

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

OLIVER LAFONZO FREEMAN

Appellant

No. 2803 EDA 2013

Appeal from the PCRA Order of September 4, 2013  
In the Court of Common Pleas of Delaware County  
Criminal Division at No.: CP-23-CR-0001317-1992

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

MEMORANDUM BY WECHT, J.:

**FILED APRIL 17, 2014**

Oliver Freeman ("Freeman") appeals from the September 4, 2013 order that dismissed his petition for relief pursuant to the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541, *et seq.* We affirm.

The PCRA court provided the following factual and procedural history:

[Freeman] was charged on February 3, 1992 with Murder in the First degree, Murder in the Second Degree, Murder in the Third Degree, Robbery, Aggravated Assault, Recklessly Endangering Another Person, Theft by Unlawful Taking, Possessing an Instrument of Crime, and Possession of Firearms. These charges arose from the February 2, 1992 shooting of George Schroeder in Chester, PA. On that day Mr. Schroeder traveled to 10<sup>th</sup> and Booth Streets expecting to buy drugs. Instead he was ambushed and robbed. [Freeman] admitted to shooting Mr. Schroeder and led detectives to the location of the .38 caliber handgun that he used when he robbed and shot the victim. On February 3, 1992 Mr. Schroeder died as a result of the gunshot wounds that [Freeman] inflicted. On July 7, 1992 the Commonwealth filed a Notice of Aggravating Circumstances, indicating its intent to seek the imposition of a sentence of . . . death. However, on November 4, 1992 [Freeman] entered a

negotiated guilty plea to second[-]degree Murder.<sup>1</sup> The negotiated plea was accepted by the Trial Court and a mandatory life sentence was imposed. [Freeman] did not file a direct appeal from judgment of sentence.

<sup>1</sup> 18 Pa.C.S. § 2502(b)

[Freeman] filed a *pro se* PCRA petition on June [29], 1993 and Mark P. Much, Esquire was appointed to represent [Freeman] in his PCRA proceedings. On April 5, 1994, Mr. Much filed an application to withdraw along with a thorough and extensive **Finley**<sup>[1]</sup> letter stating his finding that [Freeman's] PCRA petition was meritless.<sup>[2]</sup> After an independent review of the record the Court concurred with appointed counsel's assessment and on April [25], 1994 [Freeman] was given Notice of the Court's intent to dismiss without a hearing. On May [3], 1994, the PCRA petition was dismissed. [Freeman] appealed that dismissal and on October 24, 1994, [Freeman's] appeal to the Pennsylvania Superior Court was dismissed.

On August 2, 2012, [Freeman] filed his second *pro se* PCRA petition and counsel was appointed to represent him in this matter on [August 10], 2012. On March 13, 2013, appointed counsel filed an amended PCRA petition. This petition alleges that [Freeman's] conviction was the result of ineffective assistance of trial counsel in that trial counsel failed to pursue a defense of diminished capacity. Additionally, it is alleged that because [Freeman's] 1994 appointed PCRA counsel failed to file a brief in his appeal following the dismissal of his 1992 PCRA petition, he is entitled to relief. The Commonwealth replied to that petition on April 20, 2013. The amended petition is untimely on its face and does not include facts that satisfy an exception to the PCRA's jurisdictional time requirements. On July 23, 2013, [Freeman] was notified that this amended PCRA

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<sup>1</sup> **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*). **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Finley** provide the requirements for counsel seeking to withdraw from representation involving a PCRA petition.

<sup>2</sup> The PCRA court granted counsel's application to withdraw on May 11, 1994.

petition would be dismissed without a hearing<sup>2</sup> and on September 4, 2013 the amended petition was dismissed.

<sup>2</sup> On August 12, 2013, [Freeman] filed a *pro se* response to the Notice of Intent to Dismiss PCRA Without a Hearing. This motion was forwarded to counsel pursuant to Pa.R.Crim.P. 576. Counsel did not file a response to the Notice of Intent to Dismiss Without a Hearing.

PCRA Court Opinion ("P.C.O."), 11/4/2013, at 1-3.

On October 4, 2013, Freeman filed a counseled notice of appeal. The PCRA court ordered Freeman to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Freeman timely complied.

Freeman raises three issues:

- I. Was the Trial Court in error for dismissing [Freeman's] Post Conviction Relief Act petition as to the issue of timeliness?
- II. Was the Trial Court in error for dismissing [Freeman's] Post Conviction Relief Act Petition without a Hearing in reference to the issue of diminished capacity in light of an expert opinion that was available to Defense Counsel?
- III. Was the Trial Court in error for dismissing [Freeman's] Post Conviction Relief without a Hearing as to the failure of [Freeman's] Counsel to file a timely brief with the Superior Court of Pennsylvania?

Freeman's Brief at 4.

Before reaching the merits of Freeman's appeal, we first must determine whether we have jurisdiction to do so. To be timely, a PCRA petition must be filed within one year of the date that the judgment of sentence became final unless the petition pleads and proves one of the PCRA's enumerated exceptions:

**(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.

(3) For purposes of this subchapter, 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. It is well-established that the PCRA's time limits are jurisdictional, and are meant to be both mandatory and applied literally by the courts to all PCRA petitions. ***Commonwealth v. Leggett***, 16 A.3d 1144, 1145 (Pa. Super. 2011).

Instantly, because Freeman did not file a direct appeal, his judgment of sentence became final one year after the time expired in which he could have filed that appeal, which was on or about December 4, 1993. His

August 2, 2012 PCRA petition facially was untimely. Therefore, Freeman was required to plead and prove one of the enumerated exception.

In his August 2 petition, Freeman claimed that his counsel was ineffective, that his sentence was excessive and illegal, and that he suffered an unspecified Eighth Amendment violation. PCRA Petition, 8/2/2012, at 3, 7. While Freeman has checked boxes stating that he is eligible for relief due to government obstruction and because new evidence has become available, *id.* at 2, he does not plead either in the body of the petition. The March 13, 2013 counseled amended PCRA petition similarly raises claims of ineffective assistance of counsel, but neither pleads nor proves one of the exceptions.

Finally, in his response to the PCRA court's notice of intent to dismiss the PCRA petition without a hearing, Freeman appears to invoke the governmental interference and newly discovered evidence exceptions. Response, 8/12/2013, at 2. However, Freeman claimed that the alleged governmental interference was the PCRA court's refusal to provide him with an evidentiary hearing. *Id.* The PCRA court's notice of intent to dismiss was a proper court order. We previously have held that a proper court order does not constitute governmental interference. ***Commonwealth v. Howard***, 788 A.2d 351, 354 (Pa. 2002). To the extent that Freeman is attempting to claim also that ineffectiveness of counsel was governmental interference, similar claims also have been soundly rejected. ***Commonwealth v. Crews***, 863 A.2d 498, 503 (Pa. 2004) ("[I]t is well settled that the alleged ineffectiveness of all prior counsel, including first

PCRA counsel, does not fall within the governmental interference exception.”).

Freeman makes two claims of newly discovered evidence. The first is an August 10, 1992 letter from Perry A. Berman, M.D. to Freeman’s trial counsel that detailed the results of a psychiatric evaluation performed by Dr. Berman upon Freeman. However, Freeman’s counsel filed a notice of a diminished capacity defense that stated Dr. Berman would testify in regards to this defense. A publicly filed document cannot be newly discovered evidence twenty years after it was filed. ***See Commonwealth v. Taylor***, 67 A.3d 1245, 1248 (Pa. 2013). Additionally, Freeman participated in the evaluation which would have put him on notice that a report would have been generated and, with due diligence, Freeman could have found the report prior to the time that the instant PCRA petition was filed.

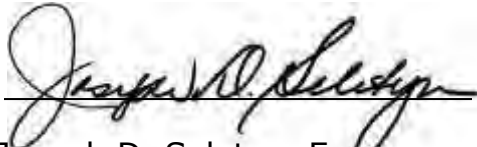
In his second newly discovered evidence claim, Freeman alleges that appointed counsel for his first PCRA petition did not file a brief in the appeal, which resulted in the appeal’s dismissal. Freeman’s first PCRA was dismissed by this Court on October 24, 1994, and he does not explain how this decades-old dismissal is a newly discovered fact. Also, Freeman’s counsel was permitted to withdraw from his representation on May 11, 1994, eight days after the PCRA petition was dismissed and well before any brief would have been due to this Court.

Freeman has not pled or proven any facts that would support application of an exception to the PCRA jurisdictional time bar. As such,

neither this Court nor the PCRA court had jurisdiction to reach the merits of Freeman's claims.

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: 4/17/2014