

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CORY JOHN ALTMAN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 785 WDA 2013

Appeal from the Order Entered on April 2, 2013
In the Court of Common Pleas of Warren County
Criminal Division at No.: CP-62-CR-0000053-2009

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

FILED APRIL 11, 2014

Cory John Altman ("Altman") appeals from the April 2, 2013 order that dismissed his second, *pro se*, petition for relief pursuant to the Post-Conviction Relief Act ("PCRA").¹ We affirm.

The trial court aptly summarized the factual history of this case in the memorandum attached to its September 16, 2009 order dismissing Altman's "Motion for Judgment of Acquittal" as follows:

On December 5, 2008[,] at approximately 4:30 p.m., Kyle Yeager (age 15) and Jordan Yeager (age 12) found their father, Shawn Yeager ["the victim"], dead on the back porch of his residence located at 2444 Kelly Hill Road, Tidioute, [Pennsylvania], which is in Limestone Township, Warren County. [When the children could not [detect] a pulse, they called] their maternal grandmother, Wilma Altman, who lived nearby.

¹ 42 Pa.C.S. §§ 9541, *et seq.*

Shortly thereafter, Mrs. Altman arrived at the Yeager residence with [other members of her family. Upon arrival, the members of the Altman family also confirmed that the victim was dead]. Mrs. Altman then called 911 for emergency assistance. Trooper Jeffrey Walters of the Pennsylvania State Police, Warren Barracks, proceeded to the scene. Trooper Walters arrived at some time after 5:00 p.m., approximately the same time [that] the estranged wife of the victim, Susan Yeager [("Yeager")], arrived at the scene after returning from work at Wal-Mart. Trooper Walters interviewed [Yeager] and a few members of her family who had come to the scene. . . . [Trooper Walters then] asked the family members of the victim and [Yeager] (the Altman family) to come to the State Police Barracks on December 7, 2008[,] so that the police could talk with them in order to determine how the victim died.

A number of witnesses voluntarily came forward and informed the police that [Yeager] . . . and [Altman's] sister, had made comments on numerous occasions to multiple people over the last several years that she wanted . . . the victim, dead. Upon learning of Yeager's prior expressed desires to have [the victim] killed in a "hunting accident," the police shifted their focus to Yeager as their primary suspect. They questioned Yeager on December 7, 2008, and ultimately she confessed that she had solicited [Altman² and two co-defendants] to commit the crime. Furthermore, after an opportunity to fully discuss the consequences of a confession with appointed counsel, Public Defender John Parrocchini, Esq., and after being advised of his rights, [Altman] voluntarily confessed to the murder of [the victim] on December 8, 200[8].

Trial Court Memorandum Opinion, 9/16/2009, at 1-2.

On December 8, 2008, the Commonwealth of Pennsylvania charged [Altman] with one count Murder in the First Degree . . . , three counts of Conspiracy to Commit Murder in the First Degree, [Persons Not to Possess, Use, Etc. Firearms], as well as

² Cory Altman is Susan Yeager's brother.

one count of Cruelty to Animals.^[3] On February 10, 2009, the Commonwealth amended the charges against [Altman] to one count each of Murder in the First Degree and Cruelty to Animals^[4] and withdrew [the remaining charges]. . . . [T]rial commenced on May 11, 2009. On May 14, 2009, a jury convicted [Altman on both charges]. [The trial court] sentenced [Altman] on June 16, 2009 to life imprisonment without the possibility of parole.

Id. at 1. The PCRA court has summarized the remaining procedural history in its order dismissing Altman’s second PCRA petition without a hearing as follows:

On June 24, 2009, [Altman] filed a Post-Sentence Motion for Judgment of Acquittal, arguing that there was insufficient evidence to sustain the verdicts for both [charges]. By Memorandum Opinion and Order dated September 1[6], 2009, and as amended on September 23, 2009, the [trial court] denied [Altman’s] Motion. On September 25, 2009, [Altman] filed a Notice of Appeal. However, on November 24, 2009, [Altman] filed a *pro se* praecipe to withdraw and discontinue his appeal, and accordingly, the Superior Court of Pennsylvania discontinued the appeal on December [4], 2009.

On March 31, 2010, [Altman] filed a [*pro se* PCRA petition], and the [PCRA court] appointed Nicole Sloane, Esquire (“Attorney Sloane”) to represent [Altman]. On May 14, 2010, Attorney Sloane filed a **Turner-Finley**^[5] “No Merit” Letter and a Motion to Withdraw as Counsel. On June 3, 2010, after a thorough review of the record, the [PCRA court] permitted Attorney Sloane to withdraw and sent [Altman] notice of the [its] intent to dismiss

³ 18 Pa.C.S. §§ 2502(a), 903(a)(1)-(2), 6105(a)(1), and 5511(a)(1)(i), respectively.

⁴ The cruelty to animals charge was in reference to Shawn Yeager’s dog, which also was shot and killed during the murder.

⁵ **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

his Petition. On June 14, 2010, [Altman] filed a response to the [PCRA court's] notice. On August 3, 2010, [the PCRA court] dismissed eleven of [Altman's] claims but preserved three claims of ineffective assistance of counsel for further review. [The PCRA court also] appointed Joan M. Fairchild, Esquire ("Attorney Fairchild") as counsel for [Altman]. On October 1, 2010, the [PCRA court] held a hearing on [Altman's] three remaining claims, which included that [Altman's] trial counsel was ineffective for failing to request a change of venue or venire, for failing to strike jurors that were acquaintances of the testifying officers or had family in law enforcement thereby tainting the jury panel, and for failing to object to the Commonwealth's use of photographs of the victim with his children during closing argument. On October 7, 2010, [the PCRA court] issued a Memorandum Opinion and Order, denying [Altman's first PCRA petition. Altman] appealed, and on August 2, 2011, the Superior Court of Pennsylvania affirmed [the PCRA court's] October 7, 2010 [order], denying [Altman's] Petition.^[6] On September 1, 2011, [Altman] filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, and on February 15, 2012, the Supreme Court of Pennsylvania denied [Altman's] Petition.^[7]

On January 16, 2013, [Altman] filed a . . . second[, *pro se*, PCRA petition] and Consolidated Memorandum of Law.

PCRA Court Opinion ("P.C.O."), 3/5/2013, at 1-2.

On March 5, 2013, the PCRA court issued an order and opinion pursuant to Pa.R.Crim.P. 907 stating that the claims listed in Altman's second petition were either meritless or waived, and stating that his petition would be dismissed in twenty days. ***Id.*** at 2-4. The order also provided that Altman could respond within that time. ***Id.*** at 4. On March 22, 2013, Altman filed a petition for an extension of time in which to file a response.

⁶ ***Commonwealth v. Altman***, 32 A.3d 821 (Pa. Super. 2011) (table).

⁷ ***Commonwealth v. Altman***, 40 A.3d 119 (Pa. 2012) (table).

On March 25, 2013, the PCRA court granted Altman a fifteen-day filing extension. On March 28, 2013, Altman filed his response. On April 2, 2013, the PCRA court dismissed Altman's petition.

On April 29, 2013, and on May 2, 2013, [Altman] filed an Addendum to Post-Conviction Collateral Relief and Consolidated Memorandum of Law and an Application for Notes of Testimony and All Other in Court Related Documents. On May 2, 2013, the [PCRA court] interpreted [Altman's] Addendum as a Motion for Reconsideration of Dismissal of PCRA and denied it. On the same date, the [PCRA court] denied [Altman's] Application because all of the transcripts [had] previously been transcribed and submitted. On May 6, 2013, and on May 7, 2013, [Altman] filed a Notice of Appeal, a Request for Transcripts, and a Request by Appellant for Continuation of In Forma Pauperis Status for Purposes of Appeal. By Order dated May 6, 2013, and filed of record on May 7, 2013, the [PCRA court] directed [Altman] to file a concise statement of errors complained of on appeal [pursuant to Pa.R.A.P. 1925(b)] within 21 days. . . . On May 23, 2013, [Altman] filed a [Rule 1925(b) statement].

PCRA Court's 1925(a) Opinion, 5/29/2013, at 1-2. On May 29, 2013, the PCRA court issued a Rule 1925(a) opinion.

Altman has raised six issues for our consideration. However, before we may address the merits of Altman's petition, we must assess whether Altman's second PCRA petition is timely. It is well-established that the PCRA time limits are jurisdictional, and are meant to be both mandatory and applied literally by the courts to all PCRA petitions, regardless of the potential merit of the claims asserted. ***Commonwealth v. Murray***, 753 A.2d 201, 202-03 (Pa. 2000); ***Commonwealth v. Leggett***, 16 A.3d 1144, 1145 (Pa. Super. 2011). "[N]o court may properly disregard or alter [these filing requirements] in order to reach the merits of the claims raised in a

PCRA petition that is filed in an untimely manner.” **Murray**, 753 A.2d at 203; **see Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000).

“[A]ny PCRA petition, including a second or subsequent petition, must be filed within one year of the date that the petitioner’s judgment of sentence becomes final.” **Commonwealth v. Breakiron**, 781 A.2d 94, 97 (Pa. 2001) (citing 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 review.’” **Commonwealth v. Wharton**, 886 A.2d 1120, 1124 (Pa. 2005) (quoting 42 Pa.C.S. § 9545(b)(3)). Instantly, on December 4, 2009, this Court granted Altman’s praecipe to discontinue his direct appeal. We construe this to be “the conclusion of direct review” in Altman’s case, and, therefore, the day that his judgment became final. **See** 42 Pa.C.S. § 9545(b)(3). Thereafter, Altman had until December 4, 2010, to file a timely PCRA petition. **See** 42 Pa.C.S. § 9545(b)(1). Although Altman’s first PCRA petition was timely, Altman’s second petition was not filed until January 16, 2013. Consequently, Altman’s second PCRA petition is facially untimely by more than two years.

Despite such facial untimeliness, a tardy PCRA petition nonetheless will be considered timely if (but only if) the petitioner pleads and proves one of

the three exceptions to the one-year time limit enumerated in §§ 9545(b)(1)(i)-(iii) of the PCRA, which provide:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the 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.

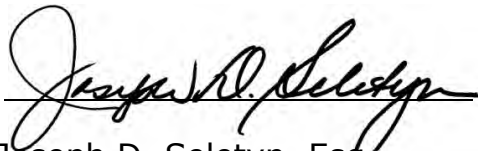
(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 Pa.C.S. § 9545(b). When an appellant files a facially untimely petition under the PCRA, and fails expressly to invoke any of the exceptions to the PCRA's one-year jurisdictional time limit, his petition is untimely and we must deny relief. ***See Commonwealth v. Wilson***, 824 A.2d 331, 336 (Pa. Super. 2003) ("Appellant's failure to timely file his PCRA petition, and his failure to invoke any of the exceptions to the timeliness requirements of the PCRA, results in an untimely PCRA petition under any analysis.").

Instantly, Altman has not addressed the untimely nature of his second PCRA petition at all. His brief is devoid of any discussion of the timeliness exceptions at 42 Pa.C.S. § 9545(b). Consequently, we are constrained to conclude that the PCRA court was without jurisdiction to consider Altman's untimely PCRA petition. We do not address the merits of Altman's claims.⁸

Order affirmed.⁹

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/11/2014

⁸ Several of Altman's claims implicate the legality of his sentence. Such claims still must abide by the timeliness requirements of the PCRA. "Though not technically waivable, a legality [of sentence] claim may nevertheless be lost should it be raised for the first time in an untimely PCRA petition for which no time-bar exception applies, thus depriving the court of jurisdiction over the claim." **Commonwealth v. Slotcavage**, 939 A.2d 901, 903 (Pa. Super. 2007) (citing **Commonwealth v. Fahy**, 737 A.2d 214, 223 (Pa. 1999) ("Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto.")).

⁹ The PCRA court found the instant petition timely, but ultimately concluded that Altman's claims failed on their merits. Although we find that Altman's claims must fail for want of jurisdiction, and consequently do not address the merits of Altman's claims, "[t]his Court may affirm a PCRA court's decision on any grounds if the record supports it." **Commonwealth v. Ford**, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citing **Commonwealth v. Burkett**, 5 A.3d 1260, 1267 (Pa. Super. 2010)).