

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

FREDERICK MAYHUE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1906 WDA 2012

Appeal from the PCRA Order November 16, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0001250-1987

BEFORE: SHOGAN, J., LAZARUS, J., and PLATT, J.*

JUDGMENT ORDER BY LAZARUS, J.

FILED: May 22, 2013

Frederick Mayhue appeals the order entered in the Court of Common Pleas of Allegheny County dismissing his petition filed under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546. We affirm.

On April 14, 1994, Mayhue was sentenced to life imprisonment without parole for the first-degree murder of his wife.

On August 15, 2012, Mayhue filed his third PCRA petition in which he invoked the timeliness exception of section 9545(b)(1)(iii), asserting that **Miller v. Alabama**, ___ U.S. ___, 132 S.Ct. 2455 (2012), required the reversal of his sentence. The PCRA court dismissed the petition on November 19, 2012, and this appeal followed.

* Retired Senior Judge assigned to the Superior Court.

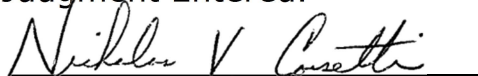
Section 9545(b)(1)(iii) permits the filing of a PCRA petition more than one year after a judgment of sentence becomes final if the petitioner alleges and proves that the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania and has been held by that court to apply retroactively.

On June 25, 2012, the Supreme Court of the United States held in **Miller** that mandatory life sentences without the possibility of parole for juveniles are unconstitutional under the Eighth Amendment. The new right set forth in **Miller** applies only to individuals who were under the age of eighteen when they committed murder. Mayhue was 52 years old when he killed his wife. Because **Miller** does not recognize a new right that applies to Mayhue, his third PCRA petition is untimely. Mayhue's related argument that **Miller** violates equal protection because it treats adults and juveniles convicted of first-degree murder differently, also fails to meet any timeliness exception to the PCRA.

The timeliness of a PCRA petition is a jurisdictional requisite. **Commonwealth v. Hackett**, 956 A.2d 978 (Pa. 2008). "Jurisdictional time limits go to a court's right or competency to adjudicate a controversy." **Id.** at 983. Accordingly, the PCRA court properly dismissed Mayhue's petition.

Order affirmed.

Judgment Entered.



Deputy Prothonotary

J-S28027-13

Date: 5/22/2013