

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JOSEPH C. TOY	:	
	:	
Appellant	:	No. 385 EDA 2026

Appeal from the PCRA Order Entered January 13, 2026
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0002475-2018

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

MEMORANDUM BY McLAUGHLIN, J.:

FILED OCTOBER 27, 2026

Joseph Toy appeals from the order dismissing as untimely his Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

In October 2018, Toy entered a negotiated guilty plea to conspiracy, criminal trespass, and possessing instruments of crime.¹ At the guilty plea hearing, the court stated that Toy was pleading guilty to conspiracy to commit "burglary of a property intended for overnight accommodations where there were persons present or criminal trespass or possession of an instrument of crime or theft[.]" **See** N.T., Oct. 15, 2018, at 10. The assistant district attorney later recited the facts the prosecution would prove if the case went to trial, including the following:

The homeowner called 911 after receiving a motion sensor alarm on his cell phone. The homeowner viewed live

¹ 18 Pa.C.S.A §§ 903, 3503(a)(1)(i), and 907(a), respectively.

video of the inside of his home where the motion sensors are located, and viewed two unidentified males walking up his stairs to the second floor. One male was carrying a blue crowbar, which was later recovered.

The homeowner, who was in the area, arrived on location at his home with responding officers. . . .

Id. at 12-13.

In exchange for the guilty plea, the Commonwealth agreed not to invoke the mandatory 25-to-life third-strike sentence to which Toy was exposed. ***See*** 42 Pa.C.S.A. § 9714.² ***Id.*** at 8. The trial court accepted the plea and sentenced Toy to an aggregate term of 15 to 30 years' incarceration. ***Id.*** at 19.

² Section 9714 provides:

(a) Mandatory sentence.--

(1) Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence, be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).

(2) Where the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Proof that the

(Footnote Continued Next Page)

After sentencing, on October 24, 2018, Toy moved to withdraw his guilty plea. Toy's counsel stated at argument on the motion that counsel had discovered that Toy's file mistakenly included an abstract of a conviction of a different Joseph Toy. N.T., Nov. 29, 2018, at 4. Ultimately, however, Toy withdrew the motion. **Id.** at 5. Counsel explained that after further review, he was convinced that the third-strike mandatory minimum applied here due to a 1977 rape conviction and a 2014 burglary conviction. **Id.** at 4-5.³ Toy did not file a post-sentence motion or direct appeal.

Toy filed his first PCRA petition on April 9, 2019, asserting that plea counsel was ineffective for erroneously informing him that his conviction for the present offense would count as a "third strike" as a result of his prior convictions. Trial Ct. Op., filed Apr. 7, 2026, at 2. The PCRA court denied the petition, and Toy appealed. This Court concluded that Toy's claim that his 2014 conviction was not a crime of violence for the purposes of 42 Pa.C.S.A.

offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required. Upon conviction for a third or subsequent crime of violence the court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the offender to life imprisonment without parole.

42 Pa.C.S.A. § 9714(a).

³ In March 2014, Toy pleaded *nolo contendere* to two counts of conspiracy to commit burglary in exchange for a negotiated sentence of four to eight years' imprisonment. **Toy**, 2020 WL 5362382, at *2. One of those counts involved the burglary of a structure while two children were present. **Id.** In 1977, Toy was convicted of rape. **Id.**

§ 9714 lacked merit, and that plea counsel's advice to enter a guilty plea to avoid a third-strike mandatory sentence was reasonable. **Commonwealth v. Toy**, No. 1027 EDA 2020, 2020 WL 5362382, at *5 (Pa.Super. Sept. 8, 2020) (unpublished mem.). Toy sought allowance of appeal, which the Pennsylvania Supreme Court denied. **Commonwealth v. Toy**, 258 A.3d 403 (Pa. 2021) (table).

In January 2025, Toy filed the instant *pro se* PCRA petition. He maintained it was timely because a challenge to the legality of his sentence is not waivable. The PCRA court issued notice of its intent to dismiss the petition without a hearing and, in January 2026, dismissed the petition. Toy timely appealed.

Toy raises the following issues:

Whether the Court erred in denying petitioner's PCRA challenging the legality of Sentence under timeliness statute of 42 Pa.C.S.A. § 9545.

Whether 42 Pa. C.S.A. §9542 allows for petitioners to challenge the legality of sentence obtained through collateral relief.

The Court erred allowing for petitioner[s] to enter into a negotiated plea agreement for crimes not committed constitutes a miscarriage of justice.

Whether counsel, prosecution and the court knew of and disregarded the facts the the [sic] petitioner was pleading to a crime he did not commit constituted a miscarriage of justice.

Whether the colloquy of the petitioner were knowingly [sic] when petitioner excepted [sic] a plea of a crime he did not commit.

Whether the sentence of burglary of an occupied dwelling increased petitioner[']s sentence and the threat of prosecution to file a third strike coerced petitioner into a plea of guilt[y] to a crime he did not commit

Whether the Double Jeopardy Clause of the United States Constitution protects petitioner against more than one punishment for the same offense.

Toy's Br. at 8 (unpaginated).

Toy argues that his petition was timely because challenges to the legality of a sentence are non-waivable. He maintains the conviction was for burglary of an occupied dwelling, but the actual offense was the burglary of an unoccupied dwelling. He argues that this alleged error caused the conviction to count as a "crime of violence" for purposes of the "three strikes" law. *Id.* at 12. He further states that his plea agreement was based on the burglary of an unoccupied home, but he unknowingly pleaded guilty to burglary of an occupied dwelling, which qualified him for the three-strike mandatory sentence. *Id.* at 11-12. Toy asserts that for this reason, his sentence is illegal and because his appeal deals with legality of a sentence, it is not subject to the PCRA's time restrictions.

In reviewing the denial of PCRA relief, we determine "whether the PCRA court's ruling is supported by the record and free of legal error." *Commonwealth v. Presley*, 193 A.3d 436, 442 (Pa.Super. 2018). A petitioner has one year from the date the judgment of sentence becomes final to file a PCRA petition, unless a statutory exception applies. *See* 42 Pa.C.S.A. § 9545(b)(1). Toy's judgment of sentence became final in 2018, when his time to file a direct appeal expired. 42 Pa.C.S.A. § 9545(b)(3) (providing "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”). He did not file his present PCRA petition until January 2025. The petition is therefore untimely.

If a PCRA petition is filed after the one-year deadline, a petitioner must plead and prove one of following time-bar exceptions:

- (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.

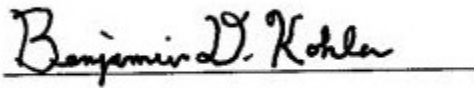
42 Pa.C.S.A. § 9545(b)(1)(i)-(iii).

The rule that a challenge to the legality of a sentence is not subject to waiver principles does not empower a court without jurisdiction to entertain such a claim. Because Toy did not allege facts that would satisfy a time-bar exception, he failed to invoke the PCRA court’s jurisdiction. It thus properly dismissed the petition. “[A]lthough legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA’s time limits or

one of the exceptions thereto." **See *Commonwealth v. Fowler***, 930 A.2d 586, 592 (Pa.Super. 2007) (citation omitted).

Order affirmed. Motion to supplement and correct certified record denied.

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