

V.

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

: No. 4 WDA 2026

V.

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

: No. 5 WDA 2026

V.

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

: No. 6 WDA 2026

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v. :
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Appellant : No. 7 WDA 2026

Appeal from the PCRA Order Entered December 17, 2025
In the Court of Common Pleas of Fayette County Criminal Division at
No(s): CP-26-CR-0002039-2023

BEFORE: LAZARUS, P.J., BOWES, J., and LANE, J.

MEMORANDUM BY LANE, J.:

FILED: SEPTEMBER 30, 2026

Dustyn James Grogan (“Grogan”) appeals from the order denying his first petition filed pursuant to the Post Conviction Relief Act (“PCRA”).¹ We affirm.

As a complete factual recitation is unnecessary to resolve this appeal, we summarize only the relevant procedural history. Between 2016 and 2023, Grogan committed multiple offenses that resulted in charges being filed against him at several docket numbers. In 2017, the trial court accepted Grogan’s guilty plea to a firearms offense at docket number CP-26-CR-0000737-2016 (“737”) and sentenced him to a term of incarceration.² Following his release on parole, Grogan committed additional offenses. The Commonwealth charged him on four additional dockets that are now at issue:

¹ **See** 42 Pa.C.S.A. §§ 9541-9546.

² As this conviction is not at issue in this appeal, this Court does not have the benefit of the relating record. Therefore, we are unable to determine the nature or length of the imposed sentence.

theft by unlawful taking at CP-26-CR-0000571-2023 ("571"); evading arrest at CP-26-CR-0001310-2023 ("1310"); fleeing or attempting to elude an officer at CP-26-CR-0002039-2023 ("2039"); and simple assault at CP-26-CR-0002047-2023 ("2047").

In September 2023, Grogan pleaded guilty to evading arrest at docket number 1310, and the trial court imposed a sentence of two to four months' incarceration. However, in October 2023, prior to sentencing at the other three dockets, the Pennsylvania Parole Board found that Grogan violated the conditions of his parole at docket number 737 and recommitted him to a state correctional institution for a period of twelve months.

In November 2023, pursuant to a negotiated plea agreement, Grogan pleaded guilty at docket numbers 571, 2039, and 2047. The agreement provided an aggregate sentence of one to two years' incarceration at docket numbers 2039 and 2047, to run concurrently and a concurrent three-month probation at docket number 571. The parties further agreed that all three sentences would run concurrently with the sentences imposed at docket numbers 1310 and 737. The trial court accepted the guilty pleas, imposed the negotiated sentences, and awarded him credit for time served. Grogan did not file any post-sentence motions or notices of appeal.

The Pennsylvania Parole Board thereafter informed Grogan that, pursuant to 61 Pa.C.S.A. § 6138(a)(5),³ the new sentences at docket numbers 571, 2039, and 2047 could not run concurrently with the revocation prison sentence he was serving at docket number 737.

On November 12, 2025, Grogan filed the instant *pro se* PCRA petition. The PCRA court appointed counsel who filed an amended petition, alleging that Grogan's sentences at docket numbers 571, 2039, and 2047 were illegal because they could not be run concurrently to the sentence at docket number 737. The PCRA court issued notice of its intent to dismiss the petition pursuant to Pa.R.Crim.P. 907. On December 17, 2025, the PCRA court issued an order denying Grogan's petition. Grogan filed a timely notice of appeal and a concise statement of errors complained of on appeal. The PCRA court issued a statement in lieu of opinion explaining that the reasons for its denial of PCRA relief are set forth in its denial order.

Grogan presents the following issues for our review:

1. Whether [Grogan's] plea bargaining for running his sentences [at docket numbers 571, 2039, and 2047] concurrent to his parole violation [at docket number 737] constitutes a patent and obvious defect?

³ We note that, pursuant to section 6138(a)(5)(i), when a defendant is serving a sentence that includes a period of parole, and parole is revoked and a term of incarceration is imposed, the Pennsylvania Parole Board may not direct that the parole revocation term be served concurrently with any new sentence of incarceration the parolee subsequently receives. Rather, the parolee must first serve the balance of the revocation prison sentence before commencing service of any new prison sentence. **See** 61 Pa.C.S. § 6138(a)(5)(i).

2. Whether a sentence that is patently and obviously defective is subject to the one-year time limitation of the [PCRA]?
3. Whether the revocation of [Grogan's] parole [at docket number 737] prevented [Grogan] from serving his sentence [at docket number 571]?

Grogan's Brief at 3 (unnecessary capitalization omitted).

Our standard of review of an order denying a PCRA petition is well-settled:

We review an order d[eny]ing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error. This Court may affirm a PCRA court's decision on any grounds if the record supports it. Further, we grant great deference to the factual findings of the PCRA court and will not disturb those findings unless they have no support in the record. However, we afford no such deference to its legal conclusions. Where the petitioner raises questions of law, our standard of review is *de novo* and our scope of review plenary.

Commonwealth v. Ford, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

Under the PCRA, any petition, including a second or subsequent petition, must be filed within one year of the date the judgment of sentence becomes final. **See** 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 Pennsylvania, or the expiration of time for seeking such review. **See** 42 Pa.C.S.A. § 9545(b)(3). The PCRA's timeliness requirements are jurisdictional in nature, and a court may not address the merits of the

issues raised if the PCRA petition was not timely filed. **See Commonwealth v. Albrecht**, 994 A.2d 1091, 1093 (Pa. 2010).

Here, the trial court imposed sentences at dockets 571, 2039, and 2047 on November 30, 2023. Grogan did not file any post-sentence motions, nor did he file any notices of appeal. Accordingly, his judgments of sentence therefore became final thirty days later, on January 2, 2024.⁴ **See** 42 Pa.C.S.A. § 9545(b)(3); **see also** Pa.R.A.P. 903(a) (providing that a notice of appeal shall be filed within thirty days after the entry of the order from which the appeal is taken). He thus had until January 2, 2025, to timely file a PCRA petition. **See** 42 Pa.C.S.A. § 9545(b)(1). His petition filed on November 2, 2025, is facially untimely.⁵

Pennsylvania courts, nevertheless, may consider an untimely PCRA petition if the petitioner explicitly pleads and proves one of three statutory exceptions:

⁴ We note that thirty days from November 30, 2023, was Saturday, December 30, 2023. Considering the January 1, 2024, holiday, the next day on which Grogan could have filed his petitions was January 2, 2024. **See** Pa.R.J.A. 107 (providing that as it relates to the computation of time, “whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation”); **see also** Pa.R.A.P. 107 (providing that Pa.R.J.A. 104–115 govern the construction of the Pennsylvania Rules of Appellate Procedure).

⁵ We note that a timeliness analysis is unnecessary with respect to docket number 1310 because Grogan neither alleged in his petition nor argues on appeal that the sentence imposed at that docket is illegal.

(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)-(iii). Any petition attempting to invoke one of these exceptions “shall be filed within one year of the date the claim could have been presented.” 42 Pa.C.S.A. § 9545(b)(2). Our Supreme Court has emphasized that “it is the petitioner who bears the burden to allege and prove that one of the timeliness exceptions applies.” **Commonwealth v. Marshall**, 947 A.2d 714, 719 (Pa. 2008) (citation omitted).

It is equally well-settled that “[a]lthough legality of sentence is always subject to review within the PCRA, [these] claims must still first satisfy the PCRA’s time limits or one of the exceptions thereto.” **Commonwealth v. Fahy**, 737 A.2d 214, 223 (Pa. 1999). An “[a]ppellant cannot elude the PCRA’s timeliness requirements based on a claim of an illegal sentence.” **Commonwealth v. Woods**, 179 A.3d 37, 43 (Pa. Super. 2017).

Here, Grogan concedes that his petition is untimely and fails to invoke any of the statutory exceptions. Instead, he baldly argues that this Court may review his illegal sentencing claim because “[a] sentence that is patently and

obviously defective is not subject to the one-year time limitation of the [PCRA].” Grogan’s Brief at 11. He contends that his sentence is patently and obviously defective because section 6138(a)(5) prohibits a new prison sentence from running concurrently with a parole revocation sentence. Grogan cites no authority for this proposition. He merely speculates that ***Commonwealth v. McGee***, 302 A.3d 659 (Pa. 2023),⁶ “left open [the] possibility” that a patently illegal sentence escapes the time bar, and that the PCRA court could therefore retain authority under 42 Pa.C.S.A. § 5505 to correct the sentence. ***Id.*** at 12.

We disagree. Section 5505 provides that a trial court “may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed”); ***see also Commonwealth v. Holmes***, 933 A.2d 57, 65 (Pa. 2007) (holding that there is a “limited class of cases amendable to the exercise by a trial court of the inherent power to correct patent errors despite the absence of traditional jurisdiction,” and that this inherent jurisdiction would apply in the absence of jurisdiction under section 5505 because the statute “was never intended to eliminate the inherent power of a court to correct

⁶ ***See McGee***, 302 A.3d at 670 (holding the Pennsylvania Supreme Court “[did] not reach the question of whether a trial court’s inherent authority to correct patent and obvious errors in the record [was] subject to the time limitations of the PCRA” because the case presented no patent or obvious error in the record).

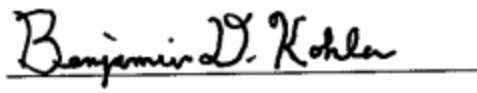
obvious and patent mistakes in its orders, judgments and decrees”). However, this Court has ruled that the limited jurisdictional exception under section 5055 does not provide an alternate remedy for collateral relief that sidesteps the jurisdictional timeliness requirements of the PCRA. **See Commonwealth v. Jackson**, 30 A.3d 516, 523 (Pa. Super. 2011), *appeal denied*, 47 A.3d 845 (Pa. 2012) (holding that “a PCRA court cannot invoke inherent jurisdiction [under section 5505] to correct orders, judgments and decrees, even if the error is patent and obvious”). Thus, Grogan’s argument in this regard is unavailing.

In sum, as explained above, a claim challenging the legality of a sentence is always subject to review under the PCRA; however, such a claim must still satisfy the PCRA’s time limits or one of the exceptions thereto. **See Fahy**, 737 A.2d at 223; **see also Woods**, 179 A.3d at 43. Here, Grogan’s petition is untimely, and he failed to plead or prove any exception to the PCRA’s one-year time bar. Consequently, neither this Court nor the PCRA court have jurisdiction to consider the merits of his issues. **See Commonwealth v. Cox**, 146 A.3d 221, 231 (Pa. 2016) (holding that where a petition is untimely and the petitioner has failed to satisfy an exception to the PCRA’s time bar, “no court could have jurisdiction to reach the merits of the issue[s] . . . raised therein”); **see also Fahy**, 737 A.2d at 223.

For the foregoing reasons, we affirm the PCRA court’s denial order.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 9/30/2026