

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RANDOLPH BARKSDALE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2622 EDA 2013

Appeal from the PCRA Order of August 30, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No.: CP-51-CR-0833371-1982

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

FILED APRIL 17, 2014

Randolph Barksdale ("Barksdale") appeals from the August 30, 2012 order that dismissed his *pro se* petition for relief pursuant to the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541, *et seq.* We affirm.

An earlier panel of this Court set forth the factual history of this case as follows:

On August 6, 1982, [Barksdale], who was then age twenty-six, was arrested pursuant to a warrant for the New Year's Eve murder of sixteen-year old Katrina Sappington, a girlfriend of [Barksdale]. Evidence at trial established that the victim's death was caused by drowning. The evidence also indicated that when the victim's face was forced under the water of a shallow creek, the victim inhaled enough gravel and twigs to completely fill all of the airways from the mouth to the lungs, which prevented breathing. [Barksdale], a high school honor graduate, gave a signed, seven-page confession which was admitted into evidence without objection. In his confession, [Barksdale] admitted that he and another girlfriend of his, fourteen year-old Katie Walker, had lured the unsuspecting victim into Cobbs Creek Park in Philadelphia for the express purpose of killing her. [Barksdale]

described how he and Walker ignored Sappington's pleas, how he alerted Walker when the victim tried to escape, and how he helped Walker drag the unconscious victim back into the water when he noticed that she was still breathing. [Barksdale] further described how Sappington was forced into the creek on her knees, and he admitted that he stood right behind Walker and offered to help as Walker held the victim's head under the water. When [Barksdale] and Walker were sure Sappington was dead, they put her lifeless body into a nearby trash dumpster and covered it with leaves. [Barksdale] and Walker then went out to celebrate the New Year.

Commonwealth v. Barksdale, 951 Phila. 1984, at 1-2 (Pa. Super. Sept. 6, 1985) (unpublished memorandum).

Barksdale was convicted of first-degree murder¹ and, on March 8, 1984, sentenced to life in prison. Barksdale filed a direct appeal. This Court affirmed the judgment of sentence in the above-excerpted memorandum opinion. The Pennsylvania Supreme Court denied allowance of appeal on December 30, 1985.

Barksdale filed his first PCRA petition on April 9, 1992. On March 13, 1995, the PCRA court denied the petition. On April 9, 1996, this Court affirmed the PCRA court and the Pennsylvania Supreme Court denied allowance of appeal on January 7, 1997.

Barksdale filed his second PCRA petition on December 20, 2005. The PCRA court denied the petition on June 21, 2006. On August 29, 2007, this

¹ 18 Pa.C.S.A. § 2502(a).

Court affirmed the PCRA court. Barksdale did not seek allowance of appeal from the Supreme Court.

On October 29, 2012, Barksdale filed the petition currently on appeal. On August 2, 2013, the PCRA court filed the requisite notice of intent to dismiss his petition without a hearing pursuant to Pa.R.Crim.P. 907. On August 30, 2013, the PCRA court dismissed the petition.

On September 9, 2013, Barksdale filed a notice of appeal, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On September 24, 2013, the PCRA court filed its Pa.R.A.P. 1925(a) opinion.

Barksdale raises two issues on appeal:

- I. Whether (in) reviewing the (property) of the (PCRA) court's dismissal of [Barksdale's] PCRA filing, it was an abuse of discretion for the (PCRA) court to determine that it was untimely . . . where the petition was timely filed under Title 42 Pa.C.S.A. § 9545(b)(1)(iii) and § 9545(b)(2), because of a newly recognized constitutional right being enacted by the U.S. Supra. Court applying to [Barksdale] retroactively?
- II. Whether the PCCRA [*sic*] court erred and denied [Barksdale] his federal and state constitutional rights to equal protection of law, and due process of law by dismissing [Barksdale's] second/subsequent PCRA petition without a [*sic*] evidentiary hearing and appointment of counsel . . . where [Barksdale] raised substantial questions of disputed facts regarding the timeliness of his second/subsequent PCRA petition?

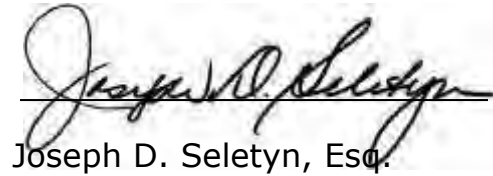
Barksdale's Brief at 4 (ellipses and parentheticals in original).

The PCRA court thoroughly and accurately disposed of Barksdale's claims in its opinion. **See** PCRA Court Opinion, 9/24/2013, at 1-4 (unpaginated). Specifically, the PCRA court determined that Barksdale's petition must be timely for the court to have jurisdiction; that Barksdale's petition facially was untimely; that Barksdale did not adequately plead an exception to the timeliness rule; that **Miller v. Alabama**, 132 S.Ct. 2455 (2012), does not apply to Barksdale because he was an adult when he committed his crime;² that, even if **Miller** applied, Barksdale did not raise his claim within sixty days of when **Miller** was issued; and that the PCRA court did not have jurisdiction to consider the merits Barksdale's claims because the petition was untimely. We have reviewed the record, Barksdale's brief, applicable law and the PCRA court's opinion. Having done so, we adopt the PCRA court's analysis and affirm its order. A copy of that opinion is attached hereto for reference.

Order affirmed.

² At the time the PCRA court authored its opinion, there had been no decision on the retroactivity of **Miller**. Since then, our Supreme Court has held that **Miller** does not apply retroactively to those juveniles whose sentence was final prior to the announcement of **Miller**. **Commonwealth v. Cunningham**, 81 A.3d 1, 11 (Pa. 2013). Regardless of the Supreme Court's decision in **Cunningham**, **Miller** does not apply to Barksdale because he was an adult at the time he committed his crime.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/17/2014

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA

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FILED

SEP 24 2013

Post Trial Unit

CP-51-CR-0833371-1982 Comm. v. Barksdale, Randolph
Memorandum Opinion

v.



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RANDOLPH BARKSDALE

:

CP-51-CR-0833371-1982

MEMORANDUM AND ORDER

WOODS-SKIPPER, J

September 24, 2013

This Court hereby dismisses the instant Post Conviction Relief Act Petition filed on October 29, 2012 for the reasons set forth below.¹

I. PROCEDURAL HISTORY

On February 7, 1983, Petitioner was found guilty by a jury presided over by the Honorable Juanita Kidd Stout of murder in the first degree. Post verdict motions were filed, heard, and denied, and on March 8, 1984, Petitioner was sentenced to life imprisonment. The Pennsylvania Superior Court affirmed the judgment of sentence on September 6, 1985. The Pennsylvania Supreme Court denied *allocatur* on December 30, 1985.

Petitioner filed his first *pro se* PCRA petition on April 9, 1992. Counsel was appointed, and an amended petition was subsequently filed. After review, on March 13, 1995, the Court

¹ This memorandum and order has been issued more than twenty days after Petitioner was served with notice of the forthcoming dismissal of his Post Conviction Relief Act petition. Pa.R.Crim.P. 907.

dismissed Petitioner's first PCRA petition. The Superior Court affirmed the decision on April 9, 1996 and a petition to the Supreme Court was denied on January 7, 1997.

Petitioner's second PCRA petition was filed on December 20, 2005 and was subsequently dismissed on June 21, 2006. The Superior Court affirmed the decision on August 29, 2007. Petitioner did not appeal to the Supreme Court.

Petitioner filed the instant *pro se* petition on October 29, 2012. After conducting an extensive and exhaustive review of the record and applicable case law, this Court finds that Petitioner's petition for post conviction collateral relief is untimely filed. Therefore, this Court does not have jurisdiction to consider Petitioner's second PCRA petition.

II. DISCUSSION

Petitioner's conviction became final in 1986. After a conviction becomes final, a petitioner has one year to file a post conviction petition. Therefore, Petitioner's October 29, 2012 petition is patently untimely unless it properly invokes one of the enumerated exceptions to the one-year limitation 42 Pa.C.S.A. § 9545 (b)(1)(i)-(iii).²

The petitioner bears the burden to allege and prove one of the timeliness exceptions applies.³ In addition, a petition invoking any of the timeliness exceptions must be filed within 60

² The three exceptions to the one-year limitation 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.

42 Pa.C.S.A. §9545 (b)(1)(i)-(iii).

³ *Commonwealth v. Marshall*, 947 A.2d 714, 720 (2008).

days of the date the claim first could have been presented.⁴ Petitioner attempts to invoke the timeliness exception enumerated in 42 Pa.C.S.A. § 9545 (b)(1)(iii). Specifically, Petitioner states that the United States Supreme Court created a constitutional right in *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) that applies retroactively⁵ to his case and affords a basis of relief. Petitioner is mistaken.

Petitioner's claim fails to satisfy the requirements necessary for invoking the newly-recognized constitutional right exception. In *Miller v. Alabama*, the United States Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition against 'cruel and unusual punishments.'"⁶ It is plain from the holding of the case that it does not apply to Petitioner. The *Miller* holding specifically limited itself to juveniles eighteen years of age and younger who were sentenced to life without parole for committing the crime of murder. While it is true that Petitioner was sentenced to life without parole for murder, Petitioner fully admits that he was twenty-five years old at the time of the murder, which puts him outside the reach of the Supreme Court's *Miller* decision. Therefore, Petitioner does not adequately invoke an exception to the timeliness provision.

Petitioner also contends that because Pennsylvania's sentencing schemes recognize all first and second degree murder offenders as comprising a single class, it would be a violation of equal protection for the court to afford juveniles special considerations in sentencing. Petitioner therefore concludes that the holding in *Miller* should be applicable in this case, even though Petitioner was at the age of 25 at the time of the murder. However, the mere argument that a

⁴ 42 Pa.C.S. § 9545(b)(2).

⁵ This Court notes that the Pennsylvania Supreme Court has not yet determined whether the United State Supreme Court's ruling in *Miller* applies retroactively for the purpose of PCRA petitions. See *Commonwealth v. Cunningham*, 51 A.3d 178 (Pa.2012).

⁶ 132 S. Ct. at 2460.

newly-recognized constitutional right *should* be extended to others does not afford Petitioner an exception to the timeliness requirements of the PCRA.⁷

Even had Petitioner's claim met the underlying requirements of section 9545(b)(1)(iii), he still would not be entitled to any relief, as he did not satisfy the 60-day requirement set forth in section 9545(b)(2). The 60-day period begins to run upon the date of the underlying judicial decision.⁸ The United States Supreme Court's decision in *Miller v. Alabama* was filed on June 25, 2012 and the instant petition was not filed until October 29, 2012. Petitioner failed to file the instant petition until over four months after the Supreme Court's decision and the petition is therefore untimely.

Because the instant petition was filed twenty five years after Petitioner's sentence became final, a valid exception to the timeliness requirements must be pled and proven. Upon review, however, the claims raised in Petitioner's petition fail to invoke any such exception. Petitioner fails to demonstrate that government officials obstructed the presentation of his claims; fails to offer after-discovered evidence which was previously unknown to him and could not have been obtained by the exercise of due diligence; and does not allege a violation of a constitutional right recognized after the one-year limitation and held to apply retroactively. Consequently, this Court lacks jurisdiction to consider Petitioner's substantive claims and was required to dismiss Petitioner's petition as untimely.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Sheila Woods-Skipper", written in a cursive style.

SHEILA WOODS-SKIPPER, J.

⁷ See *Commonwealth v. Cintora*, 2013 PA Super 160 (Pa. Super. Ct. June 28, 2013).

⁸ *Commonwealth v. Boyd*, 923 A.2d 513, 517 (Pa.Super.2007).