

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIAM RICKY BOYD,	:	
	:	
Appellant	:	No. 382 WDA 2015

Appeal from the PCRA Order Entered February 9, 2015,
in the Court of Common Pleas of Allegheny County,
Criminal Division, at No(s): CP-02-CR-0002209-1993
and CP-02-CR-0002211-1993

BEFORE: FORD ELLIOTT, P.J.E., DONOHUE, and STRASSBURGER, JJ.*

MEMORANDUM BY STRASSBURGER, J.:

FILED JULY 31, 2015

William Ricky Boyd (Appellant) appeals *pro se* from the order entered February 9, 2015, dismissing his petition filed pursuant to the Post Conviction Relief Act (PCRA).¹ We affirm.

Generally, a PCRA petition must be filed within one year from the date a judgment becomes final. There are three exceptions to this time requirement: (1) interference by government officials in the presentation of the claim; (2) newly discovered facts; and (3) an after-recognized constitutional right. When a petitioner alleges and proves that one of these exceptions is met, the petition will be considered timely. A PCRA petition invoking one of these exceptions must be filed within 60 days of the date the claims could have been presented. The timeliness requirements of the PCRA are jurisdictional in nature and, accordingly, a PCRA court cannot hear untimely petitions.

¹ 42 Pa.C.S. §§ 9541-9546.

*Retired Senior Judge assigned to the Superior Court.

Commonwealth v. Brandon, 51 A.3d 231, 233-34 (Pa. Super. 2012) (citations and quotation marks omitted).

On April 26, 1994, Appellant was found guilty in a jury trial of one count of criminal conspiracy, four counts of aggravated assault, and two counts of carrying a firearm without a license. He was sentenced to an aggregate term of 50 to 100 years' incarceration, which included mandatory minimum sentences for the visible possession of a firearm² and for the victim being under the age of sixteen.³ Appellant's judgment of sentence was affirmed by a panel of this Court on June 17, 1996, and his petition for allowance of appeal was denied on January 15, 1997. ***Commonwealth v. Boyd***, 679 A.2d 1284 (Pa. Super. 1986), *appeal denied*, 689 A.2d 230 (Pa. 1997). Thus, Appellant had until approximately April 15, 1998 to file timely a PCRA petition.⁴

² 42 Pa.C.S. § 9712.

³ 42 Pa.C.S. § 9718.

⁴ Appellant timely filed his first *pro se* PCRA on March 27, 1997. Counsel was appointed, filed an amended petition, and the PCRA court dismissed the petition on September 26, 2000. That order was eventually affirmed by a panel of this Court on September 4, 2003, and our Supreme Court denied Appellant's petition for allowance of appeal on August 31, 2004. ***Commonwealth v. Boyd***, 860 A.2d 1128 (Pa. Super. 2004) (unpublished memorandum), *appeal denied*, 871 A.2d 188 (Pa. 2005). Thereafter, Appellant filed several PCRA petitions. Appellant also sought relief in the federal courts.

On January 7 and 15, 2015, Appellant filed the PCRA petition and supplemental petition at issue in this appeal. Appellant argued that his sentence violates the recent United States Supreme Court decision in ***Alleyne v. United States***, 133 S.Ct. 2151 (2013). He contended that his petition is timely because ***Alleyne*** is a “constitutional right that was recognized by the Supreme Court of the United States ... after the time period provided in this section and has been held by that court to apply retroactively.” 42 Pa.C.S. § 9545(b)(1)(iii). **See** PCRA Petition, 1/7/2015, at 6.

On January 21, 2015, the PCRA court filed its notice of intent to dismiss Appellant’s petition pursuant to Pa.R.Crim.P. 907 because ***Alleyne*** “only applies retroactively in cases still pending direct review.” Pa.R.Crim.P. 907 Notice, 1/21/2015. On February 9, 2014, the PCRA court dismissed the petition. Appellant timely filed a notice of appeal. The PCRA court did not order Appellant to file a concise statement, but the PCRA court did issue an opinion pursuant to Pa.R.A.P. 1925.

Appellant’s PCRA petition, filed on January 7, 2015, is patently untimely, having been filed approximately seventeen years after Appellant’s judgment of sentence became final. Thus, the PCRA court had no jurisdiction to entertain Appellant’s petition unless he pled and offered proof of one or more of the three statutory exceptions to the time bar. 42 Pa.C.S.

§ 9545(b)(1). Appellant's reliance on **Alleyne** does not satisfy any exception.

Even assuming that **Alleyne** did announce a new constitutional right, neither our Supreme Court, nor the United States Supreme Court has held that **Alleyne** is to be applied retroactively to cases in which the judgment of sentence had become final. This is fatal to Appellant's argument regarding the PCRA time-bar. This Court has recognized that a new rule of constitutional law is applied retroactively to cases on collateral review only if the United States Supreme Court or our Supreme Court specifically holds it to be retroactively applicable to those cases.

Commonwealth v. Miller, 102 A.3d 988, 995 (Pa. Super. 2014).

Because neither the United States Supreme Court nor our Supreme Court has held that **Alleyne** applies retroactively to cases on collateral review, Appellant may not rely on it to satisfy an exception to the PCRA time-bar requirements. Accordingly, the PCRA court properly dismissed Appellant's petition.

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: 7/31/2015