

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
FREDRICK EARL TAYLOR,	:	
	:	
Appellant	:	No. 27 WDA 2014

Appeal from the PCRA Order entered on July 24, 2013
in the Court of Common Pleas of Westmoreland County,
Criminal Division, No. CP-65-CR-0005082-2008

BEFORE: PANELLA, JENKINS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JULY 24, 2014

Fredrick Earl Taylor (“Taylor”) appeals from the Order dismissing his first Petition for relief pursuant to the Post Conviction Relief Act (“PCRA”). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Taylor was convicted of one count each of robbery, theft by unlawful taking-movable property, theft by receiving stolen property, and of simple assault-physical menace. Taylor was sentenced to ten to twenty years in prison on September 9, 2010. On June 1, 2011, this Court affirmed the judgment of sentence and on September 27, 2011, our Supreme Court denied allowance of appeal. **See Commonwealth v. Taylor**, 31 A.3d 732 (Pa. Super. 2011) (unpublished memorandum), *appeal denied*, 30 A.3d 488 (Pa. 2011).

On March 27, 2013, Taylor filed a *pro se* PCRA Petition in which he alleged ineffective assistance of counsel. After appropriate Notice, the PCRA court dismissed Taylor's Petition. Thereafter, Taylor filed the instant appeal.

On appeal, Taylor raises the following question for our review: "Whether trial counsel rendered ineffective assistance [] when he failed to properly investigate the case and failed to locate a ready and willing exculpatory eyewitness?" Brief for Appellant at 4.

We review an order dismissing a petition under the PCRA in the light most favorable to the Commonwealth. ***Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa. Super. 2012). "This review is limited to the findings of the PCRA court and the evidence of record." ***Id.*** (citation omitted). "We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error." ***Id.*** (citation omitted).

Under the PCRA, any petition "shall be filed within one year of the date the judgment becomes final[.]" 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence becomes final "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." ***Id.*** § 9545(b)(3). The PCRA's timeliness requirements are jurisdictional in nature and a court may not address the merits raised if the PCRA petition was not timely filed. ***Commonwealth v. Albrecht***, 944 A.2d 1091, 1093 (Pa. 2010).

Here, Taylor's judgment of sentence became final on December 27, 2011, ninety days after our Supreme Court denied permission to appeal. As Taylor filed no appeal with the Supreme Court of the United States, he had until December 27, 2012 to file this PCRA Petition. Taylor did not file his Petition until March 27, 2013. Thus, Taylor's Petition is facially untimely under the PCRA.

However, Pennsylvania courts may consider an untimely petition if the appellant can explicitly plead and prove one of the three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any PCRA petition invoking one of these exceptions "shall be filed within 60 days of the date the claim could have been presented." *Id.* § 9545(b)(2); *Albrecht*, 994 A.2d at 1094.

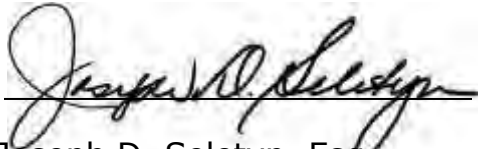
Taylor invokes the newly discovered facts exception set forth at 42 Pa.C.S.A. § 9545(b)(1)(ii). Brief for Appellant at 8. Taylor claims that he has discovered an eyewitness whose proposed testimony will exonerate him. *Id.* at 8-9. However, Taylor has failed to demonstrate that the eyewitness could not have been discovered through the exercise of due diligence at the time of his trial. Further, Taylor fails to set forth the factual basis of the witness's testimony or show that the witness's testimony would exonerate him. Thus, Taylor has failed to properly invoke the newly discovered facts

exception to the timeliness requirement.¹

Because Taylor has failed to prove any exception to the PCRA's timeliness requirements, we conclude that the PCRA court properly dismissed Taylor's PCRA 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: 7/24/2014

¹ Taylor raises various ineffective assistance of counsel claims. However, ineffectiveness of counsel does not implicate an exception to the timeliness requirements. **See *Commonwealth v. Lewis***, 63 A.3d 1274, 1281 (Pa. Super. 2013).