

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

FILED

MAY 24 2017

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Appeals/Post Trial

COMMONWEALTH OF PENNSYLVANIA :
Appellee, :
 :
 : C.P. 0604471-1996
v. :
 :
 :
TYRONE HARRIS :
Appellant, : 1438 EDA 2017
 :
 :

CP-51-CR-0604471-1996 Comm. v. Harris, Tyrone
Opinion

OPINION



7952101161

OVERTON, J.

Appellant, Tyrone Harris, filed a motion seeking relief under the Post Conviction Relief Act 42 Pa. C.S.A. § 9541 et. seq. For the reasons stated below, this court denied the petition.

FACTS/PROCEDURAL HISTORY¹

1. On September 30, 1995, Appellant murdered Herbert “Rassol” Washington on the corners of Germantown and Indiana Avenues in the city of Philadelphia.
2. On March 7, 1997, a jury sitting before the Honorable James A. Lineberger found the Appellant guilty of first degree murder and possession of an instrument crime.
3. On May 14, 1997, the Honorable Albert F. Sabo sentenced the Appellant to life imprisonment for murder and imposed a concurrent term of six (6) to twelve (12) months for carrying a firearm on a public street.

¹ In lieu of a recitation of the facts, this Court references the opinion of the Superior Court entered on June 3, 2015.

4. By opinion filed October 20, 1998, the Pennsylvania Superior Court affirmed the judgment of sentence.
5. Defendant filed a petition for allowance of appeal in the Pennsylvania Supreme Court which denied *allocatur* on March 7, 2000.
6. On March 6, 2001, the Appellant filed a petition for post conviction relief which was ultimately dismissed.
7. On October 4, 2002, the Pennsylvania Superior Court affirmed the decision of the PCRA Court.
8. The Appellant filed a second, *pro se* PCRA petition on March 23, 2005, and counsel filed an amended version of this second petition on March 21, 2006.
9. On January 19, 2007, the PCRA Court notified the Appellant that his second PCRA would be dismissed because the issues raised in the original and amended PCRA were without merit, unless he chose to respond before February 8, 2007.
10. On April 25, 2014, this Court formally dismissed the Appellant's PCRA petition as untimely.
11. On May 15, 2014, Appellant filed a timely notice of appeal.
12. On May 16, 2014, this PCRA Court issued a 1925(b) Order for Statement of Matters Complained of on Appeal.
13. On May 22, 2014, Appellant filed a Concise Statement of Matters Complained of on Appeal.
14. On June 26, 2014, this PCRA Court issued an opinion in response.
15. On June 3, 2015, the Superior Court affirmed the dismissal in a memorandum opinion.

16. On December 16, 2015, the Pennsylvania Supreme Court denied the Appellant's Petition for Allowance of Appeal.
17. On March 23, 2016, Appellant filed a third PCRA petition.
18. On August 10, 2016, Appellant filed an amended PCRA petition and a Memorandum of Law.
19. On November 4, 2016, the PCRA Court issued a 907 notice that Appellant's issues were untimely filed.
20. On November 7, 2016, Appellant filed a Response to the 907 notice.
21. On March 27, 2017, the PCRA petition was dismissed as untimely.
22. On April 19, 2017 Appellant filed a Notice of Appeal.
23. On May 5, 2017, this PCRA Court issued a 1925(b) Order for Statement of Matters Complained of on Appeal.
24. On May 15, 2017, Appellant filed a Concise Statement of Matters Complained of on Appeal.

DISCUSSION:

The Court incorporates the claims put forth in Appellant's instant PCRA petition.

Timeliness of PCRA Petition

Section 9545(b) of the Post-Conviction Relief Act provides that "[a]ny petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final." 42 Pa.C.S.A. § 9545(b)(1). The timeliness requirement of the PCRA is "mandatory and jurisdictional in nature." *Commonwealth v. Davis*, 916 A.2d 1206, 1208 (Pa. Super. 2007); *Commonwealth v. Carr*, 768 A.2d 1164, 1167 (Pa. Super. 2001). Accordingly, "no court may properly disregard or alter them in

order to reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner.” *Id.*

There are three exceptions that extend the one-year time limitation. 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). The specifically enumerated exceptions are:

(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.

42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any petition seeking to assert one of the three exceptions to the one-year time-bar “shall be filed within 60 days of the date the claim could have been presented.” 42 Pa.C.S.A. § 9545(b)(2).

On March 27, 2017, this Court dismissed Appellant’s instant Post-Conviction Relief Act (PCRA) petition as untimely. Accordingly, the only error Appellant could possibly raise on this appeal is that this Court erred by dismissing his petition because his petition was actually timely under one of the three exceptions to the one-year time limitation.

The Superior Court affirmed Appellant’s sentence on October 20, 1998, and Appellant’s Petition for Allowance of Appeal to the Pennsylvania Supreme Court was denied March 7, 2000. Therefore, the Appellant’s judgment of sentence became final on June 5, 2000 and he had until June 5, 2001 to file any timely petition for post-conviction

relief. Appellant's instant PCRA petition was filed on March 23, 2016. Pursuant to 42 Pa.C.S.A. § 9545(b)(2), the Court finds that the claims presented in Appellant's instant PCRA petition were not asserted within 60 days of the date they could have been presented. Therefore, this petition does not properly invoke one of the three exceptions that would extend the one-year time limitation. This Court is without jurisdiction to address the matters asserted by Appellant's instant PCRA petition. Therefore, the claims raised in Appellant's PCRA petition are without merit.

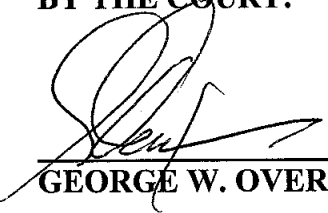
CONCLUSION

In light of the foregoing, this Court's dismissal of Appellant's PCRA petition should be **AFFIRMED**.

BY THE COURT:

DATE:

5/24/17



GEORGE W. OVERTON

J.