NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
v.	:	
	:	
DAVID M. KING	:	
	:	No. 364 WDA 2026
Appellant	:	

Appeal from the Order Entered December 10, 2025
In the Court of Common Pleas of Cambria County
Criminal Division at No(s): CP-11-CR-0000233-2015

BEFORE: BOWES, J., OLSON, J., and MURRAY, J.

MEMORANDUM BY BOWES, J.: **FILED: November 16, 2026**

David M. King appeals *pro se* from the order dismissing his "Motion to Vacate Sentence," concluding that he had exhausted his direct appeal and Post Conviction Relief Act ("PCRA") rights. We affirm, albeit on a different basis.[1]

Appellant is serving a sentence of fifty-five to 110 years of imprisonment that was imposed after a jury convicted him of more than fifty offenses related to his decade-long sexual abuse of his minor child. Neither his direct appeal nor his first, timely PCRA petition garnered him any relief. ***See Commonwealth v. King***, 190 A.3d 687, 2018 WL 1631584 (Pa.Super. 2018) (unpublished memorandum), *appeal denied*, 195 A.3d 847 (Pa. 2018);

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[1] ***See***, ***e.g.***, ***Commonwealth v. Parker***, 249 A.3d 590, 595 (Pa.Super. 2021) ("[T]his Court may affirm a PCRA court's order on any legal basis.").

Commonwealth v. King, 241 A.3d 374, 2020 WL 5951388 (Pa.Super. 2020) (non-precedential decision), *appeal denied*, 252 A.3d 1074 (Pa. 2021).

On November 3, 2025, the clerk of courts docketed the motion at issue in this appeal, which Appellant dated October 30, 2025.[2] Appellant insisted at the outset of his filing that it was not a PCRA petition. Instead, he cited as his bases for relief 42 Pa.C.S. § 5505 (providing the general rule that a court has thirty days to modify or rescind an order if no appeal is taken), and ***Commonwealth v. Walters***, 814 A.2d 253, 256 (Pa.Super. 2002) ("[W]here a showing of fraud or another circumstance so grave or compelling as to constitute extraordinary causes justifying intervention by the court, then a court may open or vacate its order after the [thirty]-day period [established by § 5505] has expired." (cleaned up)). Substantively, he contended that his counsel and the prosecutor committed a fraud upon the court by proceeding with his case without either holding a formal arraignment in accordance with Pa.R.Crim.P. 571(A)-(C) or obtaining his signature on a written waiver pursuant to Rule 571(D).

The Honorable Tamara R. Bernstein entered an order scheduling a video hearing on the motion. After she recognized that she had been involved in

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[2] Although the few-day discrepancy has no impact on this appeal, we accept October 30, 2025 as the filing date pursuant to the prisoner mailbox rule. ***See*** Pa.R.A.P. 121(f) ("A *pro se* filing submitted by a person incarcerated in a correctional facility is deemed filed as of the date of the prison postmark or the date the filing was delivered to the prison authorities for purposes of mailing . . . .").

Appellant's prosecution, the case was reassigned to the Honorable Michael A. Carbonara. Judge Carbonara canceled the hearing and entered an order providing, in pertinent part:

> [U]pon consideration of [Appellant]'s Motion to Vacate Sentence, and the court determining that [Appellant]'s direct appeal rights and PCRA rights have been exhausted to date, and [Appellant] specifically advising that his Motion to Vacate Sentence is not filed pursuant to the [PCRA], it is hereby ordered and decreed that the motion is denied without hearing.

Order, 12/10/25 (cleaned up).

This timely appeal followed.[3] The court did not order Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal, and he filed none. The court pointed us to the text of its December 10, 2025 order in satisfaction of its Rule 1925(a) obligations. Appellant's brief does not contain a statement of questions involved, but we readily ascertain that he asks us to consider whether the court erred in holding that he was not entitled to relief pursuant to § 5505 and ***Walters***.

We begin with a review of the applicable legal principles. Our General Assembly enacted the PCRA to provide "the sole means of obtaining collateral relief[,] . . . encompass[ing] all other common law and statutory remedies for the same purpose that exist[.]" 42 Pa.C.S. § 9542. Stated differently, "the PCRA subsumes all forms of collateral relief . . . to the extent a remedy is

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[3] The notice of appeal was not docketed until January 20, 2026, but we deem it to have been filed on its post-marked date of January 9, 2026, pursuant to Pa.R.A.P. 121(f).

available under such enactment." ***Commonwealth v. West***, 938 A.2d 1034, 1043 (Pa. 2007). The PCRA offers relief when a petitioner establishes that his conviction resulted from, *inter alia*, a constitutional violation, ineffective assistance of counsel, or the unavailability of subsequently discovered exculpatory evidence. ***See*** 42 Pa.C.S. § 9543(a)(2).

A claim does not fall outside the domain of the PCRA "[s]imply because the merits of the PCRA petition [at issue] cannot be considered due to previous litigation, waiver, or an untimely filing[.]" ***Commonwealth v. Kutnyak***, 781 A.2d 1259, 1261 (Pa.Super. 2001). Instead, a non-PCRA collateral proceeding may be entertained only if the claims "fall outside the eligibility parameters of the PCRA[.]" ***Commonwealth v. Masker***, 34 A.3d 841, 850 (Pa.Super. 2011) (*en banc*).

Therefore, "issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a *habeas corpus* petition or other self-styled petition outside of the PCRA." ***Commonwealth v. Mucci***, 327 A.3d 1223, 1234 (Pa.Super. 2024) (cleaned up). To be timely, a PCRA petition must be filed within one year of the date that the underlying judgment of sentence became final unless the petitioner pleads and offers to prove one of the statute's enumerated timeliness exceptions. ***See*** 42 Pa.C.S. § 9545(b)(1) (providing exceptions in certain instances of governmental interference, newly-discovered facts, and newly-recognized constitutional rights). "[I]f [a PCRA] petition is untimely, courts lack jurisdiction over the

petition and cannot grant relief." ***Commonwealth v. Fantauzzi***, 275 A.3d 986, 994 (Pa.Super. 2022).

As noted, Appellant's motion alleged that proceeding with his prosecution in the absence of a formal arraignment or valid waiver thereof amounted to a fraud that is correctable outside the confines of the PCRA. He argues that this defect is a structural error that negated the trial court's subject matter jurisdiction, and, as such, it is subject to challenge at any time. ***See*** Appellant's brief at 5-6 (pagination supplied); Appellant's reply brief at 2-3 (pagination supplied).

The Commonwealth, on the other hand, argues that Appellant's motion was a second, untimely PCRA petition. It construes Appellant's fraud claim as sounding in ineffective assistance of counsel, which is cognizable through the PCRA. ***See*** Commonwealth's brief at 5-8. The Commonwealth further observes: "Simply stating that the motion is not a PCRA petition does not make it so." ***Id***. at 9.

We agree that the issues raised by Appellant fall within the ambit of the PCRA, regardless of Appellant's protestations otherwise. The purpose of arraignment, which is governed by Rule 571, "is to fix the identity of the accused, to inform him of the nature of the charges against him and to give him the opportunity of informing the court of his plea thereto." ***Commonwealth v. Leland***, 204 A.3d 461, 465–66 (Pa.Super. 2019) (cleaned up). As Appellant recognizes in his brief, the right to arraignment is

a matter of due process as recognized in the federal and Pennsylvania constitutions. ***See*** Appellant's brief at 7 (pagination supplied).

What Appellant fails to acknowledge is that the absence of an arraignment is not a structural error with an automatic right to relief. Instead, "defects in an arraignment do not constitute reversible due process error unless they prejudice the defendant's rights." ***Leland***, 204 A.3d at 466 (citing, *inter alia*, ***Garland v. Washington***, 232 U.S. 642 (1914)). Consequently, Appellant presents us not with an issue of fraud or lack of subject matter jurisdiction, but a constitutional due process challenge that is unquestionably cognizable by the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(2)(i). As indicated *supra*, the PCRA provides the only means for raising a constitutional violation after a judgment of sentence has become final.[4]

Hence, Appellant's attempt to utilize a § 5505 procedure to avoid the time restrictions of the PCRA is unavailing. ***See Commonwealth v. Arnold***, 256 A.3d 15, 2021 WL 1830367, at *6 (Pa.Super. 2021) (non-precedential decision) ("To the extent Appellant contends [§] 5505 provides an avenue for relief, we disagree. Appellant's claim falls under the PCRA. Thus, he is required to prove the applicability of one of the time-for-filing exceptions in order to obtain relief pursuant to a facially untimely petition."). Rather than

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[4] To the extent that Appellant's issue implicates the effectiveness of his counsel in failing to secure his arraignment-related rights, that claim is, as suggested by the Commonwealth, also subject to remedy through the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(2)(ii).

accept Appellant's representation that his filing was not a PCRA petition, the court should have treated it as such and determined whether it had jurisdiction under that statute to consider its merits. Nevertheless, since we may review that jurisdictional question *sua sponte*, we need not remand to the PCRA court for it to conduct that analysis in the first instance. ***See***, ***e.g.***, ***Commonwealth v. Giles***, 357 A.3d 555, 559 (Pa.Super. 2026).

Appellant's judgment of sentence became final in January 2019 when the time for filing a writ of certiorari in the Supreme Court of the United States expired. Accepting the date affixed to it as its date of filing, the instant petition was filed in late October 2025, rendering it facially untimely. Appellant was aware of the absence of an arraignment since the time of his trial, and further complained about it in a 2020 letter to prior PCRA counsel. ***See*** Motion to Vacate, 10/30/25, at Exhibit C. Therefore, it is not a newly-discovered fact. Moreover, Appellant neither offers an indication that the government interfered with his ability to present this claim earlier, nor invokes a newly-recognized constitutional right. As such, it is apparent from the certified record that no exception to the PCRA's one-year time bar was available to establish the PCRA court's jurisdiction to entertain the merits of the claim, and it was properly dismissed for that reason.

In sum, although the PCRA court failed to apply the proper legal analysis in rejecting Appellant's Motion to Vacate Sentence, it reached the proper result. Consequently, we have no cause to disturb its order.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/16/2026