

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ROBERT AUSTIN	:	
	:	
Appellant	:	No. 242 EDA 2026

Appeal from the PCRA Order Entered December 4, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0516941-1993

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

MEMORANDUM BY McLAUGHLIN, J.:

FILED OCTOBER 27, 2026

Robert Austin appeals *pro se* from the order entered dismissing his petition for relief under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Austin was found guilty by a jury in October 1994 of first-degree murder and robbery. He was sentenced to the mandatory life sentence for first-degree murder, plus 10 to 20 years in prison for robbery. This Court affirmed in 1998 and the Supreme Court of Pennsylvania denied allowance of appeal in 1999. Austin did not seek *certiorari* from the Supreme Court of the United States.

After prior, unsuccessful PCRA petitions, Austin filed the instant petition in February 2022,¹ styled as a Notice of Appeal *Nunc Pro Tunc*. Austin claimed

¹ The "Notice of Appeal *Nunc Pro Tunc*" was entered on the trial court docket on May 13, 2022. However, the certified record contains the envelope in which
(Footnote Continued Next Page)

that a breakdown in the trial court resulted in the denial of his right to appeal the dismissal of his first PCRA petition. **See** Notice of Appeal *Nunc Pro Tunc* ("PCRA Petition"), filed 2/16/22. He claimed the prothonotary failed to docket multiple filings and motions, including his notice of appeal from the order dismissing his first PCRA petition. Austin asserted the governmental interference and unknown facts time-bar exceptions under Sections 9545(b)(1)(i) and (ii) of the PCRA. **Id.** at ¶ 10. He maintained "[t]his error occurred over 20 plus years ago, yet establishes with clear evidence that [Austin] in this case followed the rule of law." **Id.** at ¶ 12. Austin included a copy of his notice of appeal from the denial of his PCRA petition, dated June 23, 2001 and bearing a trial court "received" stamp of July 20, 2001. He also attached a copy of the docket sheet showing that the prothonotary did not docket the notice of appeal. **See id.** at Exhibit A ("Docket Sheet") and Exhibit B ("Notice of Appeal").

Austin filed a "Request for Leave to Amend PCRA Petition," in October 2022. He raised a new claim that a prior PCRA judge abused his discretion when he denied Austin's motion for DNA testing of the victim's clothing. Request for Leave to Amend PCRA Petition, filed 10/19/22, at ¶ 1.² Austin

Austin mailed it, and it bears a postmark of February 16, 2022. As that is the only evidence of record of the date on which Austin gave the documents to prison authorities for mailing, pursuant to the prisoner mailbox rule, we treat that date as the filing date. **See Commonwealth v. Jones**, 700 A.2d 423, 426 (Pa. 1997).

² The PCRA judge who denied Austin's motion for DNA testing is not the same one who reviewed Austin's instant PCRA petition.

noted that the opinion supporting the denial of DNA testing stated that “the issue of DNA was raised during the initial trial and evidence showed that the clothes were washed prior to seizure of said evidence.” **Id.** at ¶ 6 (quoting PCRA Court Opinion, 2/14/19, at 5).

The PCRA court gave notice of intent to deny the petition without a hearing. It concluded the petition was untimely and Austin failed to invoke any time-bar exception. **See** Notice Pursuant to Pennsylvania Rule of Criminal Procedure 907, filed 10/23/25.³ Austin filed a response to the notice but did not address any time-bar exception. **See** Response to 907 Notice of Intent to Dismiss PCRA, filed 11/7/25. The court dismissed Austin’s petition as untimely. Order, filed 12/4/25;⁴ Order Dismissing PCRA Petition, filed 12/9/25. This timely appeal followed.

Austin raises the following claims:

1. Did the clerk of court’s actions result in a breakdown in the court’s operations where notice was never entered into the docket sheet of the May 31, 2001 order dismissing his first timely filed PCRA in violation of Pennsylvania laws to start the time to appeal[?]
2. Did the PCRA court abuse its discretion and or misapply the law denying DNA testing disregarding the standard and scope of review where its findings established the trial court’s determination of the facts are clearly

³ Between the time of Austin’s request for leave to amend in October 2022 and the court’s issuance of its Rule 907 notice in October 2025, Austin filed numerous motions requesting the court to address his petition.

⁴ The court also reviewed what it described as Austin’s “request for DNA testing.” **See** Rule 907 Notice at 2. However, the record does not include a motion for DNA testing from Austin related to the PCRA petition at issue.

contrary to and has no support in the record produced at trial[?]

Austin's Br. at 1, 3.

When reviewing the denial of a PCRA petition, we determine "whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error." ***Commonwealth v. Reeves***, 296 A.3d 1228, 1230 (Pa.Super. 2023) (citation omitted).

Unless a statutory exception applies, a petitioner has one year from the date the judgment of sentence becomes final to seek PCRA relief. ***See*** 42 Pa.C.S.A. § 9545(b)(1). "[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." ***Id.*** at § 9545(b)(3).

Here, Austin's judgment of sentence became final on April 16, 1999. Therefore, the instant petition, filed more than 20 years later, is patently untimely, and Austin bears the burden of establishing one of the time-bar exceptions. Austin asserts the governmental interference and unknown facts time-bar exceptions.

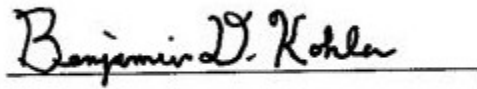
To establish the governmental interference exception, the petitioner must show that: "(1) the failure to previously raise the claim was the result of interference by government officials, and (2) the petitioner could not have obtained the information earlier with the exercise of due diligence." ***Commonwealth v. Kennedy***, 266 A.3d 1128, 1135 (Pa.Super. 2021). To satisfy the unknown facts exception, the petitioner must demonstrate that

“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[.]” 42 Pa.C.S.A. § 9545(b)(1)(ii). Due diligence is exercised where the petitioner takes “reasonable steps to protect his own interests” and “explain[s] why he could not have learned the new facts earlier with the exercise of due diligence.” ***Commonwealth v. Sanchez***, 204 A.3d 524, 526 (Pa.Super. 2019). A petitioner claiming a time-bar exception must raise the claim within one year of the date the claim could have been raised. **See** 42 Pa.C.S.A. § 9545(b)(2).

Austin failed to plead facts that, if true, would establish that he could not have learned earlier of the prothonotary’s failure to docket his notice of appeal through due diligence. As Austin acknowledged in his PCRA petition, the events at issue occurred over 20 years ago. **See** PCRA Petition at ¶ 12. Yet as the PCRA court stated, Austin’s petition did not “address whether he exercised due diligence in seeking this information over the past two decades, much less that this purported fact was previously undiscoverable despite the exercise of due diligence.” Opinion, filed 2/2/26, at 1-2 (footnote omitted). Because Austin failed to plead and prove any time-bar exception, we affirm the order dismissing the 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: 10/27/2026