**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| DERRICK LAMAR KING | : | |
| Appellant | : | No. 394 MDA 2026 |

Appeal from the Order Entered February 10, 2026
In the Court of Common Pleas of Berks County Criminal Division at
No(s): CP-06-CR-0004202-2017

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

MEMORANDUM BY LANE, J.: **FILED: NOVEMBER 10, 2026**

Derrick Lamar King ("King") appeals *pro se* from the order denying his post-conviction petition for writ of *habeas corpus*. We treat King's *habeas corpus* petition as an untimely petition filed pursuant to the Post Conviction Relief Act ("PCRA"),[1] and affirm.

A detailed recitation of the factual and procedural history of this matter is not necessary for the disposition of this appeal. Instead, we briefly note that in 2017, Officer Matthew Cavallo ("Officer Cavallo") initiated a traffic stop on a vehicle in which King was a backseat passenger. As Officer Cavallo approached the vehicle, he observed it rocking back and forth as though a passenger was moving around inside. Upon reaching the vehicle, Officer

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* Retired Senior Judge assigned to the Superior Court.

[1] ***See*** 42 Pa.C.S.A. §§ 9541-9546.

Cavallo used his flashlight to look through the rear window, whereupon he discovered, in plain view, King sitting in the back passenger seat with a small amount of marijuana in his lap, kicking a wrapped object under the front passenger seat. After ordering King out of the vehicle and detaining him, Officer Cavallo retrieved the wrapped object from under the front passenger seat and uncovered it to reveal a revolver. As King had a prior felony conviction which prevented him from possessing a firearm, as well as an outstanding arrest warrant, Officer Cavallo placed him under arrest. The Commonwealth then charged King with multiple drug and firearm related crimes.

The underlying matter ultimately proceeded to a severed trial for the crime of persons not to possess firearms, at the conclusion of which a jury found King guilty of this crime. As a result, on December 6, 2018, the trial court imposed a sentence of five to ten years' imprisonment. This Court affirmed King's judgment of sentence on November 21, 2019, and King did not seek further review by our Supreme Court. ***See Commonwealth v. King***, 224 A.3d 789 (Pa. Super. 2019) (unpublished memorandum).

In 2020, King filed a timely, first PCRA petition. The PCRA court appointed counsel, who, after filing multiple continuances, filed a motion to withdraw from representation. After granting withdrawal, the PCRA court reassigned the case to a different PCRA counsel, who in turn filed both a "no-merit" letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa.

1998) and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1998) (*en banc*), as well as a petition to withdraw from representation. In response, the PCRA court granted counsel's petition to withdraw and denied King's PCRA petition. King did not appeal from this denial order, and instead filed numerous *pro se* documents and motions with the court.

On January 30, 2026, King filed the instant *pro se* "Petition for Writ of *Habeas Corpus* Adsubjuiciendum [*sic*]," wherein he strictly challenged the legality of his judgment of sentence. In subsequently denying this petition, the lower court reasoned that King was ineligible for *habeas corpus* relief due to the fact that "a remedy may be available" for his illegality claim under the PCRA. Order, 2/10/26.[2] King filed a timely notice of appeal from the denial order, and both he and the lower court complied with Pa.R.A.P. 1925.

King raises the following issue for our review: "Did the PCRA court err in converting [his] *habeas corpus* [petition] into a PCRA petition and then finding the same untimely even though a question of the sentence[']s] legality was called into question?" King's Brief at 1 (unnecessary capitalization omitted).

In effect, King's sole issue concerns whether the lower court erred by denying his self-titled *habeas corpus* petition as a result of its determination that the illegality claim therein was potentially cognizable under the PCRA,

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[2] The lower court did not treat King's petition as a PCRA petition.

and thus ineligible for *habeas corpus* relief. As such, we preliminarily note that King's case procedurally comes to this Court as a filing outside of the PCRA. However, as this Court has emphasized, an "[a]ppellant's selected designation" for their filing "does not control" our treatment of the filing as the same. ***Commonwealth v. Johnson***, 200 A.3d 964, 967 (Pa. Super. 2018). Hence, before we may reach the merits of King's issue on appeal, we must first examine whether his request for relief must be treated as a PCRA petition, as the PCRA's time limits are jurisdictional, and we cannot address the merits of an untimely petition. ***See id***.

Pertinently, "claims that ***could*** be brought under the PCRA ***must*** be brought under that Act. No other statutory or common law remedy 'for the same purpose' is intended to be available; instead, such remedies are explicitly 'encompassed' within the PCRA." ***Id***. (*quoting* ***Commonwealth v. Hall***, 771 A.2d 1232, 1235 (Pa. 2001) (emphasis in original)). Thus, "unless the PCRA could not provide for a potential remedy, the PCRA statute subsumes the writ of *habeas corpus*." ***Commonwealth v. Taylor***, 65 A.3d 462, 465-66 (Pa. Super. 2013). To this effect, "[i]ssues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a *habeas corpus* petition. Phrased differently, a defendant cannot escape the PCRA time-bar by titling his petition or motion as a writ of *habeas corpus*." ***Id***. at 466.

While styled as a petition for a writ of *habeas corpus*, King's petition strictly raises a challenge to the legality of his judgment of sentence. ***See*** Petition for Writ of *Habeas Corpus Adsubjuiciendum*, 1/30/26, at unnumbered 1. As it is well established that this type of claim is cognizable under the PCRA statute, we necessarily treat King's petition as a PCRA petition, and the lower court's order as a denial of PCRA relief. ***See*** 42 Pa.C.S.A. § 9543(a)(2)(vii) (stating a petitioner is eligible for PCRA relief where the court imposed "a sentence greater than the lawful maximum"); ***see also Taylor***, 65 A.3d at 465 (*sua sponte* treating the appellant's petition for writ of *habeas corpus* as a PCRA petition and the lower court's corresponding denial order as a denial of PCRA relief). Accordingly, and as mentioned ***supra***, before we may reach the merits of King's illegality issue in a PCRA setting, we must first determine whether this Court has the jurisdiction to do so.

Under the PCRA, any petition, including a second or subsequent petition, must be filed within one year of the date the judgment of sentence becomes final. ***See*** 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 Pennsylvania, or the expiration of time for seeking such review. ***See*** 42 Pa.C.S.A. § 9545(b)(3). The PCRA's timeliness requirements are jurisdictional in nature, and a court may not address the merits of the issues raised if the PCRA petition was not timely filed. ***See Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010).

Instantly, we reiterate that this Court affirmed King's judgment of sentence on November 21, 2019. ***See King***, 224 A.3d 789. Thus, because King did not thereafter petition the Pennsylvania Supreme Court for further review, his judgment of sentence became final thirty days later, on December 23, 2019. ***See*** 42 Pa.C.S.A. § 9545(b)(3). King therefore had one year from that date, until December 23, 2020, to timely file a PCRA petition. ***See*** 42 Pa.C.S.A. § 9545(b)(1). Consequently, King's underlying petition filed on January 30, 2026, is facially untimely.

Nevertheless, Pennsylvania courts may consider an untimely PCRA petition if the petitioner explicitly pleads and proves one of three exceptions set forth under section 9545(b)(1). These exceptions are as follows:

> (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;
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> (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
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> (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). Any petition attempting to invoke one of these exceptions "shall be filed within one year of the date the claim could have been presented." 42 Pa.C.S.A. § 9545(b)(2). Our Supreme Court has emphasized that "it is the petitioner who bears the burden to allege and prove

that one of the timeliness exceptions applies." ***Commonwealth v. Marshall***, 947 A.2d 714, 719 (Pa. 2008) (citation omitted).

Here, our review of King's petition discloses no acknowledgement of the untimeliness of his petition nor any argument invoking any of the above-listed timeliness exceptions. As a result, because King failed to plead or prove any exception to the PCRA's one-year time bar, neither this Court nor the PCRA court have jurisdiction to consider the merits of his illegality issue. ***See Commonwealth v. Cox***, 146 A.3d 221, 231 (Pa. 2016) (holding that where a petition is untimely and the petitioner has failed to satisfy an exception to the PCRA's time bar, "no court could have jurisdiction to reach the merits of the issue . . . raised therein"). Accordingly, we affirm the lower court's denial order, albeit on different grounds.[3] ***See Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa. Super. 2012) (instructing that "this Court may affirm a PCRA court's decision on any grounds if the record supports it").

Order affirmed.

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[3] As explained above, although the lower court alluded to the PCRA as the proper vehicle for King's *habeas corpus* claim, it did not treat King's petition as a PCRA petition. Consequently, the lower court did not: (1) issue a Pa.R.Crim.P. 907 notice of its intent to dismiss the petition without a hearing; or (2) afford King the opportunity to amend the petition, prior to issuing its denial order. However, because King did not challenge these procedural deficiencies on appeal, any such claim in this regard is nonetheless waived. ***See Taylor***, 65 A.3d at 468.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/10/2026