NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
GARY KENNETH PRICE	:	
Appellant	:	No. 98 MDA 2026

Appeal from the PCRA Order Entered December 22, 2025
In the Court of Common Pleas of York County Criminal Division at No(s): CP-67-CR-0002478-2023

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

MEMORANDUM BY LANE, J.: **FILED: NOVEMBER 17, 2026**

Gary Kenneth Price ("Price") appeals *pro se* from the order denying his second petition filed pursuant to the Post Conviction Relief Act ("PCRA").[1] We affirm.

We provide the relevant factual and procedural history of this matter, as follows. In 2023, Price was walking the streets of Philadelphia while under the influence of drugs when he encountered a man in an alley, pushed him to the ground, punched him in the face, and retrieved two necklaces and a watch from his person. For these actions police arrested Price, and the Commonwealth charged him with, *inter alia*, robbery and possession with intent to deliver. As Price could not meet the monetary requirements for

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* Retired Senior Judge assigned to the Superior Court.

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

immediate bail release, the Commonwealth initially held him in custody following his arrest. Forty-eight days later, however, and following an agreed upon amendment to these requirements, the Commonwealth released Price on a non-monetary bail. Importantly, the conditions of this bail did not call for Price's institutionalization or confinement, but instead required only that he report daily to the York County probation office ("Probation Services").

Following various delays, Price appeared before the trial court on August 13, 2024, the scheduled date of his trial, at which point he entered a written guilty plea to the above-listed crimes. In response, the trial court conducted a verbal colloquy of Price on the record, accepted his guilty plea, and deferred sentencing pending the preparation of a presentence investigation report ("PSI").[2] On October 31, 2024, the trial court imposed an aggregate sentence of five to ten years' imprisonment. Price thereafter filed a post-sentence motion seeking credit for the forty-eight days he served in custody following his arrest, and the trial court granted said credit on November 18, 2024. Price did not file a direct appeal from his judgment of sentence.

In February 2025, Price filed a PCRA petition, his first, and the PCRA court appointed counsel. Appointed counsel subsequently filed both a "no-merit" letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa.

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[2] As Price did not appear for either of his scheduled appointments for purposes of drafting a PSI, the eventual report reviewed by the sentencing court provided only "basic information . . . regarding [Price's] history[,]" without any recommendation as to a potential sentence. N.T., 10/31/24, at 13.

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 issued a Pa.R.Crim.P. 907 notice of its intent to dismiss the PCRA petition without a hearing, before ultimately granting counsel's withdrawal request. Price did not respond to this notice, and the PCRA court thereafter denied his petition on October 10, 2025. Price did not appeal from the PCRA court's denial order.

On December 16, 2025, Price filed a *pro se* "Motion to Grant Credit for Time on Bond[,]" which the lower court treated as a post-sentence motion. Therein, Price requested credit for 565 days of time served for the period during which he was released on non-monetary bail. The lower court denied the motion. Price filed a notice of appeal from this denial order, and both he and the lower court complied with Pa.R.A.P. 1925.

Price raises the following issues for our review:

> (1) Was it error and/or abuse of discretion by the lower court to deny [Price's] motion for time credit?
>
> (2) Was it error and/or abuse of discretion by the lower court to cite a[n] opinion of fabricated facts?

Price's Brief at 4.

Instantly, Price's appeal comes to this Court from a ruling on a purported post-sentence 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. ***Commonwealth v. Johnson***, 200 A.3d

964, 967 (Pa. Super. 2018). In this sense, "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)). Hence, before we may reach the merits of Price's issues on appeal, we must first examine whether his request for relief filed in the lower court 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***.

Here, Price styled his underlying filing as a post-sentence motion in an attempt to challenge the trial court's alleged improper denial of 565 days' credit for time served on bail. ***See*** Motion to Grant Credit for Time on Bond, 12/16/25. However, because it is well settled that such a challenge goes to the legality of Price's sentence, and that illegality claims are plainly cognizable under the PCRA statute, we necessarily treat Price's filing as a second PCRA petition, and the lower court's order as a denial of PCRA relief. ***See Commonwealth v. Lee***, 182 A.3d 481, 483-84 (Pa. Super. 2018) (instructing that a "claim based upon a trial court's failure to give full credit for time served is a challenge implicating the legality of one's sentence"); ***see also Commonwealth v. Taylor***, 65 A.3d 462, 465 (Pa. Super. 2013) (*sua sponte* treating the appellant's post-sentence filing as a PCRA petition and the lower

court's corresponding denial order as a denial of PCRA relief). Thus, before we may reach the merits of Price's issues 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).

As indicated above, the trial court granted Price's post-sentence motion on November 18, 2024, and Price did not thereafter file an appeal from his judgment of sentence. Thus, Price's judgment of sentence became final thirty days following the trial court's order granting his post-sentence motion, on December 18, 2024. ***See*** Pa.R.Crim.P. 720(A)(2)(a) (instructing that when a criminal defendant files a timely post-sentence motion, he or she has thirty days from the date "of the entry of the order deciding the [post-sentence] motion" to file an appeal); ***see also*** 42 Pa.C.S.A. § 9545(b)(3). Price therefore had one year from that date, until December 18, 2025, to timely file a PCRA petition. ***See*** 42 Pa.C.S.A. § 9545(b)(1). Consequently, because

Price filed the underlying second petition on December 16, 2025, it is timely, and we may continue with our review of his issues on the merits.

Our standard of review of an order denying a PCRA petition is well-settled:

> We review an order [denying] a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of record. We will not disturb a PCRA court's ruling if it is supported by evidence of record and is free of legal error. This Court may affirm a PCRA court's decision on any grounds if the record supports it. Further, we grant great deference to the factual findings of the PCRA court and will not disturb those findings unless they have no support in the record. However, we afford no such deference to its legal conclusions. Where the petitioner raises questions of law, our standard of review is *de novo* and our scope of review plenary.

Commonwealth v. Ford, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

We preliminarily observe that both of Price's issues on appeal go towards challenging the trial court's denial of credit for the 565 days he was released on bail, with the second such issue strictly containing counterarguments to the lower court's Rule 1925(a) analysis. Thus, for purposes of our review, we will address both of Price's issues as a singular illegality claim.

Pertinently, a challenge to the legality of sentence presents a question of law for which our standard of review is *de novo*, and our scope of review is plenary. ***See Commonwealth v. Renninger***, 269 A.3d 548, 567 (Pa. Super. 2022). With respect to whether a sentencing court must grant a convicted

criminal credit for time served, the trial court must adhere to the requirements of 42 Pa.C.S.A § 9760(1), which provides as follows:

> Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

42 Pa.C.S.A § 9760(1). When interpreting the definition of "custody" within this statute, Pennsylvania appellate courts have consistently interpreted it to mean "confinement in prison or another institution." ***Commonwealth v. Maxwell***, 932 A.2d 941, 943-44 (Pa. Super. 2007). In furtherance of this sentiment, our Supreme Court created a bright-line rule establishing that "time spent on bail release, subject to electronic monitoring, does not qualify as custody for purposes of [s]ection 9760[,]" absent certain limited exceptions pertaining to equity. ***Commonwealth v. Kyle***, 874 A.2d 12, 20 (Pa. 2005) (holding that "release to one's home on bail subject to electronic monitoring does not reach the level of restriction that necessarily intends placement in an institutional setting[,]" as required by section 9760); ***see also Commonwealth v. Kriston***, 588 A.2d 898 (Pa. 1991) (holding that the defendant, as a matter of equity, should receive credit for time served subject to electronic home monitoring because prison authorities had assured him he would receive such credit).

From what we can ascertain from the notably scant argument section of his appellate brief, Price essentially contends that the trial court erred by denying him credit for time served due to the fact that it did not consider him to be in custody for purposes of section 9760 while he was released on bail following his arrest. Conversely, Price argues that his requirement to report daily to Probation Services while released on bail constituted "custody and restriction of a person[']s liberty" sufficient to require the trial court to apply this time as credit against his judgment of sentence. Price's Brief at 7.

The PCRA court determined that Price's illegality claim was without merit, reasoning as follows:

> Price seeks "time credit for 565 days while being on restricted custody while out on bail." [However, w]hile Price's [concise] statement claims he was "on restricted custody[,]" his actual bail conditions indicate otherwise. A condition of Price's release on non-monetary bail was that he "report to the daily reporting center in lieu of house arrest." Daily reporting is not "custody." [Indeed,] Price was not even on home confinement or house arrest. His restriction was even lesser, as he was only required to report daily. Thus, the claim he was entitled to credit time against his incarceration has no merit.

PCRA Court Opinion, 2/6/26, at 5 (reformatted, citations omitted).[3]

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[3] Although the PCRA court initially concluded that Price's claim was waived for failing to preserve it at sentencing, in a timely post-sentence motion, or in his court-ordered concise statement, it reached this conclusion as a result of an erroneous determination that Price's claim constituted a challenge to the discretionary aspects of his sentence. However, because we instead identify that Price's issue presents a challenge to the legality of his sentence, it cannot be waived. ***See Commonwealth v. Thorne***, 276 A.3d 1192, 1196 (Pa. 2022) (citation omitted) (explaining that, whereas issues not properly raised
(Footnote Continued Next Page)

After careful review, we likewise determine that the trial court did not impose an illegal sentence by denying Price credit for the time that he spent on bail following his arrest. As the PCRA court correctly emphasized in its Rule 1925(a) opinion, the conditions of Price's bail release required neither his institutionalization nor confinement. Instead, and in lieu of such restrictive measures, the only limitation to Price's autonomy while released on bail was a requirement that he report to Probation Services once per day. Such a minor restriction clearly falls below the heightened levels of institutionalization or confinement discussed by our Supreme Court when it established the aforementioned bright-line rule for purposes of affording credit for time served pursuant to section 9760. ***See Kyle***, 874 A.2d at 20. Accordingly, because Price includes no argument that he should be granted credit for time served while released on bail as a matter of equity, we affirm the lower court's denial order, albeit on different grounds.[4] ***See id***.; ***see also Kriston***, 588 A.2d at 898; ***Ford***, 44 A.3d at 1194.

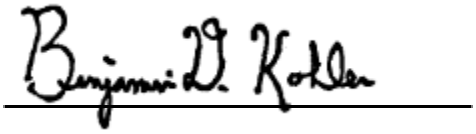
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and preserved before the trial court are typically waived and cannot be presented for the first time on appeal, a challenge to the legality of a sentence is an exception to this issue preservation requirement and cannot be waived).

[4] As explained above, the lower court did not treat Price's petition as a PCRA petition. Consequently, it did not: (1) issue a Pa.R.Crim.P. 907 notice of its intent to dismiss the petition without a hearing; or (2) afford Price the opportunity to amend the petition, prior to issuing its denial order. However, because Price did not challenge these procedural deficiencies in his appellate brief, any such claim in this regard is nonetheless waived. ***See Taylor***, 65 A.3d at 468; ***see also*** Pa.R.A.P. 2116(a) (stating that "[n]o question will be
(Footnote Continued Next Page)

Order affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/17/2026

considered unless it is stated in the statement of questions involved or is fairly suggested thereby").