

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

MICHAEL O'NEAL ECCLES

Eccles

No. 656 MDA 2014

Appeal from the PCRA Order March 25, 2014  
In the Court of Common Pleas of Adams County  
Criminal Division at No(s): CP-01-CR-0000079-2010

BEFORE: GANTMAN, P.J., JENKINS, J., and MUSMANNO, J.

MEMORANDUM BY JENKINS, J.:

**FILED DECEMBER 18, 2014**

Michael Eccles appeals from an order dated March 25, 2014 denying his second Post Conviction Relief Act<sup>1</sup> ("PCRA") petition without a hearing. Because Eccles' petition is untimely, we affirm.

On January 6, 2010, Eccles was arrested in connection with an armed robbery of a Turkey Hill mini-mart in Adams County. On May 24, 2010, Eccles entered a negotiated guilty plea to robbery<sup>2</sup> and conspiracy to commit robbery<sup>3</sup>, and the trial court sentenced him to 8-16 years' imprisonment. Eccles did not file post-sentence motions or a direct appeal.

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<sup>1</sup> 42 Pa.C.S. § 9541 *et seq.*

<sup>2</sup> 18 Pa.C.S. § 3701(a)(1)(ii).

<sup>3</sup> 18 Pa.C.S. § 903(a)(1).

On May 5, 2011, Eccles filed his first PCRA petition alleging that trial counsel was ineffective for failing to move to suppress evidence that police recovered during their investigation of the robbery. On April 19, 2012, following an evidentiary hearing, the PCRA court denied this petition. Eccles filed a timely appeal, and on December 5, 2012, this Court affirmed. On May 28, 2013, our Supreme Court denied Eccles' petition for allowance of appeal.

On June 24, 2013, Eccles, acting *pro se*, filed a second PCRA petition. On July 18, 2013, the PCRA court entered a notice of intent to dismiss Eccles' second PCRA petition without a hearing as untimely. In response, Eccles filed a "supplemental" PCRA petition. On March 25, 2014, the PCRA court denied Eccles' second PCRA petition without a hearing. In a memorandum accompanying the order of dismissal, the PCRA court explained that this petition was untimely.

Eccles filed a timely appeal and Pa.R.A.P. 1925(b) statement<sup>4</sup>. The PCRA court filed a Pa.R.A.P. 1925(a) opinion incorporating its March 25, 2014 memorandum by reference.

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<sup>4</sup> Eccles raised six issues in his Pa.R.A.P. 1925(b) statement:

1. Did the trial court err[] by stating in its opinion that [Eccles] actually had a suppression hearing?
2. Did the trial court commit reversible error by stating that [Eccles'] second PCRA was untimely filed?
3. Did the trial court commit reversible error by stating that [Eccles] failed to assert that said document was improperly secreted from his discovery?

*(Footnote Continued Next Page)*

Our standard of review of an order denying PCRA relief is whether the record supports the PCRA court's determination and whether the PCRA court's decision is free of legal error. ***Commonwealth v. Phillips***, 31 A.3d 317, 319 (Pa.Super.2011). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***Id.***

We first examine whether Eccles' second PCRA petition is timely, because the timeliness of a PCRA petition is a jurisdictional threshold, and we cannot review an untimely PCRA petition. ***Commonwealth v. Abu-Jamal***, 941 A.2d 1263, 1267-68 (Pa.2008). Effective January 16, 1996, the petitioner must file any PCRA petition within one year of the date his judgment of sentence 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." 42 Pa.C.S.A. § 9545(b)(3). An untimely petition may be reviewed on the merits, however, when the petitioner pleads and proves any of three limited exceptions to the one-year limitation period articulated in 42

(Footnote Continued) —————

4. Did the trial court commit reversible error by stating that [Eccles] did not meet the second [ex]ception to [42 Pa.C.S. §] 9545?
5. Did the trial court commit reversible error by stating in its opinion that said document was public record?
6. Did the trial court commit reversible error by stating that [Eccles'] claim lacks merit?

Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii)<sup>5</sup>. A petition invoking one of these exceptions must be filed within sixty days of the date the claim could first have been presented. 42 Pa.C.S.A. § 9545(b)(2).

Eccles pled guilty and was sentenced on May 24, 2010, and he did not file post-sentence motions or a direct appeal. Therefore, his judgment of sentence became final thirty days later, on Wednesday, June 23, 2010. 42 Pa.C.S. § 9545(b)(3). Eccles had one year from June 23, 2010 to file a PCRA petition, or until Thursday, June 23, 2011. His second PCRA petition, which he filed on June 24, 2013, is patently untimely.

Eccles argues that his second PCRA petition is timely under section 9545(b)(1)(ii) because it is based on after-discovered evidence unavailable

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<sup>5</sup> These exceptions are as follows:

(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.

42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii).

through the exercise of due diligence. We disagree. The "after-discovered" evidence includes (1) a daily police log, (2) a police interview waiver of rights form, (3) a page from what appears to be a police report of the underlying incident, (4) a screenshot of the magisterial district justice docket entry stating Eccles' date of arrest and charges, (5) the police criminal complaint, (6) a page from the magisterial district court docket in Eccles' criminal case, and (7) various transcripts from pretrial hearings in his case. All of these documents are either public records or documents that were available to Eccles through pretrial discovery.

Specifically, the magisterial district court documents, criminal complaint, and court transcripts are all part of the record and clearly were available to Eccles long before his guilty plea. Moreover, Eccles could have requested the police incident report and waiver of rights form through pretrial discovery. Eccles fails to demonstrate that he requested these documents during discovery. Finally, Eccles admits that he has been in possession of the daily police log since its creation. Brief For Appellant, p. 10. Thus, none of the documents are after-discovered evidence, i.e., evidence that "was unknown to the petitioner and could not have been ascertained by the exercise of due diligence." 42 Pa.C.S. § 9545(b)(1)(ii).

Eccles also claims in boilerplate form that his second PCRA petition is timely under the governmental interference exception to the statute of limitations within 42 Pa.C.S. § 9545(b)(1)(i). Again, we disagree. It

appears that Eccles believes that his arrest was improper, either because (1) his preliminary arraignment did not take place until 14½ hours after his arrest, (2) he was arrested twice for the same crimes, or (3) he did not receive **Miranda**<sup>6</sup> warnings at the police station. Brief For Appellant, pp. 5-6, 11. Eccles fails to explain, however, which government officials interfered with him raising these claims (or how they interfered) during the 1½ year hiatus between his arrest in January 2010 and the expiration of the PCRA's statute of limitations in June 2011<sup>7</sup>.

Because Eccles' second PCRA petition was untimely and no exceptions apply, the PCRA court lacked jurisdiction to address the claims presented and grant relief. **Commonwealth v. Fairiror**, 809 A.2d 396, 398 (Pa.Super.2002) (PCRA court lacks jurisdiction to hear untimely petition). Likewise, we lack jurisdiction to reach the merits of the appeal. **Commonwealth v. Johnson**, 803 A.2d 1291, 1294 (Pa.Super.2002) (Superior Court lacks jurisdiction to reach merits of appeal from untimely PCRA petition).

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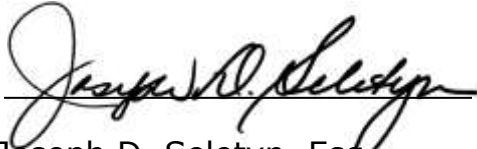
<sup>6</sup> **Miranda v. Arizona**, 384 U.S. 436 (1966).

<sup>7</sup> Eccles also fails to explain what prejudice he suffered from these alleged errors.

J-S78027-14

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: 12/18/2014