IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 047-CR-1998
	:	
MYLES RAMZEE,	:	
	:	
Defendant	:	

Gary F. Dobias, Esquire — Counsel for the Commonwealth
Special Assistant District Attorney

Myles Ramzee — Pro Se

MEMORANDUM OPINION

Serfass, J. – December 7, 2016

Defendant, Myles Ramzee, (hereinafter "Defendant"), has taken this appeal from the Order of Court entered on September 14, 2016 his Defendant's "Petition for Post-Conviction Collateral Relief." We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid Order of Court be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

The facts surrounding the murder of Tyrone Hill, a/k/a Korran Harrington a/k/a Carona, when viewed most favorably to the Commonwealth as verdict winner, find their genesis in turf wars between drug dealers.[1] Five (5) individuals were charged

[1] Reference to the trial transcripts is to the original first three volumes filed on April 20, 1999 and the amended remaining volumes, filed on July 26,

with the Murder of Carona: Defendant; Kaquwan Milligan a/k/a Footy; Dennis Boney a/k/a Bunny; Cetewayo Frails a/k/a Cease; and Verna Russman.

During 1997, the prosecution's primary witness, Verna Russman, was a crack cocaine addict, selling drugs for Defendant and Anthony Cabey a/k/a V.A. N.T., 3/11/99, pp. 136-141. The drugs were sold primarily in Monroe County, Pennsylvania Id., and generated approximately ten thousand dollars ($10,000.00) per week, which was shared by Defendant, V.A. and the others involved in the drug trade, including Footy, Cease and Bunny. Id. at 164. For her part, Russman received a place to stay and crack cocaine to support her habit. Id. at 164-165.

In the spring of 1997, Russman began selling drugs for Terrell Owens a/k/a Lite, whom Defendant had brought into the drug operation after V.A.'s arrest and incarceration. Id. at 139-140; N.T., 3/17/99, pp. 685-687. In October of 1997, Lite planned to leave the state and brought in Carona as his replacement. N.T., 3/11/99, pp. 141-142. Defendant admitted his involvement in the drug sales, but claimed to have quit the operation prior to the murder and, thus, denied knowing or killing Carona. N.T., 3/17/99, pp. 685-693.

1999. The amendments to Volumes IV through VII were made due to a problem with page numbering and in no way changed the content of these volumes.

On Saturday October 25, 1997, the day before the murder, Russman and Footy spent the day selling drugs in Monroe County, where they eventually met with Cease, Defendant and Bunny. N.T., 3/11/99, pp. 44, 147-150; N.T., 3/12/99, pp. 332-333. During the visit, Russman smoked crack cocaine and listened to Defendant, Cease, Bunny and Footy plan to rob Carona of his money and drugs in order to cut into his drug territory. Id. at 150-151.

Thereafter, Russman and Footy returned to their apartment in Palmerton, Carbon County, which they shared with several people, including Lite and Carona. Id. at 141-142. She and Carona then bagged drugs he had purchased earlier that day. Id. at 44, 152. Later, Russman took Carona's vehicle to sell more drugs, while Footy remained in Palmerton. Id. at 142, 153.

During her trip, Russman was paged to bring Cease, Defendant and Bunny to the Palmerton apartment to rob Carona as planned. Id. at 172. The group arrived in two (2) vehicles in the early morning hours of October 26, 1997. Id. at 154-156, 177. Russman roused Carona, telling him she needed an eight ball to sell. Id. at 156. Bunny sat down to play a video game while Cease stood guard by the door. Id. at 157-158. Defendant greeted Carona and then exited the room for a few seconds. Id. at 157. Upon returning, Defendant walked up behind Carona, who was leaning down to retrieve his clothes, and shot him in the back of the head. Id. As Carona started to fall, Cease pushed him

backward, causing him to fall face up on the floor. Id. Cease and Defendant then rifled through Carona's pockets and stole his drugs. Id. at 159.

In the meantime, Footy dragged an upset Russman from the room, while all four (4) men appeared calm. Id. When allowed to return, Russman saw Carona's body covered with blankets on the floor. Id. at 160. Defendant then ordered Russman to drive Carona's car, while Cease, Footy and Bunny followed in another vehicle. Id. at 160-161. They eventually left Russman at an apartment in Monroe County. Id. at 162; N.T., 3/12/99, pp. 336-339.

The crime scene was discovered by the landlord on the morning of the murder and was consistent with Russman's description. Id. at 100-106. A subsequent police investigation and autopsy revealed that Carona died of a gunshot wound to the back of his head, consistent with the victim being in a bent over position. Id. at 52, 82-86. Carona's vehicle was eventually found in Brooklyn, New York, containing microscopic hairs similar to those of Bunny. N.T., 3/12/99, pp. 393-397; N.T., 3/16/99, pp. 564-571.

The day following the murder, Russman contacted the police to tell them about the killing. She was subsequently arrested. N.T., 3/11/99, p. 164. At the time of trial, Russman had been in jail for approximately fifteen (15) months, charged with the

same crimes as her co-defendants. Id. at 134, 163. No promises had been made in exchange for her testimony. Id. at 163. She testified because she believed the killing should not have occurred and the truth needed to be told. Id.

On November 19, 1997, the police arrived at Defendant's Brooklyn residence to execute a warrant for his arrest. N.T., 3/17/99, pp. 643-645. After repeatedly knocking on the apartment door and hearing movement inside, an officer announced that he was a police officer with a warrant. Id. at 646-647. Defendant eventually opened the door, but when asked his identity, he gave the name of McCormick and a false date of birth. Id. at 649-650. Defendant was then arrested, as the officer was able to surmise that the individual was actually Defendant based upon the address, a matching description and Defendant's inability to spell the alias. Id. at 650-651. On December 2, 1997, Defendant was transported to Pennsylvania to face the charges of First Degree Murder, Robbery, Aggravated Assault and Criminal Conspiracy.

Defendant asserted an alibi defense, indicating that he had spent the entire weekend of October 25 and 26, 1997 with friends and family in Brooklyn, New York. N.T., 3/17/99, pp. 664-670, 676; N.T., 3/18/99, pp. 715-716, 725-727, 730-733, 738-744. He further claimed he had not been in Pennsylvania during the entire month of October 1997. N.T., 3/17/99, pp. 684-685.

The prosecution presented Russman's testimony placing Defendant at the scene of the crime. Additionally, five (5) other witnesses placed him in Pennsylvania, in an adjacent county, on the day the conspiracy developed and/or the day of the murder, including: Rebecca Hoffman, N.T., 3/16/99, pp. 331-339; Anthony Bennett, Id. at 349-348; Stella Russman, Id. at 375-378; Lykette Bennett, N.T., 3/16/99, 490-495; and Defendant's friend, Kadias Murdaugh a/k/a Soup. Id. at 498-507.

On March 19, 1999, following a six (6) day jury trial, Defendant was found guilty of First Degree Murder, Robbery, Aggravated Assault and Criminal Conspiracy. On May 17, 1999, Defendant was sentenced to life imprisonment on the First Degree Murder charge and to one-hundred-fifty (150) months minimum and three-hundred (300) months maximum, consecutive to the life sentence, on the Robbery and Criminal Conspiracy charges. The Aggravated Assault charge merged with the Murder charge for purposes of sentencing. Defendant's direct appeal of his conviction to the Superior Court of Pennsylvania was denied as was his Petition for Allowance of Appeal filed with the Supreme Court of Pennsylvania.

On June 18, 2001, Defendant filed his first Post Conviction Relief Act (PCRA) Petition, which was amended on June 5, 2002. On April 14, 2003, the Honorable Richard W. Webb, then president judge of this court, issued an Order and Opinion denying and

dismissing Defendant's PCRA Petition. The Pennsylvania Superior Court affirmed the denial of Defendant's PCRA petition on January 12, 2004 and, on December 22, 2004, the Supreme Court of Pennsylvania denied Defendant's Petition for Allowance of Appeal.

On February 7, 2005, Defendant filed a second PCRA Petition, ***pro se***. On February 14, 2005, Judge Webb denied and dismissed Defendant's second petition. Defendant subsequently filed a timely appeal of Judge Webb's denial and dismissal to the Superior Court of Pennsylvania. On November 14, 2005, the Superior Court affirmed the denial of Defendant's second PCRA Petition. Defendant then filed a Writ of Habeas Corpus in the United States District Court for the Middle District of Pennsylvania on May 20, 2005. Defendant's Writ of Habeas Corpus was denied on December 20, 2006, as was a "Certificate of Appealability". Defendant then filed an appeal with the United States Court of Appeals for the Third Circuit, which was denied on July 20, 2007.

On August 3, 2010, Defendant filed his third PCRA Petition, which was denied by Judge Webb on April 12, 2011. On December 5, 2011, the Superior Court of Pennsylvania affirmed Judge Webb's denial of Defendant's third PCRA Petition. On May 30, 2012, the Supreme Court of Pennsylvania denied Defendant's Petition for Allowance of Appeal Nunc Pro Tunc.

On March 19, 2012, while Defendant's Petition for Allowance of Appeal Nunc Pro Tunc was pending, Defendant filed a "Notice of Appeal." On March 29, 2012, we entered an Order treating the Notice of Appeal as Defendant's fourth PCRA Petition. On April 11, 2012, we dismissed the same as premature because of Defendant's Nunc Pro Tunc petition which was then pending before the Supreme Court of Pennsylvania. On April 12, 2012, Defendant filed his fifth PCRA Petition. On April 19, 2012, we issued a Notice of Intent to Dismiss Defendant's PCRA Petition. Pursuant to that notice, we dismissed Defendant's fifth PCRA Petition on May 31, 2012.

On May 21, 2012, Defendant filed what he titled "A Petition for Writ of Habeas Corpus." On June 12, 2012, we issued an Order treating Defendant's Habeas Corpus Petition as a PCRA Petition and appointed Michael P. Gough, Esquire as Defendant's counsel. Attorney Gough was directed to either file a letter indicating that the PCRA Petition was non-meritorious or to file an amended petition raising all meritorious claims.

On August 30, 2012, Defendant, through Attorney Gough, filed a "First Amended Petition for Post-Conviction Relief." On November 20, 2012, the Commonwealth filed its Answer to Defendant's petition, titled "Commonwealth's Answer to Defendant's Amended Sixth Petition for Post-Conviction Collateral Relief." On July 17, 2014, Defendant filed a Praecipe

for Argument with respect to his "First Amended Petition for Post-Conviction Relief." On July 22, 2014, we issued an Order scheduling oral argument for September 19, 2014.

After consideration of Defendant's "First Amended Petition for Post-Conviction Relief," the Commonwealth's Answer thereto, review of the parties' briefs, and following oral argument thereon, we issued an Order of Court dated November 26, 2014 denying Defendant's petition.

On December 31, 2014, Defendant appealed this Court's Order of November 26, 2014. We filed a Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) on February 12, 2015 recommending that Defendant's appeal be denied and that our November 26, 2014 Order denying Defendant's "First Amended Petition for Post-Conviction Relief" be affirmed. The Superior Court of Pennsylvania adopted this recommendation on August 12, 2015, thereby affirming our November 26, 2014 Order.

On March 23, 2016, Defendant filed his Seventh Petition for Post-Conviction Collateral Relief. The next day, we appointed Robert S. Frycklund, Esquire as counsel to represent Defendant. Attorney Frycklund reviewed the case record, determined Defendant's claim to be meritless, and submitted a "no merit" letter pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988), and Commonwealth v. Finley, 550 A.2d 230 (Pa.Super.1988).

On May 11, 2016, Defendant filed an amendment to his Petition for Post-Conviction Collateral Relief. On July 27, 2016, this Court provided Defendant with a notice of intent to dismiss his PCRA petition without a hearing pursuant to Pennsylvania Rule of Criminal Procedure 907. On August 1, 2016, Defendant filed what he titled, a "Motion in Response to Counsel's No Merit Letter". After reviewing Defendant's PCRA Petition and Attorney Frycklund's Turner-Finley letter, we denied and dismissed Defendant's Seventh Petition for Post-Conviction Collateral Relief on September 14, 2016.

Defendant filed an "Application for Certificate of Appealability" on September 28, 2016, and a Notice of Appeal on October 5, 2016. Via Order dated October 17, 2016, we directed Defendant to file a concise statement of matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Here we note that Defendant neither filed nor served upon the undersigned a concise statement pursuant to our Order. However, in section E(2) of the "Superior Court of Pennsylvania Criminal Docketing Statement" as filed in the Office of the Carbon County Clerk of Courts on November 4, 2016, Defendant listed two (2) issues to be raised on appeal. Although we believe that the Superior Court would be justified in finding that Defendant has not preserved any issues for appellate review because of his failure to comply with Pa.R.A.P. 1925(b), we

will, nevertheless, address the following issues raised in Defendant's criminal docketing statement:

1. Whether the holding in Miller v. Alabama, 132 S. Ct. 2455 (2012), is germane to Defendant's appeal; and

2. Whether a sentence of life imprisonment without the opportunity for parole is expressly authorized by statute.

DISCUSSION

Pursuant to 42 Pa.C.S.A. §9543(a), in order to make out a claim under the PCRA, a petitioner must plead and prove by a preponderance of the evidence that he has been convicted of a criminal offense under the laws of this Commonwealth and is currently serving a term of imprisonment, probation or parole for that crime, awaiting execution of a sentence of death for the crime, or serving another sentence which must expire before the disputed sentence begins, and that the conviction resulted from one or more of the following:

> (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place;
>
> (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place;

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent; and/or

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

PCRA claims must be filed within one year of the date the judgment becomes final. 42 Pa.C.S.A. §9545(b)(1). A judgment becomes final for purposes of the PCRA when either the direct review is completed or the time for direct review has passed. 42 Pa.C.S.A. §9545(b)(3). In order to file a petition under the PCRA beyond that one-year limitation, 42 Pa.C.S.A. §9545(b)(1) sets forth the following three (3) 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;

(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.

Any petition invoking an exception pursuant to the aforementioned sub-section must be filed within sixty (60) days of the date the claim could have been presented. 42 Pa.C.S.A. §9545(b)(2). When the merits of an issue have been ruled upon by

the highest appellate court in which the petitioner could have had review as a matter of right, or where the petitioner could have raised the issue in a prior proceeding, the issue is considered waived. 42 Pa.C.S.A. §9544.

The time limitations of the PCRA are jurisdictional in nature; as such, when a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner's PCRA claims. Commonwealth v. Gamboa-Taylor, 753 A.2d 780, 783 (Pa. 2000).

Defendant was convicted on March 19, 1999 and sentenced on May 17, 1999. The Superior Court of Pennsylvania denied Defendant's direct appeal and affirmed the judgment of sentence. Defendant thereafter filed a Petition for Allowance of Appeal, which was denied by the Supreme Court of Pennsylvania on November 14, 2000. Defendant's judgment then became final ninety (90) days subsequent to the Supreme Court's denial of his Petition for Allowance of Appeal. Defendant's ability to request PCRA relief under his allotted one-year limitation expired on February 12, 2002. Defendant's current PCRA Petition was filed on March 23, 2016, more than fourteen (14) years beyond the

expiration of his filing deadline. Accordingly, in order for this Court to have jurisdiction over Defendant's current PCRA Petition, one of the exceptions set forth in 42 Pa.C.S.A. §9545(b)(1) would have to apply. However, Defendant failed to demonstrate the applicability of any of the PCRA's three (3) statutory exceptions to the timeliness requirement set forth in 42 Pa.C.S.A. §9545(b)(1), which would allow him to extend the one-year time limitation. Therefore, the deadline for Defendant to file a timely PCRA petition was properly calculated. Accordingly, because we lacked jurisdiction to consider the merits of Defendant's Seventh Amended Petition for Post-Conviction Relief, said petition was properly denied.

I. Applicability of *Miller v. Alabama*

Defendant maintains that his sentence of life imprisonment without parole is a violation of the Eighth Amendment of the United States Constitution. As previously noted, in order to make a timely appeal on such grounds, Defendant must file his petition invoking the exception set forth at 42 Pa.C.S.A. §9545(b)(1)(iii) and demonstrating that the United States Supreme Court or the Pennsylvania Supreme Court has recognized a new constitutional right of the defendant's which has been determined to apply retroactively. We reiterate that such petitions must be filed within sixty (60) days of the date the claim, under the exception, could have been first presented. 42

Pa.C.S.A. §9545(b)(2). To this end, Defendant argues that the holdings in Miller v. Alabama, ——— U.S. ———, 132 S.Ct. 2455, 2460, 183 L.Ed.2d 407 (2012) and Montgomery v. Louisiana, ——— U.S. ———, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) provide him with sufficient grounds to advance a claim of unconstitutionality. The United States Supreme Court in Miller held that sentencing an individual to life imprisonment without the possibility of parole is unconstitutionally cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution when imposed upon defendants convicted of murder who were under the age of eighteen (18) at the time of their crimes. In Montgomery, the United States Supreme Court held that its decision in Miller applies retroactively to cases on state collateral review. As a result, to have filed a timely petition pursuant to 42 Pa.C.S.A. §9545(b) and based on this case law, Defendant would have had to file a petition within sixty (60) days of the final judgment in Miller which was decided on June 25, 2012. However, Defendant filed the instant PCRA Petition on March 23, 2016, nearly four (4) years after the final judgment in Miller.

Even if Defendant had filed a timely petition pursuant to 42 Pa.C.S.A. §9545(b)(1)(iii), we would not have jurisdiction to consider that petition because he has not presented a claim falling within the ambit of the Miller decision. *See*

Commonwealth v. Furgess, ——— A. 3d ———, 2016 WL 5416640, (Pa. Super. 2016).

For this Court to have jurisdiction over Defendant's PCRA petition, his petition must present a claim that falls within the scope of the Supreme Court's decision in Miller. Id at 2. To reiterate, Miller only applies to defendants who were under the age of eighteen (18) at the time they committed their crime(s). Defendant was born on February 28, 1974, and committed murder in the first degree in this county on October 26, 1997. Therefore, Defendant was twenty-three (23) years old at the time of the murder. Mr. Ramzee is clearly not a member of the discrete class of defendants to which the substantive rule recognized by the Supreme Court in Montgomery is to be retroactively applied. Defendant's petition falls outside the ambit of Miller and, therefore, his claim must fail.

The Pennsylvania Superior Court has repeatedly declined to expand the ruling in Miller to encompass those defendants who were over the age of eighteen (18) at the time they committed their crime(s). *See* Commonwealth v. Cintora, 59 A. 3d 759 (Pa.Super.2013) (defendants, over the age of eighteen (18) when they committed murder are not within the ambit of the Miller decision and may not rely on that decision to bring themselves within the time-bar exception in 42 Pa.C.S.A. §9545(b)(1)(iii)); and Furgess, ——— A. 3d ———, 2016 WL 5416640 (holding that Miller

does not apply to non-juvenile defendants). Although Defendant has proffered no evidence nor advanced any argument that he was a "technical juvenile" due to immature brain development at the time of the subject murder, we note that the Superior Court of Pennsylvania has also expressly rejected extending Miller on such grounds. Id.

Accordingly, we find Defendant's Seventh Petition for Post-Conviction Collateral Relief to be untimely because it was filed more than sixty (60) days after the final judgment in Miller and because it fails to satisfy the jurisdictional requirements of 42 Pa.C.S.A. §9545 as the petition does not present a claim falling within the ambit of Miller. Therefore, Defendant's petition does not fall under the "newly recognized constitutional right" exception in 42 Pa.C.S.A. §9545(b)(1)(iii) and his reliance on Miller for relief is misplaced.

II. Statutory authorization for a sentence of life without parole

With the clear understanding that Miller is inapposite to Defendant's case for the reasons set forth hereinabove, it is also apparent that a sentence of life imprisonment without the possibility of parole is statutorily authorized and appropriate for this defendant. Defendant specifically questions whether there is statutory authorization for such a sentence. We would direct him to section 9711(1) of the Pennsylvania Sentencing

Code and section 1102(a) of the Pennsylvania Crimes Code. 42 Pa.C.S.A. §9711(1), 18 Pa.C.S.A. §1102(a). The former outlines the sentencing procedure for murder of the first degree and the latter describes the penalty options for a defendant convicted of first degree murder. Additionally, we note that Mr. Ramzee is not the first murderer to question the legality of his sentence in this regard. The Pennsylvania Superior Court, in Commonwealth v. Yount, 615 A. 2d 1316 (Pa. Super. 1992), held that a mandatory sentence of life imprisonment without the possibility of parole is not an unconstitutional punishment for a defendant convicted of first degree murder.

Defendant has previously argued that the only authorization for life imprisonment without parole is found at 42 Pa.C.S.A. §9714, which relates to repeat offenses. However, the Pennsylvania Superior Court in Yount performed a statutory construction analysis which compared both the repealed and current sentencing statutes to determine that a sentence of life imprisonment without parole is mandated for defendants convicted of first degree murder. Id at 621-622. The Superior Court opined that even though the defendant was not given a minimum sentence, the clear wording of 18 Pa.C.S.A. §1102 mandates that a trial court not imposing the death penalty must sentence a person convicted of first degree murder to life imprisonment. Id at 623.

Moreover, the Pennsylvania Prisons and Parole Code provides, at section 6137 (Parole Power), as follows:

(a) General criteria for parole –

(1) The board may parole subject to consideration of guidelines established under 42 Pa.C.S.A. §2154.5 (relating to adoption of guidelines for parole) and may release on parole any inmate to whom the power to parole is granted to the board by this chapter, **except an inmate condemned to death or serving life imprisonment…**

61 Pa.C.S.A. §6137 (emphasis added).

Therefore, we submit that Defendant's sentence of life imprisonment without the possibility of parole is amply supported by the settled law of this Commonwealth and his claims to the contrary are without merit.

CONCLUSION

For the foregoing reasons, we respectfully recommend that Defendant's appeal be denied and that the Order of this Court entered on September 14, 2016, denying Defendant's Seventh Petition for Post-Conviction Collateral Relief, be affirmed accordingly.

BY THE COURT:

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Steven R. Serfass, J.