NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ROBERTO VINCENT ALVAREZ	:	
Appellant	:	No. 3228 EDA 2025

Appeal from the PCRA Order Entered November 12, 2025
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0016518-1989

BEFORE: SULLIVAN, J., BECK, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.: **FILED NOVEMBER 10, 2026**

Appellant, Roberto Vincent Alvarez, appeals *pro se* from the order dismissing as untimely his third Post Conviction Relief Act (PCRA) petition.[1] Appellant argues, *inter alia*, that the PCRA court erred in treating his petition for writ of *habeas corpus* as an untimely serial PCRA petition. After review, we affirm.

The PCRA court summarized the history of this matter as follows:

> After an eight-day trial, a jury convicted Appellant of first-degree murder, criminal conspiracy to commit first-degree murder, and possession of an instrument of crime in April of 1990 before the Honorable Marjorie C. Lawrence. Judge Lawrence denied post-verdict motions and sentenced Appellant to the mandatory term of life imprisonment along with consecutive sentences for conspiracy and possession of an instrument of crime. The Pennsylvania Superior Court affirmed Appellant's judgment of

---

[1] 42 Pa.C.S. §§ 9541-9546.

> sentence by Memorandum Opinion and Order filed on November 12, 1991. . . .[2]
>
> Appellant filed his first petition under the Post Conviction Relief Act ("PCRA") on December 3, 1996, asserting a violation of his Constitutional right to an unbiased jury and several claims of ineffective assistance of counsel. Judge Lawrence held hearings and ultimately denied the petition, with the Superior Court affirming by Memorandum Opinion and Order filed on June 21, 1999.[3] On August 20, 2012, Appellant filed his second PCRA petition claiming an exception to the time bar and seeking to have his sentence vacated under ***Miller v. Alabama***, 567 U.S. 460, 132 S.Ct. 2455 (2012). Due to Judge Lawrence's retirement, Court Administration rotated the petition to the Honorable Kelly C. Wall. After reviewing the court file, Judge Wall concluded that the holding of ***Miller*** did not apply to Appellant's case and dismissed the petition without a hearing as untimely on September 24, 2012. (Notice Pursuant to Pa.R.Crim.P. 907(1) of Intent to Dismiss filed 8/28/12). Although Appellant filed a notice of appeal, the Superior Court ultimately quashed the appeal as untimely filed by Order entered on February 4, 2013.[4]
>
> On August 5, 2025, Appellant filed the instant *pro se* Petition for Writ of State *Habeas Corpus*. Due to Judge Wall's assignment to another court, Court Administration rotated the Petition to the undersigned. After a thorough review of Appellant's contentions and the applicable law, this court issued a Notice Pursuant to Pa.R.Crim.P. 907(1) of its intention to dismiss the Petition without a hearing on September 3, 2025. Appellant filed a Motion in Response to the court's Notice asserting that it would be an abuse of discretion to dismiss his state *habeas corpus* Petition. On

---

[2] ***See Commonwealth v. Alvarez***, 3499 Philadelphia 1990 (Pa. Super. filed November 12, 1991) (unpublished memorandum), *appeal denied*, 1077 E.D. Allocator Docket 1991 (Pa. filed August 10, 1992).

[3] ***See Commonwealth v. Alvarez***, 2482 Philadelphia 1998, (Pa. Super. filed June 21, 1999) (unpublished memorandum).

[4] ***See Commonwealth v. Alvarez***, 3263 EDA 2012 (Pa. Super. filed February 4, 2013) (single page order).

> November 12, 2025, the court entered an order dismissing the Petition for lack of jurisdiction.[5]

PCRA Court Opinion (PCO), 1/16/25, at 1-3 (internal footnote omitted and some formatting altered).

Appellant filed a timely notice of appeal and a court-ordered Pa.R.A.P. 1925(b) statement. The PCRA court subsequently issued a Rule 1925(a) opinion addressing Appellant's claims.

On appeal, Appellant raises the following issues, which we set forth verbatim:

> Did the Lower Court Erred as a matter of Law and abused its discretion by dismissing Plaintiffs Writ State Habeas corpus, that provide habeas claims which are false arrest without a warrant, and without a Probable cause, and without Jurisdiction from both Pennsylvania detectives and Clinton Massachusetts Law enforcement which they conducted an illegal arrest and illegal search/suizure without a warrant, and unconstitutional illegal interrogation without a Miranda Rule or warning.
>
> Did the Lower Court Erred as a matter of Law by declined to rule on Plaintiff habeas claims which was an unconstitutional proceeding that was used from the beginning of his arrest to obtain his conviction, under those circunstances was violated Plaintiffs rights, under the United States and Pennsylvania Constitutions. The Lower Court declined to rule on those habeas claims, where the Commonwealth did not made out a prima facie case as to the offense charged in the complaint before trial.

Appellant's Brief at 4 (verbatim).

---

[5] In the order, the PCRA court explained that the PCRA subsumes the writ of *habeas corpus*, and that the court was treating Appellant's petition for writ of *habeas corpus* as an untimely serial PCRA petition. ***See*** Order, 11/12/25, at 1, n.1; ***see also*** Rule 907 Notice, 9/3/25, at 3-7.

Our standard of review from an order denying PCRA relief "is limited to examining whether the evidence of record supports the court's determination and whether its decision is free of legal error." ***Commonwealth v. Beatty***, 207 A.3d 957, 960-61 (Pa. Super. 2019). "The PCRA court's factual findings are binding if the record supports them, and we review the court's legal conclusions *de novo*." ***Commonwealth v. Prater***, 256 A.3d 1274, 1282 (Pa. Super. 2021) (citation omitted).

However, the timeliness of a PCRA petition is a jurisdictional prerequisite. ***See Commonwealth v. Ballance***, 203 A.3d 1027 (Pa. Super. 2019). Therefore, we first consider whether the PCRA court properly treated Appellant's petition for writ of *habeas corpus* as an untimely PCRA petition because "Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition." ***Id.*** at 1031.

In Pennsylvania, the PCRA subsumes the writ of *habeas corpus* and is "intended to be the sole means of achieving post-conviction relief." ***Commonwealth v. Taylor***, 65 A.3d 462, 465 (Pa. Super. 2013); 42 Pa.C.S. § 9542. Therefore, claims that could be brought under the PCRA must be brought under the PCRA, regardless of the title of the document filed. ***Commonwealth v. Descardes***, 136 A.3d 493, 499 (Pa. 2016); ***Commonwealth v. Hall***, 771 A.2d 1232, 1235 (Pa. 2001). If a claim is cognizable under the PCRA, *habeas corpus* relief is not available. ***Commonwealth v. Peterkin***, 722 A.2d 638, 640–41 (Pa. 1998).

Here, Appellant contends that his convictions and sentences arose from violations of his state and federal constitutional rights. ***See*** Appellant's Brief at 15-18; ***see also*** PCRA Petition, 8/5/25, at 1.[6] As such, Appellant's claims are cognizable under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(2)(i). Accordingly, the PCRA court properly treated Appellant's petition for writ of *habeas corpus* as a PCRA petition subject to the PCRA's time restrictions. ***See Descardes***, 136 A.3d at 499; 42 Pa.C.S. § 9545(b)(1).

"The PCRA requires that all PCRA petitions, 'including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final,' unless an enumerated statutory exception applies." ***Commonwealth v. Keys***, 328 A.3d 1141, 1146 (Pa. Super. 2024) (quoting 42 Pa.C.S. § 9545(b)(1)). The three statutory 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.

---

[6] As addressed *infra*, we conclude that Appellant's claims are cognizable under the PCRA. Therefore, we refer to Appellant's *habeas corpus* petition as a PCRA petition.

42 Pa.C.S. § 9545(b)(1)(i)-(iii).

"For an exception to apply, a petitioner must: (1) plead and prove the applicability of one of the exceptions set forth in Section 9545(b)(1)(i)-(iii); and (2) file a petition raising the exception within one year from when the claim could have been presented." ***Keys***, 328 A.3d at 1146 (citing 42 Pa.C.S. § 9545(b)(1)-(2)). "A judgment 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." ***Commonwealth v. Brown***, 358 A.3d 469, 503 (Pa. 2026) (quoting 42 Pa.C.S. § 9545(b)(3)).

As noted above, this Court affirmed Appellant's judgment of sentence on November 12, 1991, and the Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal on August 10, 1992. ***See Alvarez***, 3499 Philadelphia 1990; *appeal denied*, 1077 E.D. Allocator Docket 1991. Accordingly, Appellant's judgment of sentence became final 90 days later, on November 8, 1992, when the time for filing a petition for writ of *certiorari* in the Supreme Court of the United States expired. ***See*** U.S.Sup.Ct.R. 13(1).

When the PCRA was amended, effective January 16, 1996, it imposed a one-year filing deadline running from the date a judgment of sentence becomes final. ***See*** 42 Pa.C.S. § 9545(b)(1). Because Appellant's judgment of sentence became final before the amendment's effective date, a grace proviso allowed first PCRA petitions to be filed no later than January 16, 1997. ***See Commonwealth v. Alcorn***, 703 A.2d 1054, 1056-57 (Pa. Super. 1997)

(discussing the grace proviso's application). The current petition is Appellant's third, rendering the grace proviso inapplicable. However, even if the grace proviso applied, Appellant's petition, which was filed on August 5, 2025, is more than twenty-eight years late. ***See id.*** Appellant's petition is patently untimely unless he pleads and proves one of the enumerated exceptions to the PCRA time bar. ***Keys***, 328 A.3d at 1146; 42 Pa.C.S. § 9545(b)(1)(i)-(iii).

Upon review, we agree with the PCRA court that Appellant failed to plead, much less prove, any of the three exceptions set forth in 42 Pa.C.S. § 9545(b)(1)(i)-(iii). ***See*** PCO at 8. Accordingly, because Appellant failed to plead and prove an exception, no court had jurisdiction to address Appellant's PCRA petition. ***See Ballance***, 203 A.3d at 1031. Therefore, we affirm the PCRA court's order dismissing Appellant's petition.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/10/2026