of sentence became final, would be deemed timely if it was filed by January 16, 1997." **Commonwealth v. Thomas**, 718 A.2d 326, 329 (Pa. Super. 1998) (*en banc*). Our Supreme Court has noted this grace period does not apply to second or subsequent PCRA petitions. **Commonwealth v. Crews**, 863 A.2d 498, 501 (Pa. 2004).

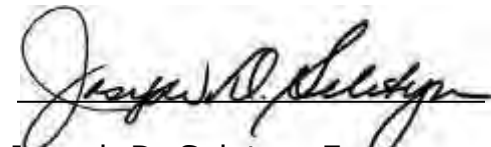
Appellant's petition is patently untimely, and Appellant must plead and prove one of the three enumerated statutory exceptions to the time-bar.

Our review reveals that Appellant has neither alleged nor proven a cognizable exception to the PCRA time-bar. Notably, the "Argument" section of Appellant's brief does not contain any citation whatsoever to the enumerated time-bar exceptions set forth in Section 9545(b). Without a pled and successfully proven exception to the time-bar, this Court is without jurisdiction to address the merits of the arguments raised. ***Commonwealth v. Perrin***, 947 A.2d 1284, 1285 (Pa. Super. 2008).

Accordingly, having concluded that Appellant's PCRA petition was untimely filed and that no cognizable exception to the time-bar applies, we discern no error on the part of the PCRA court in dismissing Appellant's second PCRA petition as untimely. Therefore, we affirm the August 26, 2013 order of the PCRA court.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/15/2014