

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

HUNG QUANG PHAM

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 355 MDA 2016

Appeal from the PCRA Order Entered January 15, 2016  
In the Court of Common Pleas of Cumberland County  
Criminal Division at No: CP-21-CR-0001546-2012

BEFORE: LAZARUS, STABILE, and RANSOM, JJ.

JUDGMENT ORDER BY STABILE, J.:

**FILED JANUARY 13, 2017**

Appellant, Hung Quang Pham, appeals from the January 15, 2016 order denying Appellant's petition pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46. We affirm.

On August 1, 2012, the Commonwealth filed a criminal information charging Appellant with, among other things, possession with intent to deliver ("PWID") a controlled substance and theft of services.<sup>1</sup> On December 19, 2012, Appellant pleaded guilty to those offenses. The trial court imposed the parties' agreed-upon sentence of five years of incarceration—the mandatory minimum—and a \$15,000 fine for PWID. For theft of services, the trial court imposed a consecutive one to three years of

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<sup>1</sup> 35 P.S. § 780-113(a)(30), 18 Pa.C.S.A. § 3926.

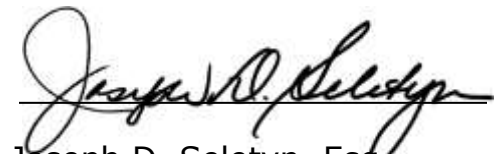
incarceration and \$100,000 in restitution. Appellant did not file a direct appeal, and therefore his judgment of sentence became final on January 18, 2013, when the thirty-day deadline for filing an appeal expired (**see** Pa.R.A.P. 903(a)). Appellant filed the instant PCRA petition, his first, on September 17, 2015.

The PCRA requires a petitioner to file his or her petition within one year of the date of finality of the petitioner's judgment of sentence. 42 Pa.C.S.A. § 9545(a). A petitioner who misses that deadline, as Appellant did in this case, must plead and prove the applicability of one of the timeliness exceptions set forth in § 9545(b)(1). Section 9545(b)(1)(iii) permits an untimely petition if it is based on a newly recognized constitutional right. Appellant alleges his petition is timely under § 9545(b)(1)(iii) and ***Alleyn v. United States***, 133 S. Ct. 2151 (2013), in which the United States Supreme Court held that any fact, other than a prior conviction, triggering a mandatory minimum must be proven to a jury beyond a reasonable doubt. In ***Commonwealth v. Washington***, 142 A.3d 810, 820 (Pa. 2016), the Pennsylvania Supreme Court held that ***Alleyn*** does not apply retroactively to cases pending on collateral review. Appellant's judgment of sentence was final before ***Alleyn***, and he sought collateral relief more than two years afterward. Appellant's petition is untimely, and the PCRA court correctly denied relief.

Order affirmed.

J-S80025-16

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: 1/13/2017