

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

LEE C. MOUA

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

: No. 210 MDA 2026

Appeal from the PCRA Order Entered January 2, 2026
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0000673-1990

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

MEMORANDUM BY BOWES, J.:

FILED: SEPTEMBER 3, 2026

Lee C. Moua appeals *pro se* from the order dismissing as untimely his third petition filed pursuant to the Post Conviction Relief Act ("PCRA"). We affirm.

Between May 16 and 17, 1988, Appellant and two conspirators beat Sayasane Ratjavong, shot him to death, and buried him in a field. After his remains were unearthed over a year later, Appellant was charged with criminal homicide and related offenses.¹ This Court previously detailed the history of the ensuing prosecution as follows:

¹ Relevant to later discussion, Appellant was charged as an adult. He became a citizen of the United States in 1985. His naturalization card listed his birth year as 1956, although he believed his date of birth was May 30, 1965. Appellant obtained a corrected card in 2018. In 2024, he was notified by a relative that his birth year was 1970, making him seventeen years old at the time of the murder, and that his parents had fabricated the 1965 date to comply with the traditions of the Hmong so he could travel to the United States with another family as a juvenile.

Appellant was convicted of first-degree murder on July 12, 1990, following a jury trial. Appellant was sentenced that same day to life imprisonment without [the] possibility of parole. Following denial of his various post-sentencing motions, Appellant filed an appeal with the Superior Court on June 3, 1992. The Superior Court affirmed the judgment of sentence on June 9, 1993, and our Supreme Court denied an allowance of appeal on November 29, 1993. **Commonwealth v. Moua**, 631 A.2d 1370 (Pa.Super. 1993) (unpublished memorandum), *appeal denied*, 637 A.2d 288 (Pa. 1993). Appellant sought no further review[, rendering his judgment final].

Almost [fifteen] years later, on August 20, 2008, Appellant filed a *pro se* petition for PCRA relief. Appointed counsel filed an amended petition on December 3, 2008. An evidentiary hearing was held on March 25, 2009 and, on June 29, 2009, the PCRA court dismissed Appellant's petition as untimely.

Commonwealth v. Moua, 996 A.2d 550 (Pa.Super. 2010) (unpublished memorandum at 1-2) (cleaned up). On appeal, we affirmed the order dismissing Appellant's first PCRA petition because it was untimely filed and Appellant did not satisfy any of the statutory exceptions.

In 2017, Appellant *pro se* moved to reopen the prior PCRA proceedings based upon discovering the alleged incompetence of one of the jurors. The PCRA court treated the motion, and Appellant's supplemental filings, as his second PCRA petition. Finding it untimely and without a valid exception to the PCRA's time bar, the court issued notice of its intent to dismiss. However, the record does not contain a final order disposing of this matter.²

² As will be discussed *infra*, our High Court denied Appellant's request to direct the PCRA court to, *inter alia*, enter an order resolving the 2017 PCRA petition. Although the record indicates that the 2017 petition remains pending, it has no bearing upon the instant PCRA proceedings because "nothing bars a PCRA (Footnote Continued Next Page)

Appellant initiated the instant PCRA proceedings in July of 2024. Specifically, he filed a *pro se* petition for *habeas corpus* relief, claiming that his sentence was illegal because the sentencing order did not identify the underlying statutory authority for imposition of a life-without-parole sentence. He did not raise an exception to the patent untimeliness of the filing if the court were to construe it as a PCRA petition. The PCRA court deemed the petition to be Appellant's third pursuant to the PCRA, and appointed Andrew Cooper, Esquire, to represent him. Upon determining that Appellant's petition was untimely and did not meet an exception to the PCRA's time bar, Attorney Cooper moved to withdraw as counsel and filed a no-merit letter in accordance with the requirements set forth in ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa.Super. 1988) (*en banc*).

Before the court ruled upon the request, Appellant filed an objection and asked for substitute counsel to pursue a claim of Attorney Cooper's ineffectiveness. Appellant averred that Attorney Cooper failed to communicate with him or conduct an investigation beyond the contents of his 2024 petition, which he described as being drafted by a "layman" and "ha[ving] no relevance to the true intent of the petitioner regarding his claim

court from considering a subsequent petition, even if a prior petition is pending, so long as the prior petition is not under appellate review." ***Commonwealth v. Montgomery***, 181 A.3d 359, 365 (Pa.Super. 2018) (*en banc*). Upon completion of the current appeal, we advise the PCRA court to enter a final order resolving the 2017 petition.

of an illegal sentence.” Objections, 9/9/25, at 3 (capitalization altered). According to Appellant, his “true intent . . . surely would have been fleshed out in a conversation with the petitioner had counsel taken the time to do so.” ***Id.*** He did not explain in the objections, however, the substance of those intentions. Upon review, the PCRA court granted counsel’s request to withdraw and issued notice of its intent to dismiss Appellant’s petition without a hearing pursuant to Pa.R.Crim.P. 907.

Between the time of his objection and the court’s Rule 907 notice, Appellant filed a *pro se* petition for a writ of mandamus in our Supreme Court asking it to compel the PCRA court to enter final orders on the outstanding 2017 and 2024 PCRA matters. ***See*** Petition for Writ of Mandamus, 12/5/25. On March 24, 2026, the High Court summarily denied Appellant’s petition. Of relevance to the instant appeal, Appellant indicated in his petition for a writ of mandamus, for the first time, that “he ha[d] finally obtained [n]ewly available fact [*sic*] to support his claim that he was a juvenile at the time of the [m]urder, not an adult, but [he was] not sure what to do with it at this point.” ***Id.*** at 4 (pagination supplied). Critically, Appellant did not present this revelation to the PCRA court. Instead, he asked the PCRA court for an extension to submit his *pro se* response to the court’s Rule 907 notice based upon limited access to the prison’s law library. The court denied his request and Appellant did not otherwise submit a response. On January 2, 2026, the court entered a final order dismissing Appellant’s third PCRA petition.

This appeal followed.³ Both Appellant and the PCRA court complied with the strictures of Pa.R.A.P. 1925. In this Court, Appellant raises five issues:

1. Was PCRA counsel ineffective for violating his duty to communicate effectively and sufficiently with [Appellant] to discuss, review and/or develop the claims listed in the PCRA petition and as otherwise application [*sic*] to the petition for post-conviction relief?
2. Was PCRA counsel ineffective for violating his duty, as mandated to perform a complete, through [*sic*] and zealous investigation of the record to determine whether all meritorious claims identified both of record and not of record, are properly investigated and raise any genuine issues of material fact and file an amended PCRA petition in a manner to warrant review by the court[?]

Specifically: Counsel failed to amend Appellant[']s PCRA petition, after he was made aware of newly-discovered evidence that the petitioner was under the age of eighteen at the time of the crime.

3. Is PCRA counsels [*sic*] **Turner/Finley** letter is [*sic*] deficient[?]
4. Did the PCRA court error [*sic*] and/or abuse it's [*sic*] discretion in failing to follow the procedural requirements pursuant to Rule 577(b) by not ruling on a combined objection to PCRA counsel[']s motion to withdraw appearance and motion for appointment of substitute PCRA counsel in-where [*sic*] ineffectiveness was alleged prior to the court[']s issuance of the [Rule] 907 notice[?]

³ While docketed past the filing deadline, the prisoner mailbox rule renders Appellant's notice of appeal timely because it was mailed within thirty days of the dismissal order. **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 as documented by a properly executed prisoner cash slip or other reasonably verifiable evidence.").

5. Did the PCRA court error [*sic*] and/or abuse it's [*sic*] discretion by accepting PCRA counsel[']s **Turner/Finley** no-merit letter, where the letter failed to meet the technical requirements[?]

Appellant's brief at 3-4 (cleaned up).⁴

The following principles govern our consideration of this appeal:

We review the factual findings of the PCRA court to ensure they are supported by the record, and we apply a *de novo* standard of review to its legal conclusions. Pennsylvania courts are prohibited from considering an untimely PCRA petition. This is because we have construed the PCRA's timing provisions as jurisdictional in nature, and, thus, no court may entertain an untimely PCRA petition. Consequently, we do not reach the merits of an untimely petition under any circumstances—even . . . if it is alleged that the petition's untimeliness is due to the ineffective assistance of counsel. Likewise, the PCRA's time-bar also applies to claims that the underlying sentence is illegal.

Commonwealth v. Laird, 331 A.3d 579, 593–94 (Pa. 2025) (cleaned up).

The PCRA provides as follows with respect to its timing requirements:

- (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

⁴ The Commonwealth relied upon the PCRA court's opinion instead of drafting a brief.

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 one year of the date the claim could have been presented.

42 Pa.C.S. § 9545(b).

At bottom, Appellant challenges Attorney Cooper's stewardship of his third PCRA petition and the PCRA court's acceptance of his no-merit letter. He avers the letter is deficient because counsel did not specify what he reviewed or detail the issues Appellant wanted to raise, and only discussed the timeliness of Appellant's PCRA petition and not the merits of any substantive issues. **See** Appellant's brief at 15, 18-20. He further argues that counsel failed to effectively represent him by choosing to draft a no-merit letter instead of pursuing an amended petition premised upon the newly-discovered fact that Appellant was just shy of eighteen years old at the time of the murder, which counsel would have learned about if he had consulted Appellant instead of relying upon what Appellant presented in his *habeas* petition.⁵ **Id.**

⁵ Notwithstanding this allegation, Appellant appends to his brief a letter detailing the discovery about his true age, which he purportedly sent to counsel prior to the **Turner/Finley** letter. Notably, Appellant made no reference to this letter in his objections to counsel's petition to withdraw. In any event, the appended letter is not part of the certified record and therefore cannot be considered by this Court. **See Commonwealth v. Preston**, 904 A.2d 1, 6 (Pa.Super. 2006) (*en banc*) (reiterating that "under the Pennsylvania Rules of Appellate Procedure, any document which is not part of the officially certified record is deemed non-existent—a deficiency which cannot be remedied merely by including copies of the missing documents in a brief" (cleaned up)).

at 8-9. He claims that counsel's omission of the age issue prejudiced him because the failure to raise it in the PCRA court will result in waiver on appeal. ***Id.*** at 9.

Certainly, an epiphany that Appellant was a juvenile at the time of the murder has the potential to support the newly-discovered facts exception to an otherwise untimely PCRA petition. However, as detailed above, that fact was never presented to the PCRA court. Throughout his filings in the PCRA court, Appellant neglected to apprise the court that he had recently learned that his believed birth year was incorrect or that this discovery could satisfy one of the PCRA's timeliness exceptions. Indeed, Appellant first notified the PCRA court of this revelation in his concise statement in this appeal. That was too late. It is well-settled that "[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). Therefore, Appellant waived his arguments regarding the applicability of an exception to the PCRA's time bar by failing to plead a timeliness exception in his initial petition.

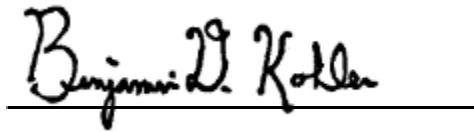
With no timeliness exception having been raised in the PCRA court, we discern no error in the court's conclusion that Appellant's third petition was time barred. Consequently, we do not reach Appellant's claims challenging the effectiveness of PCRA counsel. ***See Laird***, 331 A.3d at 599 (holding that claims challenging the effectiveness of PCRA counsel cannot overcome an otherwise untimely PCRA petition because "[i]f claims are cognizable under the PCRA, but are filed in an untimely manner without an applicable exception,

no court has the lawful authority to adjudicate those claims” (cleaned up)).

Accordingly, we affirm the order dismissing Appellant’s third PCRA petition.

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: 09/03/2026