NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. PATRICIA LYNNE RORRER Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3126 EDA 2012

Appeal from the PCRA Order October 11, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0002176-1997

BEFORE: BOWES, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J. **FILED DECEMBER 13, 2013**

Patricia Lynne Rorrer appeals from the order entered in the Court of Common Pleas of Lehigh County on October 11, 2012, denying her fourth petition for relief under the Post-Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546 ("PCRA"). After our review, we affirm.

On December 12, 1994, Rorrer, the former girlfriend of Andrew Katrinak, telephoned the Katrinak residence, where Andrew lived with his wife, Joann, and their infant son, Alex. Joann Katrinak told Rorrer never to call there again. Three days later, Joann and the baby disappeared. A farmer discovered their bodies in a wooded area where Rorrer once stabled and rode her horses.

An autopsy established that Katrinak had been beaten and shot in the face with a .22 caliber handgun. The baby, whose body was found on

Katrinak's chest, had died as a result of either suffocation or exposure. After a two-year police investigation, police arrested Rorrer in North Carolina.

On March 6, 1998, a jury convicted Rorrer of two counts each of kidnapping and first-degree murder. The court sentenced Rorrer that same day to two terms of life imprisonment and consecutive terms of ten to twenty years' imprisonment on the kidnapping convictions. On direct appeal, this Court affirmed. ***See Commonwealth v. Rorrer***, No. 3080 Philadelphia 1998, unpublished memorandum at 5 (Pa. Super. filed October 22, 1999). The Pennsylvania Supreme Court denied Rorrer's petition for allowance of appeal. ***Commonwealth v. Rorrer***, 757 A.2d 931 (Pa. 2000).

In this fourth PCRA petition, filed August 24, 2012, Rorrer avers newly discovered evidence, claiming tampering of certain forensic evidence that Judge William E. Ford had ordered preserved. She also claims that the United States Supreme Court's recent decision in ***Miller v. Alabama***, --- U.S. ---, 132 S.Ct. 2455 (2012), which held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders," ***id***. at --, 132 S.Ct. at 2469, should apply to her, despite the fact that she was thirty-three years old at the time the offenses occurred.

The Honorable Douglas Reichley filed a notice of intent to dismiss under Pa.R.Crim.P. 907, and Rorrer filed a response on September 24, 2012. The PCRA court determined no exception to the PCRA time bar applied and

dismissed Rorrer's petition as untimely. ***See*** Order, 10/11/2012. Rorrer filed this appeal, and she raises the follow issues for our review:

1. Whether appellant filed her PCRA in a timely manner;
2. Whether tampering by the Commonwealth violated appellant's due process rights as guaranteed by the Pennsylvania and United States Constitution;
3. Whether appellant was given effective assistance of counsel in all stages of a capital case, along with requirements set forth in Pa.R.Crim.P. 801;
    a. And, if appellant was abandoned by PCRA counsel;
    b. And, whether appellant can establish and show a layered claim of ineffective counsel in a capital case;
4. Whether appellant can show there is a purpose to correct manifest errors of law or fact or present newly discovered evidence, that was not available when the Court entered judgment;
5. Whether [the] common pleas court based its decision on [an] unreasonable determination of the facts in the light of evidence presented herein;
6. Whether all errors made from [the] current PCRA appeal, back through previous appeals and trial, now hold a cumulative effect of prejudicing the outcome, and if they do, do the errors taken together amount to reversible error;
7. Whether appellant was denied the opportunity for effective judicial review as secured by 42 Pa.C.S.A. § 9543-9545 by counsel's own admission; and
8. Whether appellant can prove a strong prima facie showing a miscarriage of justice has occurred.

Before we address the merits of a PCRA petition, we must consider the issue of the petition's timeliness because it implicates the jurisdiction of both this Court and the PCRA court. ***See Commonwealth v. Williams***, 35 A.3d

44, 52 (Pa. Super. 2011) (citation omitted). "Pennsylvania law makes clear no court has jurisdiction to hear an untimely PCRA petition." ***Id***. 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. Robinson***, 837 A.3d 1157, 1161 (Pa. 2003) (citation omitted). This is to "accord finality to the collateral review process." ***Id***.

"A petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final unless the petition alleges, and the petitioner proves, that an exception to the time for filing the petition, set forth at 42 Pa.C.S.A. § 9545(b)(1)(i), (ii), and (iii), is met." ***Commonwealth v. Harris***, 972 A.2d 1196, 1199-1200 (Pa. Super. 2009). The act provides as follows: Under the PCRA, any petition, 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 exceptions set forth in 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii) applies: (1) petitioner's inability to raise a claim as a result of governmental interference; (2) the discovery of previously unknown facts or evidence that would have supported a claim; and (3) a newly-recognized constitutional right. 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). To invoke an exception, the petitioner must plead it and satisfy the burden of proof. ***Commonwealth v. Beasley***, 741 A.2d 1258, 1261-62 (Pa. 1999). In addition, any exception

must be raised within sixty days of the date the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2).

As noted above, Rorrer was sentenced on March 6, 1998. This Court affirmed Rorrer's judgment of sentence on October 22, 1999, and our Supreme Court denied her petition for allowance of appeal on April 11, 2000. As a result, Rorrer's judgment became final on July 10, 2000, when the 90-day period for Rorrer to file a petition for certiorari with the Supreme Court of the United States expired. ***See*** United States Supreme Court Rule 13 (stating petition for certiorari is timely when filed with Clerk of Courts within 90 days after entry of judgment); ***see also*** 42 Pa.C.S.A. § 9545(b)(3) (stating that "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"). Rorrer had until July 10, 2001 to file a timely PCRA petition.

Rorrer filed the instant petition on August 24, 2012. Her petition, therefore, is patently untimely. Rorrer acknowledges as much, but alleges an exception to the time-bar as set forth in section 9545(b)(1)(iii). She claims that the United States Supreme Court's decision in ***Miller*** created a newly-recognized constitutional right that affords her relief. This claim is meritless.

On October 30, 2013, our Supreme Court held that ***Miller's*** prohibition against mandatory life-without-parole sentencing for juvenile offenders did not apply retroactively. ***See Commonwealth v. Cunningham***, --- A.3d

---, 2013 WL 5814388 (filed October 30, 2013). Furthermore, ***Miller*** has no bearing on Rorrer's appeal; there is no authority for the proposition that ***Miller*** applies to a defendant who committed an offense as an adult.

Rorrer also claims her petition falls within the newly-discovered evidence exception to the PCRA's one-year time requirement. 42 Pa.C.S.A. § 9545(b)(1)(ii). Specifically, Rorrer claims to have discovered that the Commonwealth tampered with forensic evidence, namely a fingernail fragment with material attached, found on Katrinak's chest. The fingernail matched neither of the victims nor the defendant, and was the subject of a prior PCRA petition, evaluated by Judge William E. Ford under section 9543.1 of the PCRA, entitled "Post conviction DNA Testing." Judge Ford's order granting Rorrer relief, provided:

> I evaluate the defendant's request for DNA testing on these items under 42 Pa.C.S. § 9543.1, entitled "Post Conviction DNA Testing." Today's order pertaining to DNA testing is entered so that counsel can provide the court with predicate information for a determination whether DNA testing is proper under Section 9543.1. Thus, I grant in part, the defendant's motion for discovery. . . . I cannot determine from these allegations in the amended petition nor were the attorneys able to answer for me at the argument to what extent DNA technology has advanced since the trial in this case. Under today's order, an individual versed in modern DNA technology can visually examine the items of evidence enumerated in the order and then advise the court at a future hearing on a number of DNA topics. Can the expert determine if there is DNA material on these items of evidence? What type of testing is proposed? Did the testing exist at the time of the trial in 1998? How does today's available testing compare to the DNA testing done in this case in term of identifying the source of the DNA material on the items of evidence? If these questions can be answered, the court will be in a better position to determine if the DNA technology

> suggested for testing of these items of evidence was in existence at the time of trial. Only if it was not in existence can testing go forward. 42 Pa.C.S. § 9543.1(a)(2). . . . There was no direct evidence from the trial that the defendant, Patricia Rorrer, killed Joann and Alex Katrinak. This was a circumstantial evidence case. In entering this order in regard to DNA, the court recognizes that other circumstantial evidence was introduced at trial which implicated the defendant in these crimes. However, the significance of analysis of certain items of evidence retrieved from the location where the bodies were found and the seatback of the Karinak vehicle cannot be overstated.

Opinion by Judge William E. Ford, 3/15/2007, at 3-5. Essentially, the court authorized a DNA expert to analyze the forensic evidence to determine if it contained sufficient materials to allow further DNA testing. In addition, the court ordered a DNA expert to review the prior forensic testing to determine if new DNA testing procedures existed that did not exist at the time of trial and that could yield more accurate results.

On June 25, 2009, after a laboratory of Rorrer's choice had performed testing, Judge Ford entered an order denying relief, reasoning as follows:

> At the hearing of November 10, 2008, the defendant requested additional DNA testing on the fingernail fragment with the attached mass. As explained below, the results of the DNA tests conclusively establish the guilt of the defendant and render her request for further DNA testing moot. . . . . In Pennsylvania, a convicted prisoner, through 42 Pa.C.S. § 9543.1, may move for the performance of forensic DNA testing "on specific evidence that is related to the investigation or prosecution that resulted in the judgment of conviction." 42 Pa.C.S. § 9543.1(a)(1). . . [A]n applicant for relief must:
>
> > Present a prima facie case demonstrating that the (i) identify of or the participation in the crime by the perpetrator was at issue in the proceeding that resulted in the applicant's conviction and sentencing; and (ii) DNA testing of the specific evidence, assuming exculpatory

> results, would establish: (A) the applicant's actual innocence of the offense for which the applicant was convicted. . . .
>
> 42 Pa.C.S. § 9543.1(c)(3).
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> * * * *
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> Because the nuclear DNA testing performed by Orchid Cellmark has already determined that the hairs from the seatback of the Katrinak vehicle originated with the defendant, further mitochondrial DNA testing on the fingernail fragment and attached mass cannot establish the defendant's actual innocence. Therefore, the request for additional testing must be denied. In sum, the defendant obtained the DNA testing she requested and the results of those tests, instead of proving her innocence, confirmed the validity of the jury's verdict that she is the murderer. Therefore, the defendant is not entitled to relief under the PCRA.

Opinion, 6/25/2009, at 10-11. Rorrer now attempts to revisit the fingernail fragment issue, claiming she only recently learned of "tampering" as a result of notice of a docket entry.[1] Essentially, Rorrer claims that when the

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[1] Rorrer claims she obtained a copy of the docket entry on September 4, 2012, almost two weeks *after* she filed her PCRA petition. The PCRA court accepted this as newly discovered evidence. In ***Commonwealth v. Bennett***, 930 A.2d 1264 (Pa. 2007), our Supreme Court explained the parameters of this exception, stating the exception set forth in subsection (b)(1)(ii) does not require any merits analysis of the underlying claim.

> Rather, the exception merely requires that the facts upon which such a claim is predicated must not have been known to appellant, nor could they have been ascertained by due diligence. Therefore, . . . the plain language of subsection (b)(1)(ii) is not so narrow as to limit itself to only claims involving after-discovered evidence. Rather, subsection (b)(1)(ii) has two components, which must be alleged and proved. Namely, the petitioner must establish that: 1) the facts upon which the claim was predicated

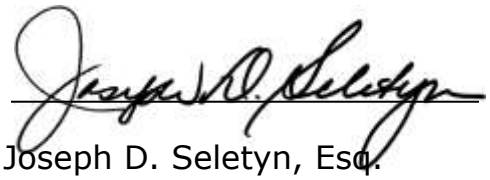
(Footnote Continued Next Page)

laboratory received the fingernail fragment, it was void of any "material attached," and therefore the Commonwealth did not preserve it in accordance with Judge Ford's prior order.

Even assuming a timely assertion of this newly-discovered evidence, we are unable to grant relief because, as Judge Ford clearly explained, regardless of what further testing would have revealed, it would not have established the defendant's **actual innocence** as required by section 9543.1(c)(3). We conclude, therefore, that the PCRA court properly denied Rorrer's request for PCRA relief.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/13/2013

(Footnote Continued) ———————————

> were unknown and 2) could not have been ascertained by the exercise of due diligence. If the petitioner alleges and proves these two components, then the PCRA court has jurisdiction over the claim under this subsection.

Id. at 1271-72 (internal quotations and citations omitted).