

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
EMRU KEBEDE	:	
	:	
Appellant	:	No. 1548 MDA 2025

Appeal from the PCRA Order Entered October 2, 2025
In the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0003556-2007

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

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED: OCTOBER 16, 2026**

Emru Kebede appeals *pro se* from the order dismissing, without a hearing, his petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-9546. We affirm and additionally deny Kebede's application for relief, seeking remand, as moot.

In 2018, following the grant of post-conviction relief based on ***Miller v. Alabama***, 567 U.S. 460 (2012), and ***Montgomery v. Louisiana***, 577 U.S. 190 (2016), the court resentenced Kebede to thirty-years-to-life imprisonment. In this Court's 2020 decision affirming his new judgment of sentence, we provided the following summary of the facts and procedural history of this case:

Briefly, in 2007, when [Kebede] was 16 years old, he participated

* Retired Senior Judge assigned to the Superior Court.

in events that led to the murder of the victim by another actor. On September 10, 2009, a jury found [Kebede] guilty of second-degree murder, and[,] on September 18, 2009, the court sentenced [Kebede] to a statutorily mandated sentence of life without parole. This Court affirmed the judgment of sentence. [**See**] **Commonwealth v. Kebede**, 23 A.3d 1080 (Pa. Super. 2011) (table) [(838 MDA 2010)].

On May 22, 2012, [Kebede] filed a petition pursuant to the [PCRA] invoking **Miller**. The PCRA court denied relief, and[,] on February 20, 2015, this Court affirmed. [**See**] **Commonwealth v. Kebede**, [120 A.3d 387 (Pa. Super. 2015) (table) (1228 MDA 2014)]. While his petition for allowance of appeal was pending, the [United States] Supreme Court, in **Montgomery, supra**, held that **Miller** would be applied retroactively. Therefore, the Pennsylvania Supreme Court vacated this Court's February 20, 2015 order, and remanded the case for proceedings consistent with **Montgomery**. [**See**] **Commonwealth v. Kebede**, 132 A.3d 973 (Pa. 2016) [(*per curiam* order)].

A resentencing hearing commenced on January 3, 2018. [Kebede] requested that the court sentence him to a minimum sentence of 15 years' imprisonment while the Commonwealth requested the court to impose a sentence of not less than 30 years' to life imprisonment. After providing a thorough review of the applicable sentencing factors, the court resentenced [Kebede] to a standard[-]range sentence of 30 years' to life imprisonment for his second-degree murder conviction.

Commonwealth v. Kebede, 2020 WL 917683 at *1 (Pa. Super., filed Feb. 26, 2020) (unpublished memorandum) (301 MDA 2018) (footnote omitted; unnecessary capitalization, parallel citation, and parentheticals omitted). Following this Court's affirmance of Kebede's new judgment of sentence, our Supreme Court denied his petition for allowance of appeal on June 7, 2022. **See Commonwealth v. Kebede**, 279 A.3d 1180 (Pa. 2022) (table) (308 MAL 2020). Kebede's corresponding petition for writ of *certiorari* with the United

States Supreme Court was denied, too, on November 21, 2022. **See *Kebede v. Pennsylvania***, 143 S.Ct. 451 (2022) (mem.).

Kebede filed a timely *pro se* PCRA petition in October 2023. Therein, he raised three claims challenging his 2009 trial counsel's effectiveness. **See** PCRA Petition, 10/20/23, at 5. The court appointed counsel to represent Kebede, but counsel nevertheless filed a no-merit letter and motion to withdraw as counsel pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1998), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1998) (*en banc*). The court, in its notice of intent to dismiss the petition pursuant to Pennsylvania Rule of Criminal Procedure 907, additionally granted counsel's motion to withdraw. **See** Pa.R.Crim.P. 907 Notice, 9/12/25. Ultimately, the court dismissed Kebede's petition on October 2, 2025.

Kebede presents one question for review:

Did the PCRA court commit reversible error by dismissing Kebede's PCRA petition without a hearing because the record establishes the existence of material facts that are in dispute between the parties?

See Appellant's Brief at 2. More specifically, underneath this blanket assertion of disputed material facts, Kebede presents, in his appellate brief, the same three claims of 2009 trial counsel's ineffectiveness that were enumerated in his 2023 petition. **See *id.*** at 7.

In reviewing the dismissal of a PCRA petition, we are guided by the following standard of review:

When reviewing a denial of PCRA relief, we must determine whether the PCRA court's factual findings are supported by the record, and whether its conclusions of law are free from legal error. Our scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party. Although we are bound by credibility determinations [of the PCRA court], we apply a *de novo* standard of review to [the PCRA court's] legal conclusions.

Commonwealth v. Clancy, 192 A.3d 44, 63 (Pa. 2018) (citations omitted).

As it is dispositive to this appeal, our Court has held that

a successful . . . PCRA petition does not “reset the clock” for the calculation of the finality of the judgment of sentence for purposes of the PCRA where the relief granted in the first petition neither restored a petitioner's direct appeal rights nor disturbed his conviction, but, rather, affected his sentence only.

Commonwealth v. McKeever, 947 A.2d 782, 785 (Pa. Super. 2008); ***see also Commonwealth v. Lesko***, 15 A.3d 345, 366 (Pa. 2011) (indicating that when defendant is granted new sentencing hearing on federal *habeas* review, defendant's original judgment of sentence is final for PCRA timeliness purposes except for matters relating to resentencing). Accordingly, although Kebede's present petition was timely, his “right” to file a timely first petition for PCRA review was limited solely to issues concerning and arising from his new judgment of sentence, which was imposed in 2018, rather than his original judgment of sentence, imposed in 2009. ***See Lesko***, 15 A.3d at 366 (noting that Lesko's “resentencing that occurred as a result of the coercive federal *habeas* mandate did not purport to revive the claims that expired once the 1981 verdict of guilt became final” and holding that Lesko's original judgment of sentence was “final for all purposes except for that part of the

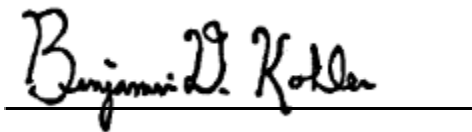
final judgment that was disturbed by the federal *habeas* proceedings, *i.e.*, Lesko's penalty phase proceeding") (emphasis omitted).

We note that the trial court initially sentenced Kebede on September 18, 2009, this Court affirmed that sentence on January 11, 2011, and our Supreme Court denied allowance of appeal on August 30, 2011, with Kebede taking no further action in the United States Supreme Court. Thus, Kebede's original judgment of sentence became final in 2012. **See** 42 Pa.C.S. § 9545(b)(1) ("Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final[.]"). Kebede was able to ligate a former collateral appeal prior to the vacation of his original judgment of sentence based on **Miller** and **Montgomery**. Based on the nature of the claims presented in Kebede's current PCRA petition, the petition was patently untimely as it related to allegations of 2009 trial court error and trial counsel's ineffectiveness. **See McKeever, supra**. Notwithstanding his attempt to seek review of his claims by reforming them as layered ineffective assistance of counsel claims in his reply brief, **see generally** Appellant's Reply Brief (asserting, *inter alia*, a claim of layered ineffectiveness pursuant to **Commonwealth v. Bradley**, 261 A.3d 381 (Pa. 2021)), Kebede has not alleged that his underlying claims fit under the auspice of any cognizable exception to the PCRA's time-bar. **See** 42 Pa.C.S. § 9545(b)(1)(i-iii) (establishing narrow exceptions to PCRA's jurisdictional time requirements). Thus, Kebede's sole claim in this appeal,

predicated on his three discrete allegations of 2009 trial counsel's ineffectiveness, is time-barred,¹ and as such, we affirm. **See Commonwealth v. Laird**, 331 A.3d 579, 583 (Pa. 2025) (holding that "**Bradley** did not establish an equitable exception to the PCRA's time-bar and that its rationale cannot be extended to create one").

Order affirmed. "Application for Relief Pursuant to Pa.R.A.P. 123" denied as moot.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/16/2026

¹ Moreover, as identified by the Commonwealth, **see** Commonwealth's Brief at 9-10, Kebede's underlying allegations of 2009 trial counsel ineffectiveness would be waived as he could have challenged that ineffectiveness in his original PCRA petition. **See** 42 Pa.C.S. § 9543(a)(3) (providing that, to be eligible for PCRA relief, petitioner must plead and prove that allegation of error has not been waived); 42 Pa.C.S. § 9544(b) (providing that issue is waived for purposes of the PCRA if petitioner could have raised it but failed to do so "before trial, at trial, during unitary review, on appeal or in prior state postconviction proceeding").