

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JAMES WYATT MILLER,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2676 EDA 2013

Appeal from the PCRA Order September 12, 2013
in the Court of Common Pleas of Monroe County
Criminal Division at No.: CP-45-CR-0000367-2008

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.:

FILED JUNE 11, 2014

Appellant, James Wyatt Miller, appeals from the order denying, after a hearing, his second counseled petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On February 10, 2008, Appellant was charged with criminal homicide and related counts for the death of Colonel Jack Bates, who perished in a house fire while Appellant was employed as his in-home aide. On December 9, 2009, a jury found Appellant guilty of involuntary manslaughter, arson causing death, arson of an inhabited building, and criminal mischief.¹ The

* Retired Senior Judge assigned to the Superior Court.

¹ **See** 18 Pa.C.S.A. §§ 2504(a), 3301(a)(2), 3301(a)(1)(ii), and 3304(a)(1), respectively.

court sentenced Appellant to life in prison without the possibility of parole. On direct appeal, this Court affirmed Appellant's judgment of sentence, and our Supreme Court denied Appellant's petition for review on December 28, 2011. (**See Commonwealth v. Miller**, 32 A.3d 272 (Pa. Super. 2011) (unpublished memorandum), *appeal denied*, 34 A.3d 82 (Pa. 2011)).

On September 13, 2012, Appellant timely filed his first, *pro se* PCRA petition. The court appointed PCRA counsel, held a hearing, and ultimately denied relief on April 26, 2013. Appellant did not file an appeal.

On July 2, 2013, PCRA counsel filed the underlying petition, captioned as a motion for new trial, alleging the recent discovery of a juror's previously-unknown criminal history. The court, properly treating the motion as a second PCRA petition², held a hearing on August 5, 2013. There, PCRA counsel developed the claim that, while investigating an unrelated case, he learned that a member of Appellant's jury, Sheryl Coons (previously Sheryl Muto), should have been disqualified from serving because she pleaded guilty to forgery in New York State in 1997.

² "[A]ny petition filed after the judgment of sentence becomes final will be treated as a PCRA petition." **Commonwealth v. Taylor**, 65 A.3d 462, 466 (Pa. Super. 2013) (citation omitted).

On September 12, 2013, the PCRA court entered an opinion and order denying Appellant's petition. Appellant timely appealed.³

Appellant raises four questions for our review:

1. Whether the [PCRA] court erred, as a matter of law, in treating this matter as a second petition under the Post Conviction Relief Act when the caption of the document filed was a motion for new trial *nunc pro tunc*[?]
2. Whether the [PCRA] court erred, as a matter of law, in finding that [Appellant] has waived his right to challenge the qualification of Sheryl Muto to serve as a juror when the jury was sworn and that no exceptions apply to the rule of waiver[?]
3. Whether the [PCRA] court erred, as a matter of law, in finding that [Appellant] failed to establish that Sheryl Muto was unqualified to serve as a juror in the Commonwealth of Pennsylvania[?]
4. Whether the [PCRA] court erred, as a matter of law, in basing its decision that Sheryl Muto was qualified based upon her credibility when the evidence presented showed that she had in fact been convicted of forgery graded as a D felony in the State of New York[?]

(Appellant's Brief, at 3).

Our standard of review is well-settled:

When reviewing the propriety of an order granting or denying PCRA relief, this Court is limited to determining whether the evidence of record supports the determination of the PCRA court and whether the ruling is free of legal error. Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record.

³ Pursuant to the PCRA court's order, Appellant filed a Rule 1925(b) statement on October 25, 2013. The court entered its Rule 1925(a) opinion on November 27, 2013. **See** Pa.R.A.P. 1925.

Commonwealth v. Rachak, 62 A.3d 389, 391 (Pa. Super. 2012), *appeal denied*, 67 A.3d 796 (Pa. 2013) (citations omitted).

Because the time limits imposed by the PCRA are jurisdictional and must be strictly construed, ***see Commonwealth v. Fahy***, 959 A.2d 312, 315 (Pa. 2008), we must address the timeliness of Appellant's petition.

A PCRA petition "shall be filed within one year of the date the judgment [of sentence] becomes final[.]" 42 Pa.C.S.A. § 9545(b)(1).

Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition. Statutory time restrictions are mandatory and jurisdictional in nature, and may not be altered or disregarded to reach the merits of the claims raised in the petition. . . .

The three statutory exceptions to the timeliness provisions in the PCRA allow for very limited circumstances under which the late filing of a petition will be excused. 42 Pa.C.S.A. § 9545(b)(1). To invoke an exception, a petition must allege and the petitioner must prove:

- (i) the failure to raise a 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). The PCRA specifically provides that a petitioner raising one of the statutory exceptions to the timeliness requirements must affirmatively plead and

prove the exception. **Id.** The statutory exceptions to the timeliness requirements of the PCRA are also subject to a separate time limitation and must be asserted within sixty (60) days of the date the claim could have been first presented. 42 Pa.C.S.A. § 9545(b)(2). As such, when a PCRA [petition] is not filed within one year of the expiration of direct review, or not eligible for one of the exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner's PCRA claims.

Commonwealth v. Taylor, 933 A.2d 1035, 1038-39 (Pa. Super. 2007), *appeal denied*, 951 A.2d 1163 (Pa. 2008) (footnote, quotation marks and case citations omitted). Thus, when a petition is filed outside the one-year time limitation, "our review focuses on whether Appellant has pled and proven that one of the three limited exceptions to the timeliness requirements of the PCRA apply." **Commonwealth v. Wilson**, 824 A.2d 331, 335 (Pa. Super. 2003) (*en banc*), *appeal denied*, 839 A.2d 352 (Pa. 2003).

Here, Appellant's judgment of sentence became final on March 27, 2012. **See** 42 Pa.C.S.A. § 9545(b)(3); **see also Commonwealth v. Owens**, 718 A.2d 330, 331 (Pa. Super. 1998). Hence, in order to comply with the filing requirements of the PCRA, Appellant's petition had to be filed by March 27, 2013. Because the underlying petition was filed on July 2, 2013, it is facially untimely and the PCRA court lacked jurisdiction to review it unless Appellant pleaded and proved one of the statutory exceptions to the time bar under 42 Pa.C.S.A. § 9545(b)(1).

In the instant case, counsel for Appellant alleges that “[o]n June 21, 2013, [he] became aware that the juror whom he thought served on another homicide prosecution had, in fact, sat as a juror in this [Appellant’s] trial.” (Petition, 7/02/13, at unnumbered page 2 ¶ 5). Specifically, he learned that Juror No. 11, Sheryl Muto, pleaded guilty to forgery, “a felony 2 offense,” in New York in 1997, rendering her ineligible for jury service pursuant to 42 Pa.C.S.A. § 4502(a)(3). (*Id.* at unnumbered page 2 ¶¶ 7-8; *see also id.* at Exhibit 2). Counsel asserts, however, that she never revealed her conviction to the Monroe County Jury Management Office. (*See id.* at unnumbered page 2 ¶ 11). Thus, Appellant claims an exception to the time bar because of this “newly-discovered evidence.” 42 Pa.C.S.A. § 9545(b)(2)(ii) (providing exception to time bar where “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”); (*see also* Appellant’s Brief, at 4). We disagree.

“[T]o constitute facts which were unknown to a petitioner and could not have been ascertained by the exercise of due diligence, the information must not be of public record and must not be facts that were previously known but are now presented through a newly discovered source.” *Commonwealth v. Edmiston*, 65 A.3d 339, 352 (Pa. 2013), *cert. denied*, 134 S. Ct. 639 (2013). It is well-settled that criminal proceedings are a matter of public record. *See Commonwealth v. Palmer*, 814 A.2d 700, 708 (Pa. Super. 2002), *appeal denied*, 832 A.2d 436 (Pa. 2003). “[M]atters

of public record are not unknown.” ***Commonwealth v. Taylor***, 67 A.3d 1245, 1248 (Pa. 2013).

Here, Appellant contends that Sheryl Muto’s forgery conviction is newly-discovered evidence. However, her conviction is a matter of public record, and not unknown for purposes of invoking an exception to the time bar. ***See Taylor, supra*** at 1248; ***Palmer, supra*** at 708.

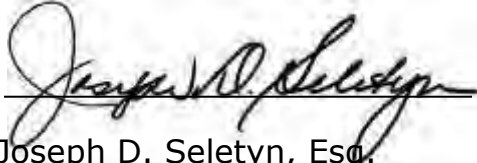
Furthermore, the PCRA court established at the hearing that, when filling out her form questionnaire for jury service, Ms. Muto answered the question of whether she “or anyone close to [her] ever been charged with, or arrested for a crime other than a traffic violation?” in the affirmative. (N.T. Hearing, 8/05/13, at 7; ***see also*** PCRA Court Opinion, 9/12/13, at 3). Although Ms. Muto maintained that she believed her conviction had been discharged and had answered “yes” in reference to her son, her answer in the questionnaire should have put counsel on notice. (***See*** N.T. Hearing, 8/05/13, at 27). Nonetheless, counsel for Appellant failed to elicit any information from Ms. Muto or preserve an objection during *voir dire*. (***See*** PCRA Ct. Op., at 5-6); ***see also Commonwealth v. Sneed***, 899 A.2d 1067, 1075 (Pa. 2006) (holding that petitioner waives any challenges to his jury panel on collateral review for failure to timely raise the issue at trial).

Thus, Appellant cannot claim this information “could not have been ascertained by the exercise of due diligence.” 42 Pa.C.S.A. § 9545(b)(2)(ii). Appellant may not reintroduce this information through a new source. ***See Edmiston, supra*** at 352. Therefore, Appellant’s claim does not satisfy the

exception to the time bar set forth in Section 9545(b)(1)(ii), and we lack jurisdiction to consider the merits of his petition.⁴ ***See Taylor, supra*** at 1038-39.

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: 6/11/2014

⁴ "This Court may affirm a PCRA court's decision on any grounds if the record supports it." ***Commonwealth v. Rykard***, 55 A.3d 1177, 1183 (Pa. Super. 2012), *appeal denied*, 64 A.3d 631 (Pa. 2013) (citation omitted).