NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JIMEL KING	:	
Appellant	:	No. 336 EDA 2026

Appeal from the PCRA Order Entered December 22, 2025
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0007769-2015

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and STEVENS, P.J.E.*

MEMORANDUM BY PANELLA, P.J.E.: **FILED NOVEMBER 16, 2026**

Jimel King appeals *pro* se from the order entered in the Philadelphia County Court of Common Pleas on December 22, 2025, dismissing King's petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. As King filed the instant PCRA petition while the appeal of his first PCRA petition was still pending, the instant petition was a legal nullity for the reasons set forth below. The PCRA court's order from which this appeal is taken is, likewise, a legal nullity. Accordingly, we quash the appeal.

On August 14, 2015, the Commonwealth filed a criminal information charging King with attempted murder, aggravated assault, conspiracy, carrying a firearm without a license, possession of a firearm by a person

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* Former Justice specially assigned to the Superior Court.

prohibited, and possessing an instrument of crime. This Court previously summarized the factual and procedural history of this matter during prior PCRA proceedings as follows:

> On June 17, 2015, [King] became enraged at the victim, Arielle Banks, because she stopped answering his phone calls. After encountering her on the street, he fired a gun at her over a dozen times while she attempted to flee, striking her in the foot, lower back, and hip. [King] was convicted of, *inter alia*, attempted murder, conspiracy, and a firearms violation. He was sentenced to an aggregate term of thirty-five to seventy years of imprisonment followed by five years of probation. The term of imprisonment included an enhanced penalty under 18 Pa.C.S.A. § 1102(c) for an attempted murder from which serious bodily injury results.
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> On appeal, this Court vacated the firearms conviction but otherwise affirmed. [King] sought allowance of appeal, which was granted. [King] argued that his due process rights were violated because, despite being well aware of the fact, he had not received formal notice that he was subject to a Section 1102(c) enhancement in the bills of information. The Pennsylvania Supreme Court agreed but determined that the error was harmless beyond a reasonable doubt. [***See***] ***Commonwealth v. King***, 234 A.3d 549, 563-66 (Pa. 2020). The Court remanded however, for resentencing on the ground that [King] should not have received separate penalties for attempted murder and conspiracy.
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> On remand, [King] was resentenced to an aggregate term of twenty-seven and a half to fifty-five years of imprisonment. He filed a post-sentence motion, which was denied. He did not file a second direct appeal.
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> [King] filed a timely PCRA petition raising seven claims of error. The court appointed new counsel to represent [King], and counsel filed a no merit letter on October 24, 2022. The PCRA court issued a notice of intent to dismiss [King]'s petition under Pa.R.Crim.P. 907. [King] filed a response alleging that PCRA counsel had failed to communicate with him. He also supplemented his claims of error by adding some details, including an averment that trial counsel had been ineffective for failing to provide notice of an alibi

defense. The court ordered PCRA counsel to prepare an amended "No Merit Letter, or amended PCRA Petition if warranted."

On May 26, 2023, PCRA counsel filed a revised no merit letter, which he also sent to [King], explaining that he had spoken with [King] and repeatedly written to him requesting information on potential alibi witnesses without receiving a reply. Counsel further alleged that, after reviewing the docket sheet, all relevant transcripts, and the trial and appellate court opinions, he concluded that the claims raised in [King]'s petition had no merit. Counsel explained why he had reached that conclusion with respect to each claim. He also noted that he had explored other potential claims but to no avail. He informed [King] that he was seeking to withdraw as counsel and that, if the request was granted, [King] would be free to retain new counsel or proceed *pro se.* The PCRA court issued a second Rule 907 notice, attaching counsel's revised no merit letter.

On June 7, 2023, [King] filed a 1½ page response to the second Rule 907 notice arguing that he had, in fact, replied to PCRA counsel's request for information. He admitted, however, that his prospective alibi witness was dead. He also reattached his prior filings but raised no additional claims.

On June 22, 2023, the PCRA court dismissed [King]'s petition before receiving [King]'s June 7, 2023, response. On July 11, 2023, [King] filed a *pro se* notice of appeal. On July 13, 2023, the PCRA court vacated its order of dismissal in order to consider [King]'s June 7, 2023, response. On September 11, 2023, having reviewed this response, the PCRA court again entered an order dismissing [King]'s petition.

On December 20, 2023, after receiving responses from the parties and trial court to an order to show cause from this Court, we vacated the PCRA court's July 13, 2023 and September 11, 2023 orders as legal nullities because they had been entered after [King] filed his *pro se* notice of appeal. Rule of Appellate Procedure 1701(a) provides, subject to exceptions not relevant here, that a lower court cannot proceed further in the matter once an appeal is taken. Accordingly, by order dated December 20, 2023, we directed that this matter would proceed before us as of July 11, 2023, the date of the *pro se* notice of appeal.

Commonwealth v. King, 1891 EDA 2023, at *1-2 (Pa. Super. Filed November 15, 2024) (unpublished memorandum). This Court affirmed the order dismissing King's PCRA petition on November 15, 2024. ***See id.*** at *4. King had thirty days, or until December 16, 2024, to file a petition for allowance of appeal in our Supreme Court. ***See*** Pa.R.A.P. 1113(a).

King did not file such a petition. Instead, prior to the expiration of the thirty-day appeal period provided by Rule 1113(a), King filed the instant *pro se* PCRA petition, his second. The petition is time-stamped as filed on December 16, 2024, the final date of the appeal period. However, the petition is hand-dated on December 9, 2024, a week prior to the expiration of the appeal period.

The Commonwealth filed a motion to dismiss the petition on the basis that the "petition is untimely, and [King] has not demonstrated that any of his claims meet an exception to the PCRA's time-bar and/or his claims are substantively meritless …" Commonwealth's Motion to Dismiss, 4/23/25, at 1.

On April 28, 2025, the PCRA court issued notice of its intent to dismiss the petition pursuant to Rule 907, mirroring the same reasoning as the Commonwealth above. After a slightly protracted back and forth,[1] involving a

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[1] On May 15, 2025, King filed a motion for leave to file an amended PCRA petition, attaching a copy of the amended PCRA petition to the motion. Notably, upon review of the record, the PCRA court never granted or denied the request.
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request for extension of time to respond to the Rule 907 notice, and the issuance of new Rule 907 notices, the court ultimately dismissed the petition on December 22, 2025, as untimely and otherwise without merit. This timely appeal followed.

On March 9, 2026, this Court entered an order in which we noted that King had filed the instant PCRA petition on December 16, 2024, prior to the expiration of time for seeking review of the June 22, 2023 order dismissing his first PCRA petition with the Pennsylvania Supreme Court. Accordingly, we directed King to show cause why this appeal should not be quashed pursuant to ***Commonwealth v. Lark***, 560 Pa. 487, 493, 746 A. 2d 585, 588 (2000) (holding that a petitioner is precluded from filing a subsequent PCRA petition until review of the pending PCRA petition is resolved "by the highest state court in which review is sought, or upon the expiration of the time for seeking such review."). Following a response from King, this Court entered an order informing the parties that the issue raised in the rule to show cause would be referred to the panel assigned to decide the merits of this appeal.

Importantly, "amendments are not 'self-authorizing' such that a petitioner may simply 'amend' a pending petition with a supplemental pleading. Rather, [Pa.R.Crim.P. 905] explicitly states that amendment is permitted only by direction or leave of the PCRA court." ***Commonwealth v. Miranda***, 317 A.3d 1070, 1076 (Pa. Super. 2024) (citations omitted); ***see also Commonwealth v. Baumhammers***, 92 A.3d 708, 730-31 (Pa. 2014) (stating a petitioner's attempts to amend their PCRA petition will not preserve a claim if the PCRA court did not authorize the amendment); ***see also Commonwealth v. Porter***, 35 A.3d 4, 12 (Pa. 2012).

Therefore, before we can reach the merits of King's issues on appeal, we must first determine whether his filing presented a viable PCRA petition. As our Supreme Court has explained, "when an appellant's PCRA appeal is pending before a court, a subsequent PCRA petition cannot be filed until the resolution of review of the pending PCRA petition by the highest state court in which review is sought, or upon the expiration of the time for seeking such review." ***Lark***, 746 A.2d at 588; ***see also Commonwealth v. Montgomery***, 181 A.3d 359, 364 (Pa. Super. 2018) (*en banc*) (reaffirming that ***Lark*** "precludes consideration of a subsequent PCRA petition from the time a PCRA order is appealed until no further review of that order is possible").

Here, King elected to appeal from the order dismissing his first PCRA petition. Accordingly, he could not file a subsequent PCRA petition until the time for seeking further appellate review of that order had expired. ***See Lark***, 746 A.2d at 588. Because King filed the instant PCRA petition within the thirty-day period[2] for filing a petition for allowance of appeal in our Supreme Court

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[2] We acknowledge the timing here appears to be a close call, as the instant petition was time-stamped as filed on the very last day that King could have sought allowance of appeal with our Supreme Court. However, we note that while the petition was not marked as filed until December 16, 2024, King hand-dated the petition on December 9, 2024. Because King is incarcerated, pursuant to the prisoner mailbox rule, his *pro se* document is deemed filed as of the date he delivered it to prison authorities for mailing. ***See Commonwealth v. Jordan***, 182 A.3d 1046, 1048 n.3 (Pa. Super. 2018). Accordingly, his petition is deemed filed on December 9, 2024, and clearly is untimely. Even if we accepted December 16, 2024 as the filing date, it was prematurely filed, as the earliest date he could have filed a subsequent PCRA
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following this Court's November 15, 2024 decision affirming the dismissal of his first PCRA petition, the instant petition was prematurely filed and, hence, a legal nullity. ***See Lark***, 746 A.2d at 588; ***Commonwealth v. Neisser***, 1968 EDA 2019, at **5-6 (Pa. Super. Filed Feb. 7, 2020) (unpublished memorandum) (stating PCRA filings advanced in violation of ***Lark*** are legal nullities);[3] ***see Commonwealth v. Allam***, 1112 EDA 2023, at *3 (Pa. Super. Filed March 26, 2024) (unpublished memorandum) (finding motion for *nunc pro tunc* relief filed within thirty-day period for filing a petition for allowance of appeal was a nullity).

We further conclude that, because the instant petition was a legal nullity, the PCRA court lacked authority to rule on it. ***See Neisser***, 1968 EDA 2019, at **5-6; ***see also Allam***, 1112 EDA 2023, at *3. Accordingly, we are constrained to quash the appeal. ***See Allam***, 1112 EDA 2023, at *3; ***see also Commonwealth v. Seay***, 814 A.2d 1240, 1241 (Pa. Super. 2003) (holding that "[w]here a PCRA petition is premature, we quash an appeal taken from a ruling on it").[4]

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petition was December 17, 2026, after the time-period for him to seek further review in the Pennsylvania Supreme Court expired.

[3] ***See*** Pa.R.A.P. 126(b)(1)-(2) (providing that Superior Court non-precedential decisions filed after May 1, 2019, may be cited for persuasive value).

[4] ***Seay*** and ***Neisser*** were recently reaffirmed by an *en banc* panel of this Court in ***Commonwealth v. Ramsey***, --- A.3d ---, 2026 WL 2209742 (Pa. Super. filed July 31, 2026) (*en banc*) (quashing a prematurely filed PCRA petition). The ***Ramsey*** panel held:

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Appeal quashed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/16/2026

> The time limits under the PCRA are jurisdictional, and courts may not create equitable remedies to cure jurisdictional defects. A PCRA petition that is prematurely filed—before the conclusion of direct appeal—is a legal nullity and does nothing to vest jurisdiction in a court or to preserve the filing pending a final order after conclusion of direct appeal.

Ramsey, 2026 WL 2209742, at *9. While the holding in ***Ramsey*** is relevant to petitions filed before the conclusion of direct appeal, rather than before the conclusion of the review period of a prior PCRA petition, the reasoning is nevertheless applicable and binding to this matter.