NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
TEVON KASHAINE THOMAS	:	
Appellant	:	No. 327 MDA 2026

Appeal from the PCRA Order Entered February 18, 2026
In the Court of Common Pleas of Luzerne County Criminal Division at No(s): CP-40-CR-0003969-2016

BEFORE: STABILE, J., MURRAY, J., and KING, J.

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

Tevon Kashaine Thomas (Appellant) appeals from the order denying and dismissing his first petition for relief filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. Because we conclude the PCRA court lacked jurisdiction to address the PCRA petition, we affirm the PCRA court's denial of relief.

Previously, this Court succinctly summarized the relevant underlying history as follows:

> Appellant's conviction stems from the shooting death of Irvando Crooks (hereinafter, the "victim"), which occurred on September 2, 2016, inside of the house located at 70 North Sherman Street in Wilkes-Barre, Pennsylvania. On that evening, Appellant had an argument with the victim over their joint narcotics enterprise. Appellant and the victim began struggling for control of a handgun, and the altercation culminated with Appellant's co-defendant, Keanu Pinnock [(Pinnock)], fatally shooting the victim. The Commonwealth charged Appellant as both a principal and an

> accomplice to the victim's murder. ***See*** Information, 1/4/17, at unnumbered 1.
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> Appellant was arrested and charged with criminal homicide and conspiracy to commit criminal homicide in connection with the victim's death. [] Pinnock pleaded guilty to third-degree murder in exchange for his testimony against Appellant. Appellant was convicted of first-degree murder and conspiracy to commit first-degree murder. [***See*** 18 Pa.C.S.A. §§ 2502(a), 903.] On the murder conviction, Appellant was sentenced to life in prison without parole…. With respect to the conspiracy conviction, Appellant was sentenced to a consecutive term of fifteen to thirty years of imprisonment. Appellant filed a post-sentence motion in arrest of judgment, arguing that there was insufficient evidence to support the convictions. The motion was denied by operation of law pursuant to Pa.R.Crim.P. 720(B)(3)(a).

Commonwealth v. Thomas, 229 A.3d 389, 1260 MDA 2018 (Pa. Super. 2020) (unpublished memorandum at 1-2) (original footnote text moved to body).[1]

This Court affirmed Appellant's judgment of sentence, after which the Pennsylvania Supreme Court denied allowance of appeal on August 18, 2020. ***Id.***, ***appeal denied***, 237 A.3d 979 (Pa. 2020). Todd Mosser, Esquire (Attorney Mosser), represented Appellant on direct appeal, and filed Appellant's petition for allowance of appeal in the Supreme Court.

On January 19, 2023, Appellant, *pro se*, sent a letter to the Luzerne County clerk of courts, inquiring about the status of his case and asking whether an attorney was associated with his case at that time. Attorney

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[1] Appellant was represented by Joseph Gardner Price, Esquire (Attorney Price), and Timothy Corbett, Esquire (collectively, trial counsel), during trial and through post-sentence motions.

Mosser subsequently filed a motion to withdraw from representation, explaining that he had been engaged to represent Appellant only through direct appeal.

Appellant then filed additional *pro se* correspondence requesting his trial transcripts and criminal docket sheets, asserting that Attorney Mosser had failed to file a PCRA petition on his behalf, and requesting the appointment of counsel. On January 5, 2024, the trial court conducted a hearing on Attorney Mosser's motion to withdraw and Appellant's *pro se* filings. During the hearing, Attorney Mosser testified that he "was retained to handle the direct appeal. … In August of 2020 the direct appeal concluded with the Supreme Court denying the allowance of appeal." N.T. (Motion to Withdraw), 1/5/24, at 2-3. Attorney Mosser also testified as follows:

> [Appellant and I] eventually had a phone call in January of 2021 where we talked about ideas for a PCRA, and I explained to him that if I was going to do a PCRA[,] I needed to be retained for that, and nobody ever reached out to me to make that happen.
>
> And then a little while later I started getting calls on my cell phone [from someone in Appellant's family], and I had sent some letters out…. I responded at least once through text. … [I explained that] I was not retained to handle the PCRA.
>
> I noticed back in March or January of [2023,] another lawyer called me to talk about [Appellant's] case, which led me to believe that [Appellant] had hired someone else to do a PCRA. So as far as my understanding was concerned[,] the fee agreement had been good in direct appeal. … I was not hired for further representation.

Id. at 3.

By contrast, Appellant testified that, based on his understanding of the January 2021 phone call, Attorney Mosser had agreed to file a PCRA petition on his behalf. ***Id.*** at 4-5. Appellant also stated that Attorney Mosser informed Appellant's mother, who had retained Attorney Mosser, that he would file a PCRA petition. ***Id.*** at 5.

After Attorney Mosser and Appellant testified, the trial court noted its "concern[] there was a miscommunication here and we had family members involved and [Appellant] was incarcerated." ***Id.*** at 8. The trial court granted Attorney Mosser's motion to withdraw. ***Id.*** After ascertaining that Appellant wished to proceed with a PCRA petition, the trial court ordered Appellant to file a PCRA petition within six months of the date of the hearing, and directed Attorney Mosser to turn over Appellant's file. ***Id.*** at 10-12; ***see also*** Order, 1/5/24. Additionally, the trial court explained that Appellant would have to file a *pro se* PCRA petition, after which time the PCRA court could appoint counsel to represent him. N.T., 1/5/24, at 10.

On May 6, 2024, Appellant, *pro se*, filed the instant PCRA petition, his first. Appellant raised a claim of prosecutorial misconduct and challenged the effectiveness of both trial counsels' and Attorney Mosser's representation. Additionally, Appellant claimed Pinnock confessed to shooting the victim. Appellant attached a handwritten "affidavit," purportedly executed by Pinnock, alleging that his testimony against Appellant had been coerced.

The PCRA court appointed Appellant counsel (PCRA counsel), who filed a supplemental PCRA petition on his behalf. In the supplemental PCRA petition, PCRA counsel requested that the court issue an order specifically stating that it had reinstated Appellant's right to file a PCRA petition based on Attorney Mosser's abandonment.[2] Supplemental PCRA Petition, 10/31/24, ¶ 32. The supplemental PCRA petition also advanced a claim of trial counsel's ineffectiveness based on counsel's failure to object to victim impact testimony. ***See id.***, ¶¶ 35-47. Additionally, PCRA counsel raised an after-discovered evidence claim premised on Pinnock's recantation testimony. ***See id.***, ¶¶ 49-56.

The Commonwealth filed a response to Appellant's supplemental PCRA petition. Notably, the Commonwealth raised no challenge to the timeliness of Appellant's PCRA petition.

The PCRA court held an evidentiary hearing on Appellant's PCRA petition on August 25, 2025. Appellant presented the testimony of Attorney Price and Pinnock; he also testified on his own behalf. The Commonwealth offered the testimony of Pinnock's plea counsel. The PCRA court directed the parties to file briefs in support of their respective positions, and both parties complied. On February 18, 2026, the PCRA court entered an order denying and dismissing Appellant's first PCRA petition.

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[2] The PCRA court never issued such an order.

Appellant timely appealed. Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Preliminarily, we address the unique procedural posture of the instant appeal, and relatedly, the timeliness of Appellant's PCRA petition. ***See Commonwealth v. Callahan***, 101 A.3d 119, 121 (Pa. Super. 2014) (explaining that the timeliness of a PCRA petition is a threshold jurisdictional question). "Even where neither party nor the PCRA court have addressed the [the timeliness of a PCRA petition], it is well-settled that we may raise it *sua sponte* since a question of timeliness implicates the jurisdiction of our Court." ***Id.*** (citation omitted).

Under the PCRA, a PCRA petition "shall be filed within one year of the date the judgment of sentence becomes final[.]" 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 the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review." ***Id.*** § 9545(b)(3). "[T]he PCRA's time restrictions are jurisdictional in nature, and if a PCRA petition is untimely, neither this Court nor the [PCRA] court has jurisdiction over the petition. Without jurisdiction, we simply do not have legal authority to address the substantive claims." ***Commonwealth v. Anderson***, 234 A.3d 735, 737 (Pa. Super. 2020) (citation and quotation marks omitted).

Pennsylvania courts may only consider an untimely PCRA petition if the petitioner explicitly pleads and proves one of the following three exceptions:

> (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
>
> (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 invoking one of these exceptions "shall be filed within one year of the date the claim could have been presented." ***Id.*** § 9545(b)(2). Further, "it is well[ ]settled under our precedent that **the PCRA confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar** in addition to those exceptions expressly delineated in the Act." ***Commonwealth v. Laird***, 331 A.3d 579, 597-98 (Pa. 2025) (emphasis added).

Instantly, Appellant's judgment of sentence became final in November 2020, when the time for filing a petition for writ of *certiorari* in the United States Supreme Court expired. U.S. SUP. CT. R. 13.

Before considering the timeliness of the instant PCRA petition, we must first consider the effect, if any, of the trial court's January 5, 2024, order purporting to reinstate Appellant's right to file a PCRA petition. The trial court

never stated that it treated Appellant's handwritten January 19, 2023, *pro se* filing (which gave rise to Attorney Mosser's motion to withdraw and the subsequent hearing) as a PCRA petition, and it is unclear from the record whether the court intended to do so.[3, 4] For our purposes, we will assume that the trial court did, in fact, treat Appellant's *pro se* filing as a PCRA petition.

Appellant's January 19, 2023, *pro se* filing, even if considered a PCRA petition, is patently untimely under the PCRA's jurisdictional time-bar. A PCRA petitioner's claim of abandonment by counsel may be used to invoke the newly-discovered fact exception at section 9545(b)(1)(ii). ***See Commonwealth v. Bennett***, 930 A.2d 1264, 1274 (Pa. 2007) (concluding that the PCRA petitioner's allegations that counsel abandoned him by failing to file an appellate brief in his first PCRA appeal were sufficient to "bring his claim within the ambit of subsection 9545(b)(1)(ii)," so long as he could also establish the fact of counsel's abandonment was previously unknown to him

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[3] Whether this filing constitutes a true PCRA petition is questionable, as the entirety of the *pro se* filing is as follows:

> Can you please send me a copy of my status sheet please and thank you[.] And also can you tell me if they [*sic*] courts know of a lawyer currently only my case. CD #3969 of 2016.

Pro Se Filing, 1/19/23. The letter contains no specific request for relief, nor does it contain an allegation that Attorney Mosser abandoned Appellant. Indeed, the formulation of Appellant's question suggests that he was unaware whether he was represented by counsel.

[4] The corresponding docket entry indicates this filing was served on Attorney Mosser, presumably as the last counsel of record.

and could not have been uncovered through the exercise of due diligence); ***see also Commonwealth v. Chester***, 163 A.3d 470, 474 (Pa. Super. 2017) (concluding that the PCRA petitioner successfully invoked the timeliness exception at section 9545(b)(1)(ii), where he alleged his counsel failed to file a requested appeal and incorrectly informed him that his post-sentence motion had been denied by operation of law; and remanding for the PCRA court to determine whether the fact of counsel's abandonment was previously unknown to him and whether he exercised due diligence in uncovering that fact).

Here, Appellant's first *pro se* filing merely requested an update regarding the status of his case and asked whether an attorney was assigned to his case. Attorney Mosser promptly filed a motion to withdraw, explaining that his representation of Appellant concluded after Appellant's direct appeal. ***See*** Motion to Withdraw, 1/30/23. Despite filing various additional *pro se* documents in the ensuing months, Appellant made no mention of his representation status until October 30, 2023, when he submitted a letter to the clerk of courts. Therein, Appellant baldly stated, "The current lawyer on my case abandoned me since 2020[.] He was supposed to file my PCRA[.] On the docket sheet ain't nothing been file [*sic*]." *Pro Se* Filing, 10/30/23 (some capitalization modified). Appellant requested court-appointed counsel to assist with filing a PCRA petition. ***Id.*** Appellant did not explain when he learned of the purported abandonment.

The trial court scheduled a hearing to consider Attorney's Mosser's motion to withdraw. Order, 12/1/23. At the start of the hearing, the trial court referenced Attorney Mosser's motion to withdraw, as well as Appellant's October 30, 2023, letter stating that Attorney Mosser had abandoned him. Attorney Mosser and Appellant each testified, as set forth *supra*, concerning their respective understandings of the terms of Attorney Mosser's retention agreement. At the close of the hearing, the trial court expressed concern that there had been a "miscommunication" between Attorney Mosser and Appellant. N.T., 1/5/24, at 8. The trial court stated, "The unfortunate result of that is that there's going to be a period of dead time that's going to run to the prejudice of [Appellant], the specifics of which I'm not in a position to state." ***Id.*** at 8-9. The court then advised Appellant that he could file a PCRA petition within six months. ***Id.*** at 12; ***see also*** Order, 1/5/24 (granting Attorney Mosser's motion to withdraw and directing Appellant to file a PCRA petition within six months).

Importantly, Appellant did not identify when he learned of the purported abandonment, explain whether he exercised due diligence in ascertaining that fact, or aver that he filed the *pro se* document within one year of discovering that Attorney Mosser had abandoned him. Neither the Commonwealth nor the PCRA court made any inquiries on these topics during the hearing. Moreover, the trial court made no mention, either during the hearing or in its subsequent order, of the PCRA's timeliness requirements.

In sum, the record is entirely devoid of any conclusion by the trial court or PCRA court that 1) Appellant's letter/filing constituted a PCRA petition; 2) Appellant pled with specificity that Attorney Mosser abandoned him; or 3) Appellant successfully invoked the newly-discovered fact exception to the PCRA's timeliness requirement, such that Appellant was entitled to consideration of the merits of any underlying claims. From the hearing transcripts, it appears the trial court, concerned about the existence of a "miscommunication," wished to give Appellant the benefit of the doubt. ***See*** N.T., 1/5/25, at 12 (trial court indicating it would permit Appellant additional time to file a PCRA petition "in the interest of justice"). However, the law is clear that our courts cannot create *ad hoc* equitable exceptions to the PCRA's time-bar. ***See Laird***, 331 A.3d at 597-98; ***see also Callahan***, 101 A.3d at 123 ("[T]he period for filing a PCRA petition can be extended only if the PCRA permits it to be extended, *i.e.*, by operation of one of the statutorily enumerated exceptions." (some brackets omitted)). As Appellant's *pro se* filing was untimely filed, and did not invoke a timeliness exception, the trial court lacked jurisdiction to grant **any** form of relief. ***See Anderson***, 234 A.3d at 737.

Additionally, because the trial court had no authority to grant Appellant additional time to file a PCRA petition, the instant PCRA petition, filed on May 6, 2024, remains patently untimely. Presumably operating under the assumption that the trial court was able to equitably extend the PCRA's time-

bar, Appellant makes no attempt to invoke an exception to the PCRA's timeliness requirement in either his PCRA petition or amended PCRA petition. Because the instant PCRA petition was untimely filed, and absent proper invocation of one of the three timeliness exceptions, the PCRA court lacked jurisdiction to consider the merits of the issues raised in Appellant's petition. ***Commonwealth v. Stahl***, 292 A.3d 1130, 1134 (Pa. Super. 2023) ("The PCRA's time limit is jurisdictional, and a court may not ignore it and reach the merits of an untimely PCRA claim.").

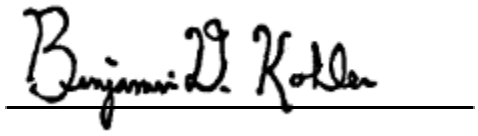
Likewise, this Court lacks jurisdiction to consider the claims Appellant raises on appeal. Thus, while we conclude the PCRA court improperly considered the merits of Appellant's claims, we affirm its denial of relief, albeit on different grounds.[5] ***See Commonwealth v. McCready***, 295 A.3d 292, 297 (Pa. Super. 2023) (stating that this Court "may affirm the decision of the PCRA court if there is any basis on the record to support the PCRA court's action; this is so even if we rely on a different basis in our decision to affirm.") (citation and brackets omitted).

Order affirmed.

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[5] We note that we affirm the denial of PCRA relief without prejudice to Appellant's right to file an additional PCRA petition raising an exception to the PCRA time-bar, if applicable.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/16/2026