

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v.

DAVID HAMLIN,

Appellant

No. 1640 MDA 2018

Appeal from the PCRA Order Entered August 31, 2018  
in the Court of Common Pleas of Dauphin County  
Criminal Division at No(s): CP-22-CR-0003594-1992

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v.

DAVID SCOTT HAMLIN,

Appellant

No. 1641 MDA 2018

Appeal from the PCRA Order Entered August 31, 2018  
in the Court of Common Pleas of Dauphin County  
Criminal Division at No(s): CP-22-CR-0001050-2011

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v.

DAVID SCOTT HAMLIN,

Appellant

No. 1642 MDA 2018

Appeal from the PCRA Order Entered August 31, 2018  
in the Court of Common Pleas of Dauphin County  
Criminal Division at No(s): CP-22-CR-0001435-2015

BEFORE: STABILE, J., MURRAY, J., and MUSMANNO, J.

MEMORANDUM BY MUSMANNO, J.:

**FILED JUNE 20, 2019**

David Scott Hamlin (“Hamlin”) appeals from the Order dismissing his first Petition for relief filed pursuant to the Post Conviction Relief Act (“PCRA”).

**See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In its Opinion, the PCRA court summarized the relevant procedural history as follows:

In September [ ] 1993, [ ] Hamlin was convicted of aggravated indecent assault[, 18 Pa.C.S.A. § 3125, at CP-22-CR-0003594-1992, and was sentenced to serve five years of probation.<sup>1</sup>] As a result of that conviction, [ ] Hamlin was required to register[, ] under Megan’s Law [I,] for a ten[-]year period.<sup>[2]</sup> At the PCRA hearing [on May 30, 2018], [ ] Hamlin alleged that he was never aware of the ten[-]year registration period. In 2007, [ ] Hamlin registered as a sex offender[, for the first time,] only after being told by a counselor at the Chino State Men’s Facility in Norco, California[, ] that he was required to [do so]. In 2015, [ ] Hamlin was charged[, at CP-22-CR-0001435-2015 (“Case No. 1435-2015”), with] failure to register as a sex offender[, ] 18 Pa.[C.S.A.] § 4915.1(a)(1), and failure to verify his address and be photographed[, *id.*] § 4915.1(a)(2).

---

<sup>1</sup> At the time Hamlin committed the assault in 1992, Pennsylvania did not have a law imposing registration requirements on sex offenders. However, such laws were enacted while Hamlin was serving his probationary term as to the 1993 conviction. Specifically, Megan’s Law I, 42 Pa.C.S.A. §§ 9791-9799 (expired), became effective on April 22, 1996.

<sup>2</sup> Even though Hamlin’s conviction occurred in 1993, the enabling legislation for Megan’s Law I provided that the sex offender registration requirements applied to individuals, like Hamlin, with convictions prior to the enactment of the act, who remained incarcerated or under supervision concerning the original sex offense. **See** 1995 P.L. 1079, No. 24 (Special Session No. 1), § 3(1) (enacted Oct. 24, 1995) (codified as note to former 42 Pa.C.S.A. § 9793); **see also** *Commonwealth v. Rivera*, 10 A.3d 1276, 1283 (Pa. Super. 2010).

PCRA Court Opinion, 12/21/18, at 1-2 (footnotes added; some footnotes, citations to record, and capitalization omitted).

On August 27, 2015, Hamlin pled guilty to both charges at Case No. 1435-2015, and the trial court sentenced him that same day to serve an aggregate term of 3 to 6 years in prison.<sup>3</sup> The trial court also ordered Hamlin to “comply with all the requirements set forth in Megan’s Law.” Sentencing Order, 8/28/15, at 1. At the time of sentencing, however, Megan’s Law had been replaced by the Sex Offenders Registration and Notification Act (“SORNA”). **See** 42 Pa.C.S.A. §§ 9799.10-9799.41.<sup>4</sup> Under SORNA, Hamlin’s predicate sex offense conviction, *i.e.*, aggravated indecent assault, is classified as a “Tier III offense,” which subjects an offender to **lifetime** registration. **See** 42 Pa.C.S.A. §§ 9799.14(d)(7), 9799.15(a)(3). Hamlin did not file a direct appeal.

On September 25, 2017, Hamlin filed a *pro se* PCRA Petition. He asserted, in relevant part, that the retroactive application of SORNA’s

---

<sup>3</sup> At the August 27, 2015 hearing, the trial court also revoked Hamlin’s probation at CP-22-CR-0001050-2011 (wherein Hamlin had received a sentence of 1 year of probation, after pleading guilty to simple assault in June 2012), and sentenced him to serve 1 to 2 years in prison, concurrent with the sentence imposed at Case No. 1435-2015.

<sup>4</sup> “The Pennsylvania General Assembly passed SORNA as Act 111 of 2011, signed December 20, 2011. In so doing, it provided for the expiration of prior registration requirements, commonly referred to as Megan’s Law, 42 Pa.C.S.A.[.] §§ 9791-9799.9, as of December 20, 2012, and for the effectiveness of SORNA on the same date.” **Commonwealth v. Wood**, 2019 PA Super 117, at \*7 (*en banc*) (citation omitted).

registration requirements is unlawful, relying upon the Pennsylvania Supreme Court's decision in **Commonwealth v. Muniz**, 164 A.3d 1189, 1223 (Pa. 2017) (holding that SORNA's registration requirements constitute criminal punishment, and thus, their retroactive application to increase a sexual offender's term of registration violates the *ex post facto* clauses of the United States and Pennsylvania Constitutions).<sup>5</sup> The PCRA court appointed Hamlin counsel to assist him with his claim, who thereafter filed an Amended PCRA Petition. The parties then argued their respective positions at the May 30, 2018 PCRA hearing.

By an Order entered on August 31, 2018, the PCRA court dismissed Hamlin's PCRA Petition. Hamlin timely filed three respective Notices of Appeal,<sup>6</sup> **see** Pa.R.A.P. 341, Note, followed by court-ordered Pa.R.A.P. 1925(b) Concise Statements of errors complained of on appeal. The PCRA court then issued a Rule 1925(a) Opinion.<sup>7</sup>

On appeal, Hamlin presents the following question for our review:

---

<sup>5</sup> After **Muniz**, this Court, in **Commonwealth v. Rivera-Figueroa**, 174 A.3d 674, 678 (Pa. Super. 2017), held that "**Muniz** created a substantive rule that retroactively applies in the collateral context."

<sup>6</sup> This Court, *sua sponte*, consolidated the appeals.

<sup>7</sup> Though we affirm based on reasoning different than that presented in the PCRA court's Opinion, this Court is not bound by the rationale of a PCRA court, and may affirm on any basis. **See Commonwealth v. Doty**, 48 A.3d 451, 456 (Pa. Super. 2012).

[Whether the PCRA] court erred in dismissing [] Hamlin’s PCRA Petition[,] as jurisdiction was appropriate, HB 631<sup>[8]</sup> (which was recently signed into law) is unconstitutional and punitive, and [] Hamlin should not be required to register under Megan’s Law[?]

Brief for Appellant at 4 (footnote added, capitalization omitted).

---

<sup>8</sup> Hamlin is referring to the General Assembly’s 2018 amendment to SORNA. This Court recently explained the amendment as follows:

In response to our Supreme Court’s decision in **Muniz** and this Court’s later decision in **Commonwealth v. Butler**, 2017 PA Super 344, 173 A.3d 1212 (Pa. Super. 2017), **appeal granted**, 190 A.3d 581 [] (Pa. July 31, 2018) (holding certain sexually violent predator provisions of SORNA were constitutionally infirm), the Pennsylvania General Assembly passed Acts 10 and 29 of 2018. [**See** H.B. 631, 202 Gen. Assem., Reg. Sess. (Pa. 2018), Act 10 of 2018 (hereinafter, “Act 10”), and H.B. 1952, 202 Gen. Assem., Reg. Sess. (Pa. 2018), Act 29 of 2018 (hereinafter, “Act 29”).] The express purpose of these legislative enactments was, *inter alia*, to “[p]rotect the safety and general welfare of the people of this Commonwealth by providing for registration, community notification and access to information regarding sexually violent predators and offenders who are about to be released from custody and will live in or near their neighborhood[,]” and to cure SORNA’s constitutional defects by “address[ing] [**Muniz** and **Butler**].” **See** 42 Pa.C.S.A. § 9799.51(b)(1), (4).

Specifically, our General Assembly modified Subchapter H’s registration requirements for those offenders convicted of committing offenses that occurred on or after SORNA’s effective date of December 20, 2012. The General Assembly also added Subchapter I to Title 42, Part VII, Chapter 97. Subchapter I sets forth the registration requirements that apply to all offenders convicted of committing offenses on or after Megan’s Law I’s effective date (April 22, 1996), but prior to SORNA’s effective date.

**Wood**, 2019 PA Super 117, at \*\*21-22 (emphasis added, citation omitted).

In reviewing an order dismissing a PCRA petition, this Court's standard of review is limited to "whether the [PCRA] court's legal conclusions are correct and whether its factual findings are clearly erroneous." ***Commonwealth v. Edwards***, 177 A.3d 963, 971 (Pa. Super. 2018).

Before we can address the substance of Hamlin's claims, we first must ascertain whether he timely filed his PCRA Petition, as any PCRA petition must be filed within one year of the date the petitioner's judgment of sentence became final. **See** 42 Pa.C.S.A. § 9545(b)(3). Notably here, the one-year time limitation is jurisdictional, and a PCRA court has no power to address the substantive merits of an untimely petition. ***Commonwealth v. Abu-Jamal***, 833 A.2d 719, 723-24 (Pa. 2003); **see also *Commonwealth v. Lawson***, 90 A.3d 1, 4 (Pa. Super. 2014) (stating that "[t]he timeliness of a PCRA petition is a jurisdictional threshold and may not be disregarded in order to reach the merits of the claims raised in a PCRA petition that is untimely."). Our appellate courts must strictly apply the time limitations of the PCRA. **See *Commonwealth v. Collins***, 888 A.2d 564, 569 (Pa. 2005). Pennsylvania courts may consider an untimely PCRA petition if the appellant can explicitly plead and prove one of three exceptions set forth in 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). A petition asserting one of these exceptions must also

establish that the exception was raised within 60 days of the date the claim could have been first presented. 42 Pa.C.S.A. § 9545(b)(2).<sup>9, 10</sup>

Hamlin concedes that because his judgment of sentence became final in September 2015, and he did not file the instant PCRA Petition until September 25, 2017, it is facially untimely. Brief for Appellant at 9. However, Hamlin invokes the newly-recognized constitutional right exception at 42 Pa.C.S.A. § 9545(b)(1)(iii), asserting that the retroactive application of SORNA's lifetime registration requirement to his case is illegal under **Muniz, supra**. See Brief for Appellant at 9-12. Hamlin contends that if his claim for collateral relief is granted, "then[,] depending on the length of his registration requirement[,] he may be serving an illegal sentence at [Case No.] 1435[-]2015[,] as he would not have been ordered to register and would be entitled to immediate release[.]" **Id.** at 11 (emphasis omitted). Finally, Hamlin argues that SORNA

does NOT apply to [Hamlin,] in terms of requiring him to continue to comply with sex offender registration requirements going forward[,] as the new statute[, *i.e.*, Act 10,] explicitly states that it does not apply to offenders who committed their offense before 1996; [Hamlin] committed his predicate offense in 1992[,] and has not committed any other sexual offenses since his original charge.

---

<sup>9</sup> Section 9545(b)(2) was amended on October 24, 2018, effective in 60 days (*i.e.*, Dec. 24, 2018), extending the time for filing from 60 days of the date the claim could have been first presented, to one year. The amendment applies to claims arising on December 24, 2017, or thereafter. See Act 2018, Oct. 24, P.L. 894, No. 146, § 3 (hereinafter "Act 146"). In the instant case, the one-year time limit of Act 146 does not apply to Hamlin's PCRA Petition, as he filed it on September 25, 2017.

<sup>10</sup> At the PCRA hearing, the parties stipulated that Hamlin filed his PCRA Petition within 60 days of the **Muniz** decision. See N.T., 5/30/18, at 8-9.

**Id.** at 11-12 (emphasis in original).

Hamlin's reliance on **Muniz** cannot satisfy the requirements of the newly-recognized constitutional right exception. As our Supreme Court has explained, this exception has two requirements:

First, it provides that the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or [the Pennsylvania Supreme Court] after the time provided in this section. Second, it provides that the right "has been held" by "that court" to apply retroactively. Thus, a petitioner must prove that there is a "new" constitutional right *and that the right "has been held" by that court to apply retroactively.* The language "has been held" is in the past tense. These words mean that the action has already occurred, *i.e.*, "that court" has already held the new constitutional right to be retroactive to cases on collateral review.

**Commonwealth v. Spatz**, 171 A.3d 675, 679 (Pa. 2017) (emphasis added; citation omitted).

Though the Superior Court in **Rivera-Figueroa, supra**, held that **Muniz** applies retroactively, because Hamlin's instant PCRA Petition is facially untimely (unlike the *timely*-filed first petition at issue in **Rivera-Figueroa**), he must demonstrate that the Pennsylvania *Supreme Court* has held that **Muniz** applies retroactively in order to satisfy Section 9545(b)(1)(iii). **See Commonwealth v. Murphy**, 180 A.3d 402, 405-06 (Pa. Super. 2018) (recognizing that to invoke the exception at subsection (iii), the petitioner must demonstrate that the Pennsylvania Supreme Court has held that **Muniz** applies retroactively). To date, the Pennsylvania Supreme Court has not held



that ***Muniz*** applies retroactively; thus, it is unavailing to Hamlin at this time.<sup>11</sup>

***See Murphy, supra.***

Because Hamlin's PCRA Petition is time-barred, both the PCRA court and this Court lack jurisdiction to review it. Therefore, we cannot address the substance of his claims pertaining to (1) the constitutionality of Acts 10 and 29;<sup>12</sup> (2) the applicability of SORNA's registration requirements to him going forward; and (3) the legality of his sentences imposed at Case No. 1435-2015. ***See Commonwealth v. Chester***, 895 A.2d 520, 522 (Pa. 2006) (stating that "[i]f a PCRA petition is untimely, neither this Court nor the [PCRA] court has jurisdiction over the petition." (citation omitted)); ***Abu-Jamal, supra*** (stating that a court has no power to address the substantive merits of an untimely PCRA petition); ***see also Commonwealth v. Fahy***, 737 A.2d 214, 223 (Pa. 1999) (noting that "[a]lthough legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto.").

Accordingly, we affirm the PCRA court's Order dismissing Hamlin's first PCRA Petition.

Order affirmed.

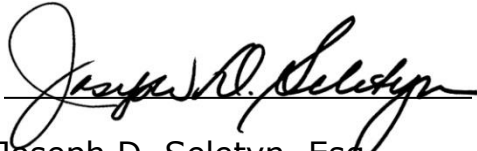
---

<sup>11</sup> Should the Pennsylvania Supreme Court later expressly hold that ***Muniz*** applies retroactively, Hamlin may again petition for PCRA relief within one year of that decision.

<sup>12</sup> We note that our Pennsylvania Supreme Court recently granted review, in its original jurisdiction, to determine the issue of whether Acts 10 and 29 are constitutional. ***See Commonwealth v. Lacombe***, 35 MAP 2018 (Pa. 2018).

J-S25039-19

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 06/20/2019