

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ROMELL THOMPSON,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1941 MDA 2013

Appeal from the PCRA Order October 11, 2013  
In the Court of Common Pleas of Cumberland County  
Criminal Division at No(s): CP-21-CR-0002705-2008

BEFORE: BENDER, P.J.E., BOWES, and PANELLA, JJ.

MEMORANDUM BY BOWES, J.:

**FILED JULY 24, 2014**

Romell Thompson appeals *pro se* from the October 11, 2013 order denying him PCRA relief. We affirm.

On June 25, 2009, Appellant was convicted by a jury of two counts of possession of a controlled substance with intent to deliver ("PWID") and one count of conspiracy to PWID. His convictions were premised upon the following proof:

On October 3, 2008, Pennsylvania State Trooper James Borza, while working with the Cumberland County Drug Task Force, along with a confidential informant, executed a controlled buy of heroin in Silver Spring Township. The heroin was purchased from Shalonda Jenkins at a Wal-Mart parking lot in Silver Spring Township. After the purchase, Trooper Borza and other officers followed Mrs. Jenkins back to the Travelodge motel in Middlesex Township where she was staying and arrested her in the parking lot after watching her complete another drug sale. Trooper Borza obtained a search warrant to search Ms. Jenkins's room. In the room, officers found a black duffel bag which contained heroin, a bag of cocaine, cash in the amount of

\$1,000, and a man's wallet. Trooper Borza recognized \$700 of the \$1,000 found in the bag as "buy money" from the controlled buy earlier in the day. The wallet belonged to Defendant. Three bags of marijuana, baggies, and a digital scale were also found in the room. Defendant was [alone] in the room when Officer Dale entered the room to secure it during the search warrant. Trooper Borza interviewed the Defendant, and Defendant stated that he knew heroin was being sold from the room and that Defendant and Mrs. Jenkins had brought heroin from New Jersey to sell in Carlisle. Defendant was placed under arrest at that time.

. . . .

Detective Jeffrey D. Kurtz of the Carlisle Borough Police Department has worked from the last seven years on the Cumberland County Drug Task Force and has received specialized training in narcotics trafficking. Detective Kurtz testified as an expert in narcotics trafficking and explained to the jury that it is common for drug traffickers to travel with someone, to have someone drive them to an unknown area, and to have someone there as protection. He also explained to the jury that it is common in drug deals for one person to remain in a hotel room or stash house to protect the cash and drugs while the other person is out doing drug transactions.

Trial Court Opinion, 12/14/09, at 2-3 (citations to record omitted).

On August 25, 2009, Appellant was sentenced to a total term of imprisonment of ten to twenty years. Appellant filed a direct appeal raising a claim that his convictions were against the weight of the evidence. On August 30, 2010, we affirmed the judgment of sentence, ***Commonwealth v. Thompson***, 11 A.3d 1043 (Pa.Super. 2010) (unpublished memorandum), and Appellant did not seek allowance of appeal to our Supreme Court. On April 15, 2011, Appellant filed a PCRA petition alleging that counsel was ineffective for failing to file a petition for allowance of appeal. That petition

was denied on January 24, 2012, and the ensuing appeal from that denial was quashed as untimely filed.

Appellant filed the PCRA petition at issue on appeal on October 1, 2013. It was denied on October 11, 2013, and this appeal followed. Appellant raises these contentions: "I. Whether the PCRA court lacked subject matter jurisdiction to preside over these proceedings? II. Whether the PCRA court committed an error of law in imposing an illegal sentence?" Appellant's brief at 4.<sup>1</sup>

Initially, we note that, when "reviewing the denial of PCRA relief, we examine whether the PCRA court's determinations are supported by the record and are free of legal error." ***Commonwealth v. Roney***, 79 A.3d

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<sup>1</sup> We observe that both of these positions are cognizable under the PCRA.

To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

. . . .

(2) That the conviction or sentence resulted from one or more of the following:

. . . .

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

42 Pa.C.S. § 9543(a).

595, 603 (Pa. 2013) (citation omitted). We next examine the timeliness of Appellant's PCRA petition as that question pertains to whether there is jurisdiction to entertain the merits of Appellant's averments. **Commonwealth v. Ali**, 86 A.3d 173, 177 (Pa. 2014) (citing **Commonwealth v. Fahy**, 737 A.2d 214 (Pa. 1999)) ("PCRA time limits are jurisdictional in nature, implicating a court's very power to adjudicate a controversy."). While the PCRA court resolved Appellant's petition on the merits and the Commonwealth relies upon that decision, we raise the timeliness of a PCRA petition *sua sponte* since, if the petition is untimely, neither this Court nor the PCRA court possesses the power to resolve the petition on the merits. **Commonwealth v. Gandy**, 38 A.3d 899, 902 (Pa.Super. 2012) (citation omitted) ("Even where neither party nor the PCRA court have addressed the matter, it is well-settled that we may raise it *sua sponte* since a question of timeliness implicates the jurisdiction of our Court."); **Commonwealth v. Valentine**, 928 A.2d 346 (Pa.Super. 2007) (noting that trial court cannot resolve the merits of an untimely PCRA petition and raising question of timeliness of a PCRA petition *sua sponte*); **see also Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000) (if a PCRA petition is untimely, "the trial court has no power to address the substantive merits of a petitioner's PCRA claims.").

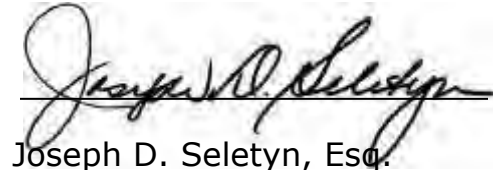
All PCRA petitions, including a second one, must be filed within one year of the date that the defendant's judgment of sentence becomes final.

42 Pa.C.S. § 9545(b)(1). A judgment becomes final for purposes of the PCRA “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. § 9545(b)(3). Since Appellant failed to seek discretionary review with our Supreme Court, his judgment of sentence became final thirty days after our August 30, 2010 decision on direct appeal, or on September 29, 2010. Thus, Appellant had until September 29, 2011 to file a timely PCRA petition, and the present petition, which was filed in 2013, is facially untimely.

There are three exceptions to the one-year time bar: when the government has interfered with the defendant’s ability to present the claim, when the defendant has recently discovered the facts upon which his PCRA claim is predicated, and when either our Supreme Court or the United States Supreme Court has recognized a new constitutional right and made that right retroactive. 42 Pa.C.S. § 9545(b)(1)(i-iii). Herein, Appellant has not acknowledged the existence of § 9545, much less invoked any exception. Therefore, we affirm. ***Commonwealth v. Taylor***, 65 A.3d 462, 468 (Pa.Super. 2013) (where defendant did not allege on appeal that any exceptions to the time-bar of § 9545 applied, we held that the petition was untimely).

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/24/2014