

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
CHRISTOPHER COKER	:	
	:	
Appellant	:	No. 2684 EDA 2022

Appeal from the PCRA Order Entered September 9, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-1200411-2003

BEFORE: BENDER, P.J.E., MURRAY, J., and SULLIVAN, J.

MEMORANDUM BY BENDER, P.J.E.:

FILED JANUARY 22, 2024

Appellant, Christopher Coker, appeals *pro se* from the post-conviction court's September 9, 2022 order denying, as untimely, his petition under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. After careful review, we affirm.

The facts of Appellant's underlying convictions are not pertinent to his instant appeal. The PCRA court aptly summarized the procedural history of Appellant's case, as follows:

On July 19, 2005, following a jury trial before the Honorable Peter F. Rogers, [Appellant] ... was convicted of one count of voluntary manslaughter (18 Pa.C.S. § 2503) and one count of possessing an instrument of crime (18 Pa.C.S. § 907). On August 30, 2005, Judge Rogers imposed an aggregate sentence of seven to fourteen years['] incarceration, followed by ten years['] reporting probation. [Appellant] was represented at trial and at sentencing by Todd Henry, Esquire.

On February 7, 2006, [Appellant] filed a *pro se* petition under the ... [PCRA], seeking reinstatement of his appellate rights. Judge Rogers reinstated [Appellant's] appellate rights on April 19, 2007.

On December 15, 2009, the Superior Court affirmed [Appellant's] judgment of sentence. [**See Commonwealth v. Coker**, 990 A.2d 39 (Pa. Super. 2009) (unpublished memorandum).] The Supreme Court of Pennsylvania denied *allocator* on June 15, 2010. [**See Commonwealth v. Coker**, 996 A.2d 1067 (Pa. 2010).] [Appellant] was represented on appeal by Richard T. Brown, Esquire.

On November 12, 2010, [Appellant] filed a *pro se* PCRA petition.... Elayne Bryn, Esquire, was appointed to represent [Appellant] on June 15, 2011. On May 11, 2015, pursuant to **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988), Ms. Bryn filed a letter stating there was no merit to [Appellant's] claims for collateral relief and requested to withdraw as counsel. On May 12, 2015, the court issued notice pursuant to Pa.R.Crim.P. 907 ("907 Notice") of its intent to dismiss [Appellant's] PCRA petition without an evidentiary hearing. [Appellant] filed a 907 response on July 28, 2015. On August 18, 2015, Judge Rogers granted Ms. Bryn's motion to withdraw as counsel without finding that the court was in agreement with Ms. Bryn's **Finley** letter. Instead, on August 28, 2015, Judge Rogers appointed David Rudenstein[, Esquire,] to represent [Appellant] and review the case anew.

On December 11, 2015, this matter was reassigned to the undersigned judge following Judge Roger[s'] retirement. On February 28, 2016, Mr. Rudenstein filed an amended PCRA petition raising multiple claims of trial and appellate counsel ineffectiveness. The Commonwealth filed a motion to dismiss [Appellant's] amended petition on April 25, 2016. On May 12, 2016, the court issued another 907 notice. [Appellant] responded to the 907 notice on May 23, 2016, with a "Motion for Leave to Hold an Immediate **Grazier** Hearing."² On June 30, 2016, the court held a **Grazier** hearing, at the conclusion of which [Appellant] elected to remain represented by [A]ttorney Rudenstein. In addition, the court entered an order dismissing [Appellant's] ... petition. The Superior Court affirmed the PCRA court's dismissal order on July 26, 2017, and the Supreme Court of Pennsylvania denied *allocator* on January 31, 2018. [**See Commonwealth v. Coker**, 175 A.3d 415 (Pa. Super. 2017) (unpublished memorandum), *appeal denied*, 180 A.3d 1211 (Pa. 2018).]

² A **Grazier** hearing is a hearing to determine whether a defendant has properly waived his right to counsel and may

lawfully proceed *pro se*. ***See Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998).

On May 22, 2020, [Appellant] filed a motion entitled, “Motion to Clarify Judgement of Order” (hereinafter, “Motion”). In the Motion, [Appellant] asked the PCRA court to clarify whether it had ruled on all of his issues at the conclusion of the June 30, 2016 proceedings, where the [c]ourt dismissed [Appellant’s] Second Petition. This court denied the Motion by order dated June 15, 2020. The Superior Court affirmed the order denying the Motion on April 7, 2021, and the Supreme Court of Pennsylvania denied *allocat[o]r* on September 29, 2021. [***See Commonwealth v. Coker***, 253 A.3d 260 (Pa. Super. 2021) (unpublished memorandum), *appeal denied*, 263 A.3d 1140 (Pa. 2021).]

On April 15, 2021, [Appellant] filed a[nother,] *pro se* PCRA petition.... The court issued a 907 notice on August 20, 2021. The court dismissed the ... petition on October 15, 2021.

[Appellant] filed a[nother,] *pro se* PCRA petition..., which is here at issue, on February 23, 2022, arguing ineffective assistance of PCRA counsel Rudenstein for failing to raise a [C]onfrontation [C]lause claim on appeal of the [November 12, 2010] petition. The Commonwealth responded to the [instant] petition on July 7, 2022. The court issued a 907 notice on July 21, 2022. [Appellant] responded to the 907 notice (“907 Response”) on August 8, 2022. On September 9, 2022, the court dismissed [Appellant’s instant] petition as untimely.

PCRA Court Opinion (PCO), 12/2/22, at 1-3 (one footnote and unnecessary capitalization omitted).

Appellant filed a timely, *pro se* notice of appeal, and he also complied with the PCRA court’s order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. The court filed its Rule 1925(a) opinion on December 2, 2022. Herein, Appellant states the following, *verbatim* issue for our review: “Was Deficient Stewardsdship on the part of Appellant Post-Conviction Counsel?” Appellant’s Brief at 4.

This Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. ***Commonwealth v. Ragan***, 923 A.2d 1169, 1170 (Pa. 2007). We must begin by addressing the timeliness of Appellant's petition, because the PCRA time limitations implicate our jurisdiction and may not be altered or disregarded in order to address the merits of a petition. ***See Commonwealth v. Bennett***, 930 A.2d 1264, 1267 (Pa. 2007). Under the PCRA, any petition for post-conviction relief, including a second or subsequent one, must be filed within one year of the date the judgment of sentence becomes final, unless one of the following exceptions set forth in 42 Pa.C.S. § 9545(b)(1)(i)-(iii) applies:

(b) Time for filing petition.--

(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, unless the petition alleges and the petitioner proves that:

(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;

(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

(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. § 9545(b)(1)(i)-(iii). Additionally, section 9545(b)(2) requires that any petition attempting to invoke one of these exceptions “be filed within one year of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2).

Here, Appellant’s judgment of sentence became final in 2010 and thus, his present petition, filed in 2022, is facially untimely. For this Court to have jurisdiction to review the merits thereof, Appellant must prove that he meets one of the exceptions to the timeliness requirements set forth in 42 Pa.C.S. § 9545(b).

Instantly, Appellant’s argument in his *pro se* brief is rather confusing but, from what we can glean, he is challenging the effectiveness of Attorney Rudenstein’s representation during the litigation of his November 12, 2010 PCRA petition. He also seems to be arguing that the PCRA court failed to rule on issues he raised in that 2010 petition, or the amendment thereto, and, consequently, the present PCRA court had jurisdiction to rule on those allegedly outstanding claims.

Neither of Appellant’s arguments satisfies a timeliness exception. First, “[i]t is well settled that allegations of ineffective assistance of counsel will not overcome the jurisdictional timeliness requirements of the PCRA.” ***Commonwealth v. Wharton***, 886 A.2d 1120, 1127 (Pa. 2005) (citations omitted). Even if ineffectiveness claims could meet an exception, Appellant is alleging ineffectiveness against Attorney Rudenstein, who represented Appellant from 2016 to 2018. Appellant fails to explain why he could not have

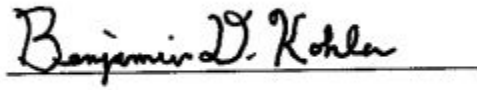
raised Attorney Rudenstein's ostensible ineffectiveness earlier than the present petition filed in 2022, especially since he litigated another PCRA petition in 2021. Thus, Appellant would be unable to satisfy the one-year requirement of section 9545(b)(2), even if his ineffectiveness claim could meet one of the exceptions of section 9545(b)(1)(i)-(iii).

Additionally, Appellant's claim that the present PCRA court had jurisdiction to review his instant petition because there were claims left unresolved in his 2010 petition is not supported by the record. Instead, the record confirms that on June 30, 2016, the PCRA court entered an order dismissing Appellant's petition filed in November of 2010. Appellant does not identify what specific issues the court allegedly left outstanding. Moreover, even if the court had erroneously failed to rule on claims that Appellant raised in that petition, he seemingly raised this argument in his "Motion to Clarify Judgement of Order," the dismissal of which was affirmed by this Court on appeal. Furthermore, Appellant could have raised this claim in his 2021 PCRA petition.

In other words, Appellant cannot assert issues pertaining to the litigation of his 2010 PCRA petition in his instant PCRA petition that was filed in 2022. That petition is clearly untimely, and Appellant has not demonstrated that any of the exceptions set forth in section 9545(b)(1) apply, or that he can satisfy the one-year requirement of section 9545(b)(2).

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/22/2024