

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ERICA DUNSTON

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1925 WDA 2012

Appeal from the PCRA Order November 2, 2012  
In the Court of Common Pleas of Erie County  
Criminal Division at No(s): CP-25-CR-0000742-2010

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

JUDGMENT ORDER BY LAZARUS, J.

FILED: May 22, 2013

Erica Dunston appeals the order entered in the Court of Common Pleas of Erie County dismissing her petition filed under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546. We affirm.

On June 17, 2010, Dunston was sentenced to life imprisonment for murder plus 22-44 months for arson. She did not file a direct appeal.

On August 22, 2012, Dunston filed the instant PCRA petition in which she 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 her sentence. The PCRA court dismissed the petition on November 2, 2012, and this appeal followed.

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\* Retired Senior Judge assigned to the Superior Court.

For purposes of the PCRA, Dunston's conviction became final on July 17, 2011, at the expiration of the time for seeking direct review of the judgment of sentence. **See** 42 Pa.C.S. § 9545(b)(3). 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. 42 Pa.C.S. § 9545(b)(1)(iii).

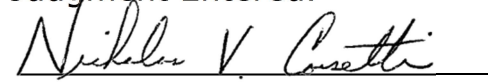
On June 25, 2012, the Supreme Court of the United States held in **Miller** that mandatory life sentences without the possibility of parole for juveniles are unconstitutional under the Eighth Amendment. The new right set forth in **Miller** applies only to individuals who were under the age of eighteen when they committed murder. Dunston was 27 years old when she killed the victim, who was her father. Because **Miller** does not recognize a new right that applies to Dunston, her PCRA petition is untimely. Dunston's related argument that **Miller** violates equal protection because it treats adults and juveniles convicted of first and second degree murder differently, also fails to meet the timeliness requirements of 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 Dunston's petition.

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Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 5/22/2013