

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

THOMAS J. JONES

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3101 EDA 2012

Appeal from the Order October 26, 2012
In the Court of Common Pleas of Carbon County
Criminal Division at No(s): CP-13-CR-0000503-1997

BEFORE: STEVENS, P.J., PANELLA, J., and COLVILLE, J.*

MEMORANDUM BY PANELLA, J.

FILED JUNE 19, 2013

Appellant, Thomas J. Jones, appeals from the order entered October 26, 2012, by the Honorable Richard W. Webb, Court of Common Pleas of Carbon County, which denied as untimely Jones's petition filed pursuant to the Post Conviction Relief Act ("PCRA").¹ We affirm.

Following a jury trial, on August 11, 1998, Jones was convicted of two counts of statutory rape, four counts of involuntary deviate sexual intercourse by forcible compulsion, two counts of indecent assault and one count of corruption of minors. On May 25, 2000, this Court affirmed Jones's judgment of sentence, and on November 3, 2000, our Supreme Court denied

* Retired Senior Judge assigned to the Superior Court.

¹ 42 PA.CON.S.TAT.ANN. § 9541, *et seq.*

appeal. ***Commonwealth v. Jones***, 759 A.2d 21 (Pa. Super. 2000) (mem. op.), ***appeal denied***, 764 A.2d 1066 (Pa. 2000).

Jones filed a *pro se* PCRA petition on September 4, 2001. Thereafter, counsel was appointed and an amended PCRA petition was filed. Following a hearing, the PCRA court denied Jones's petition on June 19, 2002. On appeal, this Court affirmed the dismissal of Jones's PCRA petition. ***Commonwealth v. Jones***, 829 A.2d 359 (Pa. Super. 2003) (mem. op.). The Pennsylvania Supreme Court denied Jones's petition for allowance of appeal on October 15, 2003. On June 9, 2005, Jones filed a second PCRA petition, which the PCRA court denied on June 13, 2005. This Court again affirmed the dismissal of Jones's petition on December 6, 2005. ***Commonwealth v. Jones***, 894 A.2d 818 (Pa. Super. 2005).

On September 19, 2012, Jones filed the instant PCRA petition. On October 2, 2012, the PCRA court issued notice of its intent to dismiss Jones's petition within 20 days pursuant to Pa.R.Crim.P. 907. The petition was ultimately dismissed on October 26, 2012. This timely appeal followed.

Preliminarily, we note that we are without jurisdiction to entertain Jones's PCRA petition. It is axiomatic that a PCRA petition, including a second or subsequent petition, must be filed within *one year* of the date that the judgment of sentence becomes final. **See** 42 PA.CONST. STAT. ANN. § 9545(b)(1). If a petition is filed after that one year date, the general rule is that the PCRA court lacks jurisdiction to hear the petition. However, section

9545(b) provides for three limited circumstances to the general rule in which such a petition may be filed beyond that one-year period:

...

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 PA.CON.S.TAT.ANN. § 9545(b)(1)(i)-(iii), (2). **See also Commonwealth v. Pursell**, 561 Pa. 214, 220, 749 A.2d 911, 914-915 (2000) ("The courts have no jurisdiction to grant [a litigant] relief unless he can plead and prove that one of the exceptions to the time bar provided in 42 [PA.CON.S.TAT.ANN.] § 9545(b)(1)(i)-(iii) applies."); **Commonwealth v. Wilson**, 824 A.2d 331, 335 (Pa. Super. 2003) (*en banc*), **appeal denied**, 576 Pa. 712, 839 A.2d 352 (2003) ("Since Appellant's PCRA petition is

untimely, our review focuses on whether Appellant has pled and proven that one of the three limited exceptions to the timeliness requirements of the PCRA apply.”).

When pleading one of the foregoing § 9545(b)(1) exceptions, a litigant is subject to a 60-day deadline for invoking an exception which commences from the date in which the claim could have been presented. **See** 42 PA.CON.S.STAT.ANN. § 9545(b)(2). Where the petition is untimely, the litigant bears the burden of pleading and proving in the petition that one of the exceptions to the one-year deadline for filing a PCRA petition applies. **See Commonwealth v. Bretz**, 830 A.2d 1273, 1275-76 (Pa. Super. 2003).

Instantly, Jones’s judgment of sentence became final on February 1, 2001, 90 days after our Supreme Court denied allowance of appeal and the time expired for filing a petition for writ of *certiorari* with the United States Supreme Court. **See** 42 PA.CON.S.STAT.ANN. § 9545(b)(3); U.S.Sup.Ct.R. 13. Therefore, Jones had until February 1, 2002, to file a PCRA petition, but did not file the present petition until September 19, 2012. As such, the PCRA court lacked jurisdiction to review Jones’s petition unless he pled and proved in his petition that one of the § 9545(b)(1) statutory exceptions was applicable.

Our review of Jones’s PCRA petition reveals that he did not explicitly plead any of the PCRA filing exceptions that must be invoked to preserve an otherwise untimely petition. Thus, the petition is patently untimely. As

Jones has failed to establish an applicable exception to the PCRA timebar, we find no error in the PCRA court's dismissal of Jones's petition as untimely.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetti", written over a horizontal line.

Prothonotary

Date: 6/19/2013