

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

SIDNEY MARTIN

Appellant

No. 1891 EDA 2013

Appeal from the PCRA Order of June 12, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No.: CP-51-CR-0418421-1993

BEFORE: GANTMAN, J., OLSON, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

FILED APRIL 16, 2014

Sidney Martin ("Martin") appeals from the June 12, 2013 order dismissing Martin's *pro se* petition, his second, for relief pursuant to the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541, *et seq.* We affirm.

The PCRA court provides a summary of the factual and procedural history in this case in its memorandum dismissing Martin's petition:

On July 26, 1994, following [a] bench trial, [Martin] was convicted of first[-]degree murder and possessing an instrument of crime.^[1] [Martin] was sentenced to life imprisonment for the charge of murder and a term of one to two years['] incarceration for the charge of possession of an instrument of crime, the latter charge to run concurrently with the former. No [direct] appeal was taken.

¹ 18 Pa.C.S. §§ 2502(a) and 907, respectively.

[Martin] filed his first PCRA petition on December 31, 1997[,] and counsel was appointed. At the status listing on June 25, 1998, the Commonwealth moved to dismiss on the basis that the PCRA petition was untimely filed. The Commonwealth's oral motion to dismiss was granted. The Superior Court affirmed the dismissal on May 18, 1999.^[2]

[Martin] filed the instant *pro se* petition on December 7, 2012. Amended petitions were submitted on December 21, 2012[,] and March 1, 2013.

PCRA Court Opinion ("P.C.O."), 6/12/2013, at 1-2 (unpaginated). Martin styled each of these submissions as a "Petition for a Writ of *Habeas Corpus Ad Subjiciendum*," and originally filed them in the civil division of the court of common pleas.³ On March 1, 2013, the case was transferred to the criminal division. On May 20, 2013, the PCRA court filed notice that it intended to dismiss Martin's claims without a hearing pursuant to

² ***Commonwealth v. Martin***, 739 A.2d 589 (Pa. Super. 1999) (table).

³ We agree with the PCRA court's decision to treat Martin's petition in this case as a second PCRA petition. Although Martin argues, at length, that he should be allowed to pursue a petition for a writ of *habeas corpus*, he has misapprehended Pennsylvania law regarding the scope of PCRA petitions. In relevant part, the PCRA "provides for an action by which persons convicted of crimes they did not commit **and persons serving illegal sentences** may obtain collateral relief." **See** 42 Pa.C.S. § 9542 (emphasis added). Specifically, the collateral relief offered by the PCRA "encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, **including *habeas corpus* and *coram nobis***." ***Id.*** (emphasis added). The Supreme Court of Pennsylvania specifically has endorsed this interpretation of the PCRA. **See *Commonwealth v. Peterkin***, 722 A.2d 638, 640 (Pa. 1998) ("[T]he writ continues to exist only in cases in which there is no remedy under the PCRA."). In the instant case, Martin's claims challenge the legality of his sentence. Thus, his claims are cognizable pursuant to the PCRA.

Pa.R.Crim.P. 907. On June 12, 2013, the PCRA court filed an order dismissing Martin's PCRA petition.

On June 26, 2013, Martin filed a notice of appeal.⁴

Martin has listed seven questions for our consideration in this case. However, before we may address the merits of Martin's petition, we must assess whether Martin's second PCRA petition is timely. The PCRA's time limits are jurisdictional, and are meant to be both mandatory and applied literally by Pennsylvania courts to all PCRA petitions, regardless of the potential merit of the claims asserted. **See Commonwealth v. Murray**, 753 A.2d 201, 202-03 (Pa. 2000). "[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." **Id.** 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

⁴ The PCRA court did not order Martin to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Accordingly, Martin did not file a Rule 1925(b) statement.

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)).

Martin did not pursue a direct appeal from his July 26, 1994 judgment of sentence. Martin’s time in which to seek an appeal to this Court expired thirty days after his judgment of sentence, on August 25, 1994. **See** Pa.R.A.P. 903(a). (“[T]he notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.”). Thereafter, Martin had until August 25, 1995, to file a timely PCRA petition. **See** 42 Pa.C.S. § 9545(b)(1). Consequently, Martin’s second PCRA petition is untimely by more than seventeen 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.

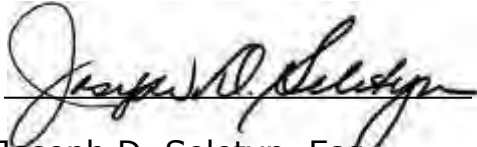
42 Pa.C.S. § 9545(b). When an appellant files a facially untimely petition under the PCRA, and fails expressly to invoke any of the exceptions to the PCRA's one-year jurisdictional time limit, his petition is untimely and we must deny relief. **See *Commonwealth v. Wilson***, 824 A.2d 331, 336 (Pa. Super. 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, Martin has not addressed the untimely nature of his second PCRA petition at all. His petition and brief are devoid of any discussion of the timeliness exceptions enumerated at 42 Pa.C.S. § 9545(b). Therefore, Martin has failed adequately to plead and prove the timeliness of his PCRA petition. Accordingly, we are constrained to conclude that the PCRA court was without jurisdiction to consider Martin's untimely PCRA petition. **See *Murray, supra***. We will not address the merits of Martin's claims.⁵

⁵ Martin'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 (*Footnote Continued Next Page*)

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: 4/16/2014

(Footnote Continued) _____

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.").