

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
MARK MCKAY	:	
	:	
Appellant	:	No. 713 EDA 2026

Appeal from the PCRA Order Entered February 19, 2026
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0008249-2016

BEFORE: LAZARUS, P.J., MURRAY, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY MURRAY, J.:

FILED AUGUST 28, 2026

Mark McKay (Appellant) appeals, *pro se*, from the order dismissing, as untimely filed, his third petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

On June 6, 2017, Appellant pled guilty to two counts of possession with intent to deliver a controlled substance, and one count each of possession of a controlled substance, possession of drug paraphernalia, and criminal use of a communication facility.¹ The trial court sentenced Appellant to an aggregate 10 to 20 years in prison, with credit for time served. Appellant timely filed post-sentence motions to withdraw his guilty plea and for reconsideration of

* Retired Senior Judge assigned to the Superior Court.

¹ 35 P.S. § 780-113(a)(30), (16), and (32), respectively; 18 Pa.C.S.A. § 7512(a).

his sentence. After a hearing, the trial court denied both motions. This Court subsequently affirmed Appellant's judgment of sentence. **See *Commonwealth v. McKay***, 201 A.3d 828, 3778 EDA 2017 (Pa. Super. 2018) (unpublished memorandum). Appellant did not seek allowance of appeal in the Pennsylvania Supreme Court.

Subsequently, Appellant unsuccessfully litigated two PCRA petitions.

On February 10, 2026, Appellant, *pro se*, filed the instant PCRA petition, his third. Therein, Appellant generally alleged the ineffectiveness of his trial counsel and set forth the requirements of an ineffectiveness claim. In support of his claim, Appellant alleged the following:

[Bensalem Township Police Officer] Christopher Grayo [(Officer Grayo)] lied on my affidavi[t of probable cause] and stated "Mr. McKay knowingly sold a non[-]narco[t]ic as a narco[t]ic" just to bring charges against me and hold me[,] knowing there was [*sic*] no drugs found during his illeg[al] search. ... I am innocent of these charges and I need justice.

PCRA Petition, 2/10/26, at 7 (unpaginated). The PCRA court dismissed Appellant's PCRA petition on February 19, 2026.²

² The PCRA court failed to issue a Pa.R.Crim.P. 907 notice before dismissing Appellant's PCRA petition without a hearing. However, Appellant waived any defect in notice by failing to raise the issue on appeal. **See *Commonwealth v. Zeigler***, 148 A.3d 849, 851 n.2 (Pa. Super. 2016) (explaining that an appellant's failure to raise on appeal the PCRA court's failure to issue a Rule 907 notice results in waiver of the claim). "Moreover, failure to issue Rule 907 notice is not reversible error where the record is clear that the petition is untimely." ***Id.***

Appellant filed a timely notice of appeal. The PCRA court did not order Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Nevertheless, the PCRA court filed a Rule 1925(a) opinion.

On appeal, Appellant has filed a *pro se* “brief on errors complained of on appeal.” Appellant’s brief generally identifies several PCRA court errors, each of which relates to his assertion that Officer Grayo falsified certain documents. ***See generally*** Appellant’s Brief at 1-3.

“Our standard of review from the [dismissal] of a PCRA petition is limited to examining whether the PCRA court’s determination is supported by the evidence of record and whether it is free of legal error.” ***Commonwealth v. Miranda***, 317 A.3d 1070, 1075 (Pa. Super. 2024) (citation and some brackets omitted).

Initially, we consider the timelines of Appellant’s third PCRA petition, as an untimely PCRA petition divests courts of jurisdiction. ***See Commonwealth v. Rienzi***, 827 A.2d 369, 371 (Pa. 2003). Under the PCRA, any petition, “including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final.” 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence 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.*** § 9545(b)(3).

Here, Appellant's judgment of sentence became final in December 2018, when the time to file a petition for allowance of appeal in the Pennsylvania Supreme Court expired. **See** Pa.R.A.P. 1113(a) (designating a 30-day period for seeking allowance of appeal from a Superior Court order). Appellant's instant petition, filed in February 2026, is therefore facially untimely.

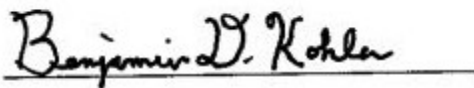
However, Pennsylvania courts may consider an untimely petition if the appellant can explicitly plead and prove one of three exceptions set forth under 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any petition invoking one of these exceptions "shall be filed within one year of the date the claim could have been presented." **Id.** § 9545(b)(2). Further, "it is the petitioner who bears the burden to allege and prove that one of the timeliness exceptions applies." **Commonwealth v. Whitehawk**, 146 A.3d 266, 269-70 (Pa. Super. 2016) (citation omitted). This burden necessarily entails an acknowledgement by the petitioner that the PCRA petition is untimely. **Commonwealth v. Wharton**, 886 A.2d 1120, 1126 (Pa. 2005).

Instantly, Appellant neither acknowledges the untimeliness of his PCRA petition nor attempts to invoke an exception to the PCRA's jurisdictional time-bar. **See id.; see also Whitehawk, supra**. Though Appellant briefly refers to purported after-discovered evidence of Officer Grayo's misconduct, it is well settled that "the newly-discovered facts exception to the time limitations of the PCRA, as set forth in subsection 9545(b)(1)(ii), is distinct from the after-discovered basis for relief delineated in 42 Pa.C.S.A. § 9543(a)(2)."

Commonwealth v. Burton, 158 A.3d 618, 629 (Pa. 2017); **see also Commonwealth v. Reeves**, 296 A.3d 1228, 1232 (Pa. Super. 2023) (“Once jurisdiction is established, a PCRA petitioner can present a substantive after-discovered-evidence claim.” (citation omitted)). Because Appellant failed to plead or prove an exception to the PCRA’s timeliness requirement, the PCRA court lacked jurisdiction to consider the merits of Appellant’s claims. The PCRA court therefore properly dismissed Appellant’s third PCRA petition as untimely filed.³

Order affirmed.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/28/2026

³ Moreover, we observe that Appellant’s purported brief fails to comply with several of our Rules of Appellate Procedure, including Pa.R.A.P. 2111(a) (detailing the required sections of an appellant’s brief), 2116(a) (statement of questions involved), 2117 (statement of the case), 2118 (summary of argument), and 2119(a) (requiring an appellate argument to be “divided into as many parts as there are questions to be argued” and include “such discussion and citation of authorities as are deemed pertinent”). “Although this Court is willing to construe liberally materials filed by a *pro se* litigant, a *pro se* appellant enjoys no special benefit.” **Commonwealth v. Tchirkow**, 160 A.3d 798, 804 (Pa. Super. 2017). We could also deem Appellant’s claims waived based on his numerous rule violations.