

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ERIC Y. GARCIA MULERO	:	
	:	
Appellant	:	No. 472 EDA 2026

Appeal from the PCRA Order Entered January 6, 2026
In the Court of Common Pleas of Northampton County Criminal Division
at No(s): CP-48-CR-0001727-2019

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

MEMORANDUM BY BENDER, P.J.E.: **FILED SEPTEMBER 29, 2026**

Appellant, Eric Y. Garcia Mulero, appeals *pro se* from the denial of his motion to open or vacate an illegal sentence pursuant to his claim of fraud on the court. The trial court treated his filing as a serial petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-46, and denied relief because his PCRA petition was untimely. Upon review, we affirm.¹

After a jury trial on March 12, 2020, Appellant stood convicted of attempted homicide, two counts of aggravated assault, and firearms not to be carried without a license.² Appellant was sentenced on June 19, 2020 to an aggregate term of 23 to 46 years of incarceration. Appellant filed post-sentence motions, which were denied on July 21, 2020. Appellant filed a

¹ We note with displeasure that the Commonwealth failed to file a brief in this appeal.

² 18 Pa.C.S. §§ 901, 2702(a)(1), 2702(a)(4), and 6106(a)(1), respectively.

notice of appeal on August 21, 2020, which was eventually quashed as being untimely filed. ***Commonwealth v. Garcia Mulero***, No. 1632 EDA 2020 (quashed 12/14/20).

Appellant filed his first *pro se* PCRA petition on October 14, 2021. The PCRA court appointed counsel, who filed an amended PCRA petition claiming that appellate counsel was ineffective for failing to file a timely direct appeal, and requesting the reinstatement of Appellant's appeal rights, *nunc pro tunc*. On April 12, 2022, the PCRA court dismissed the petition. Thereafter, this Court affirmed the denial of relief, holding that Appellant's petition was untimely and that Appellant had failed to assert any exceptions to the timeliness requirement. ***Commonwealth v. Garcia Mulero***, No. 1335 EDA 2022, 2022 WL 17576394 (Pa. Super. filed December 12, 2022) (unpublished judgment order). Appellant filed for further review with the Pennsylvania Supreme Court, which denied relief. ***Commonwealth v. Garcia Mulero***, No. 600 MAL 2022, 2023 WL 2520550 (Pa. filed March 15, 2023).

Appellant filed another PCRA petition on October 10, 2023. Counsel was appointed, who filed a ***Turner/Finley***³ no-merit letter. On December 29, 2023, the PCRA court filed notice under Rule 907 that it intended to deny the petition. Appellant filed a notice of appeal on February 1, 2024. However, the appeal was quashed as taken from an interlocutory order. ***Commonwealth v. Garcia Mulero***, No. 347 EDA 2024 (quashed 5/3/24).

³ ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

Appellant then filed a “motion to compel court order” on June 6, 2025, and the lower court dismissed it on June 16, 2025 as an untimely PCRA petition. Appellant filed a *pro se* appeal of this determination on July 8, 2025, but then discontinued the appeal via praecipe. ***See Commonwealth v. Garcia Mulero***, No. 1762 EDA 2025 (discontinued 8/15/25).

On September 25, 2025, Appellant filed the petition under review, a *pro se* “Motion to Open Vacate Illegal Sentence pursuant to Fraud Upon the Court under 42 Pa.C.S. §§ 5505.” Therein, Appellant claimed that the trial court had the power to modify his sentence under 42 Pa.C.S. § 5505 as there were no time limitations placed on the trial court’s ability to grant relief, and his sentence was procured through his attorney’s fraud on the court. While the *pro se* documents are inartfully drafted, it appears that Appellant is alleging that his trial attorney’s failure to file a timely appeal constituted a dereliction of counsel’s duties, which resulted in Appellant’s loss of appellate rights. Appellant does not directly discuss the concept of ineffective assistance of counsel. Rather, Appellant claimed: “trial counsel’s actions were dishonest in which constitutes fraud upon the court,” and this “illustrates violation of oath of office because of his silence at the imposition of an illegal sentence.” *Pro se* motion, 9/25/25, at 3. It appears that Appellant believes his sentence is illegal because of his interpretation of the sentencing guidelines.

The trial court treated this motion as a PCRA petition, and appointed counsel for Appellant. On November 25, 2025, counsel filed a ***Turner/Finley*** letter and requested permission to withdraw. On December 8, 2025, the PCRA

court filed its notice that it intended to dismiss the PCRA petition without a hearing, and permitted counsel to withdraw.⁴ Receiving no response from Appellant, the PCRA court dismissed the petition on January 6, 2026.

Appellant filed a motion to reconsider his claims of fraud on the court on January 14, 2026. This motion was denied on January 20, 2026. Appellant then filed a timely notice of appeal on February 4, 2026.⁵ Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Appellant frames his issues on appeal as follows:

1. Does the statutory construction act doctrines that judicial interpretation overpowers legislative intent?
2. Did trial court err as a matter of law for failing to answer Appellant's post sentence motion with a provision specified in 42 Pa.C.S. § 5505[?]

Appellant's brief at 4 (verbatim).

Appellant claims that the PCRA court erred in treating his motion as a PCRA petition to be decided in accordance with PCRA timeliness rules. "We review the denial of a PCRA petition to determine whether the record supports

⁴ The court amended the notice of intent to dismiss the next day, December 9, 2025, to include a missing title for the document.

⁵ Appellant's notice of appeal purported to appeal the January 20, 2026 order denying his motion for reconsideration. However, the appeal properly lies from the January 6, 2026 denial of his PCRA petition. Thus, we have amended the caption of this appeal to reflect the proper date. **See Commonwealth v. Moir**, 766 A.2d 1253, 1254 (Pa. Super. 2000) (noting that the appeal from an order denying reconsideration is improper and untimely); **Commonwealth v. Shamberger**, 788 A.2d 408, 410 n.2 (Pa. Super. 2001) (*en banc*) (correcting the caption when an appellant misstates where the appeal lies). Appellant's appeal was filed within 30 days of the denial of his PCRA petition, making it timely. Pa.R.A.P. 903(a).

the PCRA court's findings and whether its order is free of legal error." ***Commonwealth v. Min***, 320 A.3d 727, 730 (Pa. Super. 2024) (citation omitted). The scope of our review is "limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the trial level." ***Commonwealth v. Hanible***, 30 A.3d 426, 438 (Pa. 2011) (citation omitted). We defer to the factual findings of the post-conviction court, which was tasked with hearing the evidence and assessing witness credibility. ***Commonwealth v. Johnson***, 289 A.3d 959, 979 (Pa. 2023). The PCRA court's legal determinations, however, are subject to plenary review. ***Commonwealth v. Nero***, 58 A.3d 802, 805 (Pa. Super. 2012).

It is well-settled that PCRA petitions must be filed in a timely manner.

The timeliness of a PCRA petition is a jurisdictional requisite. The PCRA time limitations implicate our jurisdiction and may not be altered or disregarded in order to address the merits of the petition. In other words, Pennsylvania law makes clear [that] **no court** has jurisdiction to hear an untimely PCRA petition. The PCRA requires a petition, including a second or subsequent petition, to be filed within one year of the date the underlying judgment becomes final. 42 Pa.C.S. § 9545(b)(1). A judgment of sentence is 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." 42 Pa.C.S. § 9545(b)(3).

Commonwealth v. Ballance, 203 A.3d 1027, 1031 (Pa. Super. 2019) (cleaned up) (emphasis in original).

Further, the PCRA provides three exceptions to the timeliness requirement:

Generally, to obtain merits review of a PCRA petition filed more than one year after the sentence became final; the Appellant must allege and prove at least one of the three timeliness exceptions. **See** 42 Pa.C.S. § 9545(b)(1)(i)-(iii). The Appellant must allege and prove:

(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. § 9545(b)(1)(i)-(iii). The PCRA petitioner bears the burden to allege and prove that one of the timeliness exceptions applies to their case.

Commonwealth v. Marshall, 947 A.2d 714, 719 (Pa. 2008).

We begin by determining whether Appellant's *pro se* "Motion to Open Vacate Illegal Sentence pursuant to Fraud Upon the Court under 42 Pa.C.S. §§ 5505" was properly treated as a PCRA petition. Appellant argues that the court has "inherent power" under this section to correct his illegal sentence. However, we note that the very language of Section 5505 defeats his claim:

§ 5505. Modification of orders

Except as otherwise provided or prescribed by law, a court upon notice to the parties 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.

42 Pa.C.S. § 5505. Section 5505 generally permits a court to modify an order within thirty days of its entry, provided no appeal has been taken or allowed. Appellant cites **Commonwealth v. McGee**, 302 A.3d 659, 667 (Pa. 2023) for the proposition that Section 5505 was “never intended to create a strict jurisdictional deadline for correcting orders where there is an obvious illegality in the sentence.” However, **McGee** does not afford Appellant relief. There, our Supreme Court determined that there was no patent and obvious error in the sentencing order and, therefore, declined to decide whether a trial court’s inherent authority to correct patent and obvious errors is subject to the PCRA’s time limitations. **Id.** at 670. Likewise, here, Appellant identifies no patent and obvious error in his sentencing order.

Moreover, even if the order contained a patent and obvious illegality, binding caselaw requires that the petition be treated as a request for relief under the PCRA. This Court has rejected similar attempts to avoid application of the PCRA through citing an “inherent power” to correct illegal sentences. **Commonwealth v. Whiteman**, 204 A.3d 448, 451 (Pa. Super. 2019) (“The PCRA, as evidenced by the plain language of Section 9542, inescapably rejects the exercise of inherent power as an alternate means of remedying claims cognizable under the PCRA.”). Accordingly, Appellant cannot seek relief pursuant to 42 Pa.C.S. § 5505.

Furthermore, we note the scope of the PCRA is defined thusly:

This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. The action established in

this subchapter **shall be the sole means of obtaining collateral relief** and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including *habeas corpus* and *coram nobis*. This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide a means for raising issues waived in prior proceedings or to provide relief from collateral consequences of a criminal conviction.

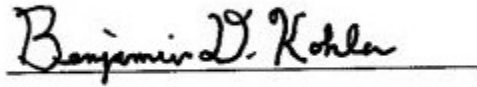
42 Pa.C.S. § 9542 (emphasis added).

“The plain language of the statute above demonstrates quite clearly that the General Assembly intended that claims that **could** be brought under the PCRA **must** be brought under that Act.” ***Commonwealth v. Hall***, 771 A.2d 1232, 1235 (Pa. 2001) (emphasis in original). Where a claim is cognizable under the PCRA, any common law or statutory remedies now subsumed by the PCRA are not available to the defendant. ***Id.*** (citation omitted). Further, “regardless of how a petition is titled, courts are to treat a petition filed after a judgment of sentence becomes final as a PCRA petition if it requests relief contemplated by the PCRA.” ***Commonwealth v. Powell***, 290 A.3d 751, 758 (Pa. Super. 2023), *citing* ***Commonwealth v. Wrecks***, 934 A.2d 1287, 1289 (Pa. Super. 2007).

As previously noted, Appellant sought relief that is cognizable under the PCRA. Therefore, the court properly treated his *pro se* filing as a serial PCRA petition. Because that petition is patently untimely and Appellant does not plead any exception to the PCRA’s one-year time bar, neither the PCRA court nor this Court has jurisdiction to entertain an untimely PCRA petition. ***Ballance, supra.***

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: 9/29/2026