NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
v.	:	
	:	
DESEAN KINGWOOD	:	
	:	
Appellant	:	No. 3135 EDA 2025

Appeal from the PCRA Order Entered October 30, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0012048-2008

BEFORE: McLAUGHLIN, J., BECK, J., and NEUMAN, J.

MEMORANDUM BY BECK, J.: **FILED NOVEMBER 16, 2026**

Desean Kingwood ("Kingwood") appeals from the order entered by the Philadelphia County Court of Common Pleas ("trial court") dismissing his "petition for writ of habeas corpus ad subjiciendum." Because the court below properly treated it as an untimely serial petition pursuant to the Post Conviction Relief Act ("PCRA"),[1] and Kingwood failed to establish an exception to the statutory time bar, we affirm.

In 2008, the police arrested Kingwood and co-defendant James Fulmore ("Fulmore") for the shooting of Joshua Hernandez, who survived. Following trial, a jury found Kingwood of one count each of attempted murder, aggravated assault, firearms not to be carried without a license, carrying a

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[1] 42 Pa.C.S. §§ 9541-9546.

firearm on the public streets in Philadelphia, possession of an instrument of crime, terroristic threats, simple assault, and recklessly endangering another person. Thereafter, the trial court sentenced him to an aggregate term of fifteen to thirty years of incarceration. This Court vacated the judgment of sentence and remanded for a new trial based on the improper introduction of prior bad acts evidence. ***Commonwealth v. Kingwood***, 153 EDA 2014 (Pa. Super. Aug. 5, 2015) (non-precedential decision), *appeal denied*, 135 A.3d 584 (Pa. 2016); ***see also*** Pa.R.E. 404(b).

On remand, Kingwood entered an open guilty plea to attempted murder, aggravated assault, firearms not to be carried without a license, and recklessly endangering another person. On September 7, 2016, the trial court sentenced him to an aggregate term of ten to twenty years of incarceration.[2] He did not file a direct appeal.

On October 2, 2017, Kingwood filed a timely pro se PCRA petition. The PCRA court appointed counsel, who filed an amended petition. Ultimately, the PCRA court dismissed the petition. This Court affirmed that decision, and our Supreme Court denied his request for further review. ***Commonwealth v. Kingwood***, 221 A.3d 270 (Pa. Super. 2019) (non-precedential decision), *appeal denied*, 234 A.3d 403 (Pa. 2020).

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[2] On June 20, 2016, a jury found Fulmore not guilty of attempted murder, aggravated assault, and carrying a firearm without a license. Trial Court Opinion, 10/30/2025, at 1, n. 1.

Thereafter, Kingwood filed two separate PCRA petitions, both of which the PCRA court dismissed. He did not appeal either dismissal.

On August 29, 2025, proceeding pro se, Kingwood initiated the filing underlying this appeal, challenging the legality of his sentence. The PCRA court construed this petition as a fourth PCRA petition and issued notice of its intent to dismiss the petition without a hearing pursuant to Pa.R.Crim.P. 907. Kingwood did not file a response. The PCRA court then dismissed the petition as untimely.

Kingwood filed a timely notice of appeal, raising numerous issues for review. Kingwood's Brief at 3. After the Commonwealth submitted its brief, Kingwood retained private counsel, who submitted a reply brief on his behalf.[3]

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[3] We take a moment to note the unusual and concerning circumstances surrounding Kingwood's counseled reply brief. On August 13, 2026, counsel filed with this Court an "Application For Leave To File A Substituted Brief For Appellant," which we denied on September 15, 2026. Order, 9/15/2026 (per curiam). In the reply brief filed, retained counsel states that he is responding to the Commonwealth's arguments, but concedes that none of Kingwood's arguments "confer[] jurisdiction, suppl[y] a statutory exception, or excuse[] the time-bar." Kingwood Reply Brief at 19. While candor to the Court is always required, and a lawyer is prohibited from asserting a frivolous claim, our Rules of Professional Conduct also mandate that counsel zealously advocate for his client's interests. ***See*** Pa.R.P.C. 3.1, 3.3; Preamble § 2. As new arguments on appeal cannot be raised in a reply brief, and because we determine we are without jurisdiction to reach the merits of the claims Kingwood raises, we need not address this further. We nonetheless remind counsel that under the circumstances here, the proper course is to decline representation of a private client in an appeal counsel concludes is wholly frivolous instead of arguing against his client's interests.

We must first determine whether the PCRA court properly treated Kingwood's habeas corpus petition as a PCRA petition subject to the PCRA's jurisdictional requirements. Pennsylvania law provides that any request for relief after an appellant's judgment of sentence becomes final must be treated as a PCRA petition if the issues raised are cognizable under the PCRA. ***Commonwealth v. Fantauzzi***, 275 A.3d 986, 994-95 (Pa. Super. 2022); ***see also*** 42 Pa.C.S. § 9542 (establishing the PCRA as "the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis"); ***Commonwealth v. Taylor***, 65 A.3d 462, 466 (Pa. Super. 2013) (an appellant cannot escape the PCRA time-bar by titling their petition as a writ of habeas corpus).

Kingwood raises a claim challenging the legality of his sentence. ***See*** Kingwood's Brief at 7-10. A claim that a petitioner is serving an illegal sentence claim is cognizable under the PCRA. ***See*** 42 Pa.C.S. § 9543(a)(2)(vii). Thus, the PCRA court properly construed his habeas petition as a PCRA petition.

We next must address whether Kingwood timely filed the instant PCRA petition or, alternatively, whether he satisfied an exception to the statutory time bar. ***See Commonwealth v. Brown***, 141 A.3d 491, 499 (Pa. Super. 2016) ("Crucial to the determination of any PCRA appeal is the timeliness of the underlying petition. Thus, we must first determine whether the instant

PCRA petition was timely filed.") (quotation marks and citation omitted). "The timeliness requirement for PCRA petitions is mandatory and jurisdictional in nature, and the court may not ignore it in order to reach the merits of the petition." ***Id.*** (quotation marks and citation omitted); ***see also Fantauzzi***, 275 A.3d at 994 ("the timeliness of a PCRA is jurisdictional and [] if the petition is untimely, courts lack jurisdiction over the petition and cannot grant relief"). "As timeliness of a PCRA petition is a question of law, our standard of review is de novo and our scope of review is plenary." ***Commonwealth v. Callahan***, 101 A.3d 118, 121 (Pa. Super. 2014) (citation omitted).

All PCRA petitions, including second or subsequent petitions, must be filed within one year of the date the judgment of sentence becomes final unless the petitioner pleads and proves one of the exceptions to the timeliness requirement. 42 Pa.C.S. § 9545(b)(1). These exceptions include:

> (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.

Id. Any PCRA petition invoking one of the exceptions listed above must be filed within one year of the date the claim could have been presented. ***Id.*** § 9545(b)(2).

Kingwood's judgment of sentence became final on October 7, 2016, after the time to file an appeal with our Court expired. ***Id.*** § 9545(b)(3) ("a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review"). Therefore, the instant PCRA petition, filed on August 29, 2025, is facially untimely.

Our review of Kingwood's filing confirms that he failed to allege any exceptions to the one-year time bar. ***See Commonwealth v. Miller***, 102 A.3d 988, 995 (Pa. Super. 2014) (stating that "though not technically waivable, a legality of sentence claim may nevertheless be lost should it be raised ... in an untimely PCRA petition for which no time-bar exception applies, thus depriving the court of jurisdiction over the claim"). As his PCRA petition was untimely filed and he failed to invoke any timeliness exception, neither the PCRA court nor this Court have jurisdiction to consider the merits of Kingwood's claims. ***See Commonwealth v. Keys***, 328 A.3d 1141, 1146 (Pa. Super. 2024) ("Without jurisdiction, we simply do not have the legal authority to address the substantive claims") (citation omitted).

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/16/2026