

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, : No. 406 EAL 2017

Respondent

Petition for Allowance of Appeal from
the Order of the Superior Court

v.

NICHOLAS EDWARDS,

Petitioner

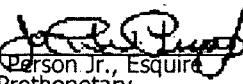
ORDER

PER CURIAM

AND NOW, this 9th day of January, 2018, the Petition for Allowance of Appeal is
DENIED.

A True Copy
As Of 1/9/2018

Attest:
John W. Pearson Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania



NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

NICHOLAS EDWARDS

Appellant : No. 2760 EDA 2016

Appeal from the PCRA Order August 9, 2016
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-1006311-2003

BEFORE: OTT, DUBOW, JJ., and STEVENS, P.J.E.*

MEMORANDUM BY OTT, J.:

FILED JULY 06, 2017

Nicholas Edwards appeals *pro se* from the order entered August 9, 2016, in the Court of Common Pleas of Philadelphia County, that dismissed his second petition under the Post-Conviction Relief Act (PCRA).¹ A jury convicted Edwards of murder of the first degree,² conspiracy,³ and related crimes, and Edwards received a mandatory sentence of life imprisonment. In this appeal, Edwards raises 10 issues, including whether the petition is untimely, whether he is entitled to *habeas corpus* relief, whether prior

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² 18 Pa.C.S. § 2502.

³ 18 Pa.C.S. § 903.

counsel were ineffective for various reasons, and whether the trial court committed reversible error. Based upon the following, we affirm.

The facts of this case are fully summarized in this Court's decision affirming the judgment of sentence. *See Commonwealth v. Edwards*, 981 A.2d 917 (Pa. Super. 2009) (unpublished memorandum), *appeal denied*, 989 A.2d 7 (Pa. February 5, 2010). The procedural history of this case is set forth in this Court's decision regarding Edwards' appeal from the denial of relief on his first PCRA petition. *See Commonwealth v. Edwards*, 120 A.3d 1043 (Pa. Super. 2015) (unpublished memorandum), *appeal denied*, 119 A.3d 350 (Pa. July 29, 2015).

On August 21, 2014, while Edwards' appeal from the denial of relief on his first PCRA petition was pending in this Court, Edwards filed a *habeas corpus* petition, alleging that he was being unlawfully detained due to the lack of a written sentencing order in contravention of 42 Pa.C.S. § 9764(a)(8). On March 2, 2015, this Court affirmed the denial of relief on Edwards' first PCRA petition and, on July 29, 2015, the Pennsylvania Supreme Court denied Edwards' petition for allowance of appeal.⁴

⁴ *Commonwealth v. Edwards*, 120 A.3d 1043 (Pa. Super. 2015) (unpublished memorandum), *appeal denied*, 119 A.3d 350 (Pa. July 29, 2015).

On December 29, 2015, Edwards filed *pro se* the instant PCRA petition – his second. On April 26, 2016, the PCRA court issued a Pa.R.Crim.P. 907 notice of intent to dismiss, explaining the PCRA petition was untimely and Edwards' claim for *habeas corpus* relief also failed. On May 10, 2016, Edwards filed a *pro se* response to the Rule 907 notice, contending that PCRA statutory exceptions applied to his petition. On August 9, 2016, the PCRA court dismissed Edwards' PCRA petition and denied the *habeas corpus* petition. This appeal followed.⁵

In the first issue raised in this appeal, Edwards challenges the PCRA court's determination that the instant petition is untimely.

Our standard of review over the denial of a PCRA petition is well-settled. "In reviewing the denial of PCRA relief, we examine whether the PCRA court's determination 'is supported by the record and free of legal error.'" **Commonwealth v. Taylor**, 620 Pa. 429, 67 A.3d 1245, 1248 (Pa. 2013) (quoting **Commonwealth v. Rainey**, 593 Pa. 67, 928 A.2d 215, 223 (Pa. 2007)).

Commonwealth v. Mitchell, 141 A.3d 1277, 1283-84 (Pa. 2016).

"It is well-settled that the PCRA's time restrictions are jurisdictional in nature." **Commonwealth v. Robinson**, 139 A.3d 178, 185 (Pa. 2016). Under the PCRA, any petition for post-conviction relief, including a second or subsequent one, must be filed within one year of the date the judgment of

⁵ The PCRA court did not order Edwards to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

sentence becomes final, unless one of the following exceptions set forth in 42 Pa.C.S. § 9545(b)(1)(i)-(iii) applies:

(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.

42 Pa.C.S. § 9545(b)(1)(i)-(iii). Any petition attempting to invoke one of these exceptions "shall be filed within 60 days of the date the claim could have been presented." 42 Pa.C.S. § 9545(b)(2).

Here, Edwards' judgment of sentence became final for PCRA purposes on May 6, 2010, ninety days after the Pennsylvania Supreme Court's

February 5, 2010 denial of allowance of appeal in his direct appeal,⁶ when the time for filing a petition for writ of *certiorari* in the United States Supreme Court expired. **See** 42 Pa.C.S. 9545(b)(3) ("[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."). U.S. Sup. Ct. R. 13. Therefore, Edwards had until May 6, 2011, to file a timely petition. Since the instant petition was filed on December 29, 2015, it is patently untimely and cannot be reviewed unless one of the statutory exceptions applies.

Edwards, in his response to the PCRA court's Rule 907 notice and in his brief to this Court, cites the PCRA exceptions set forth at 42 Pa.C.S. § 9545(b)(1)(i) and (ii). The PCRA court analyzed Edwards' petition in light of these statutory exceptions, as follows:

Although [Edwards'] instant petition contains language reciting portions of the PCRA's statutory time-bar, he failed to meaningfully plead any of the exceptions enumerated within it. Instead, [Edwards] primarily presented allegations of counsel malfeasance sparsely interwoven with fragmented, undeveloped references to the time-bar. [Edwards'] attempt to raise layered claims of ineffectiveness was therefore insufficient to satisfy his burden of proof under section 9545(b)(1). **See** **Commonwealth v. Wharton**, 886 A.2d 1120, 1127 (Pa. 2005) ("[I]t is well settled that allegations of ineffective assistance of

⁶ **See Commonwealth v. Edwards**, 981 A.2d 917 (Pa. Super. 2009) (unpublished memorandum), *appeal denied*, 989 A.2d 7 (Pa. February 5, 2010).

counsel will not overcome the jurisdictional timeliness requirements of the PCRA.”).

Moreover, despite accurately echoing our Supreme Court’s uneasiness regarding the difficulty of challenging PCRA counsel’s performance in practice, [Edwards’] contention that his petition should be deemed timely filed because he is challenging the effectiveness of his original post-conviction counsel has been unequivocally rejected. **See Commonwealth v. Robinson**, 139 A.3d 178, 186 (Pa. 2016) (“This Court has never suggested that the right to effective PCRA counsel can be enforced via an untimely filed PCRA petition.”).

Finally, even if counsel malfeasance composed the timeliness exception, [Edwards] failed to file his instant petition within sixty days from the conclusion of appellate review on July 29, 2015.^[7] **See** 42 Pa. Cons. Stat. § 9545(b)(2) (requiring any petition invoking one or more of these exceptions must be filed within 60 days from the date that the claim could have been presented). [Edwards] therefore failed to sufficiently invoke an exception to the PCRA’s statutory time-bar.

PCRA Court Opinion, 11/10/2016, at 4–5 (footnotes omitted).

Based on our review of the record and the arguments of Edwards, we agree with the PCRA court’s well-reasoned assessment. Accordingly, we conclude Edwards’ petition fails to overcome the PCRA time-bar.

⁷ Edwards claims that on August 4, 2015 — within 60 days of the Pennsylvania Supreme Court’s July 29, 2015 denial of allowance of appeal on his first PCRA petition — he mailed a second PCRA petition that was lost in the mail. Edwards relies on the “prisoner mail box rule” to argue his petition “is deemed timely regardless if it reaches the court.” Edwards’ Brief at 5. This assertion, however, does not help Edwards since he failed to satisfy any PCRA statutory exception.

In his second issue, Edwards maintains the PCRA court erred in denying him *habeas corpus* relief.⁸ Our standard of review regarding a writ of *habeas corpus* is well-settled:

Our standard of review of a trial court's order denying a petition for writ of *habeas corpus* is limited to abuse of discretion. Thus, we may reverse the court's order where the court has misapplied the law or exercised its discretion in a manner lacking reason. As in all matters on appeal, the appellant bears the burden of persuasion to demonstrate his entitlement to the relief he requests.

Rivera v. Pa. Dep't of Corr., 837 A.2d 525, 528 (Pa. Super. 2003) (citations omitted).

Edwards claims his detention is unlawful because "there [are] no records that exist relating to a lawful [] sentencing order[.]" Edwards' Brief at 8. **See also** Edwards' Petition for Writ of *Habeas Corpus*, 8/21/2014, at ¶8. Edwards cites 42 Pa.C.S. § 9764(a)(8), which provides:

§ 9764. Information required upon commitment and subsequent disposition

(a) General rule. -- Upon commitment of an inmate to the custody of the Department of Corrections, the sheriff or transporting official shall provide to the institution's records officer or duty officer, in addition to a copy of the court commitment form DC-300B generated from the Common Pleas

⁸ Contrary to the claim in Edwards' brief that the PCRA court "changed" his petition for writ of *habeas corpus* "to a post-conviction relief act petition," the PCRA court's orders and opinion reflect the PCRA court treated the *habeas corpus* petition as the proper vehicle for Edwards' illegal detention claim. Edwards' Brief at 8.

Criminal Court Case Management System of the unified judicial system, the following information:

...

(8) A copy of the sentencing order and any detainers filed against the inmate which the county has notice.

42 Pa.C.S. § 9764(a)(8).

In ***Joseph v. Glunt***, 96 A.3d 365 (Pa. Super. 2014), this Court rejected the very same argument:

The language and structure of section 9764, viewed in context, make clear that the statute pertains not to the DOC's authority to detain a duly-sentenced prisoner, but, rather, sets forth the procedures and prerogatives associated with the transfer of an inmate from county to state detention. None of the provisions of section 9764 indicate an affirmative obligation on the part of the DOC to maintain and produce the documents enumerated in subsection 9764(a) upon the request of the incarcerated person. **Moreover, section 9764 neither expressly vests, nor implies the vestiture, in a prisoner of any remedy for deviation from the procedures prescribed within.**

Id. at 371 (emphasis added). The ***Joseph*** Court found persuasive cases that "deemed a record of the valid imposition of a sentence as sufficient authority to maintain a prisoner's detention notwithstanding the absence of a written sentencing order under 42 Pa.C.S. § 9764(a)(8)." *Id.* at 372. In ***Joseph***, the criminal docket of the trial court and the transcript of the sentencing hearing confirmed the appellant's sentence. *Id.* at 372.

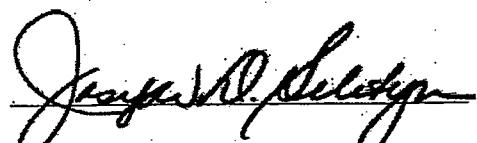
Here, as in ***Joseph***, the certified record confirms Edwards' judgment of sentence. As the PCRA court explained: "Upon reviewing the criminal docket through the Common Pleas Case Management System, the sentence

imposed by the Honorable Kathryn Lewis on February 3, 2006 was accurately docketed by the Clerk of Courts of [the Court of Common Pleas of Philadelphia County.]. PCRA Court Opinion, 11/10/2016, at 6. Therefore, Edwards' argument fails to warrant *habeas corpus* relief.

Having concluded the PCRA petition is untimely, and that no exception applies to overcome the PCRA time-bar, there is no jurisdiction to address Edwards' remaining claims. Accordingly, we affirm.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/6/2017

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA

v.

NICHOLAS EDWARDS

**CP-51-CR-1006311-2003
2760 EDA 2016**

OPINION

LEON W. TUCKER, J.

This appeal comes before the Superior Court following the dismissal of a Post-Conviction Relief Act (“PCRA”)¹ petition filed on December 29, 2015 and prior petition for writ of habeas corpus.² On August 9, 2016, this court dismissed the PCRA petition and denied habeas corpus relief for the reasons set forth below.

I. PROCEDURAL HISTORY

On November 21, 2005, following a jury trial presided over by the Honorable Kathryn S. Lewis, Nicholas Edwards (hereinafter referred to as “Petitioner”) was convicted of first-degree murder, conspiracy, carrying a firearm without a license, and possessing an instrument of crime. On February 3, 2006, Petitioner was sentenced to life imprisonment on the murder conviction and lesser terms of incarceration on the remaining charges. On July 28, 2009, following the reinstatement of appellate rights *nunc pro tunc*, the Superior Court affirmed the judgment of sentence.³ The Pennsylvania Supreme Court denied *allocatur* on February 5, 2010.⁴

¹ 42 Pa. Cons. Stat. §§ 9541-9546.

² Petitioner’s “Petition for Writ of Habeas Corpus,” filed August 21, 2014, predated his PCRA petition.

³ *Commonwealth v. Edwards*, 981 A.2d 917 (Pa. Super. 2009) (unpublished memorandum).

⁴ *Commonwealth v. Edwards*, 989 A.2d 7 (Pa. 2010).

On July 28, 2010, Petitioner timely filed his first *pro se* PCRA petition. Counsel was appointed and subsequently filed an amended petition. After conducting evidentiary hearings, the PCRA court denied the petition on April 23, 2014. The Superior Court affirmed the order denying relief on March 2, 2015.⁵ The Pennsylvania Supreme Court denied *allocatur* on July 29, 2015.⁶

On December 29, 2015, Petitioner filed the instant *pro se* PCRA petition, his second. Pursuant to Pennsylvania Rule of Criminal Procedure 907, Petitioner was served notice of the lower court's intention to dismiss his petition on April 26, 2016. Petitioner filed a response to the Rule 907 notice on May 10, 2016. On August 9, 2016, this court dismissed his PCRA petition as untimely and denied habeas corpus relief.⁷ On August 24, 2016, the instant notice of appeal was timely filed to the Superior Court.

II. FACTS

At trial, testimony showed that on July 2, 2003, Travis Hendrick and the decedent, Xavier Edmunds were standing outside 2838 Jasper Street in Philadelphia when Petitioner attacked Hendrick with a baseball bat, warning the two avoid traveling on his block. As a result of that assault, Hendrick's elbow had to be surgically replaced. N.T. 11/14/05 at 132-37, 218, 226; 11/15/03 at 153.

Two days later, on July 4, 2003, at about 9:00 p.m., Edmunds was standing outside 2838 Jasper Street with several friends, including Hendrick and Walter Stanton. A vehicle pulled up with Petitioner, pointing a gun at the group through an open window, seated in the rear on the

⁵ *Commonwealth v. Edwards*, 120 A.3d 1043 (Pa. Super. 2015) (unpublished memorandum).

⁶ *Commonwealth v. Edwards*, 119 A.3d 350 (Pa. 2015).

⁷ The Honorable Leon W. Tucker issued the order and opinion in this matter in his capacity as Supervising Judge of the Criminal Section of the Court of Common Pleas of Philadelphia – Trial Division, as of March 7, 2016, as the trial judge is no longer sitting.

driver's side. Petitioner exited the vehicle and fired two shots at Edmunds, who collapsed to the pavement. Petitioner returned to the vehicle which then drove away. When Hendrick saw Petitioner arrive and noticed that he was armed, he immediately went into the house and called the police. N.T. 11/14/95 at 113-16, 233-34; 11/16/05 at 159-63, 172.

Police arrived at the scene within several minutes. They drove Edmunds to a local hospital where efforts to save his life failed. He was pronounced dead at 9:21 p.m. Based upon information provided by Hendrick and Stanton, police obtained a warrant for Petitioner's arrest. He was located in South Carolina several weeks later and extradited to Philadelphia. N.T. 11/14/05 at 239; 11/16/05 at 12, 157-76; 11/17/05 at 152, 158, 165, 187-88.

III. DISCUSSION

A. Petitioner's current PCRA petition was manifestly untimely.

Petitioner's instant petition raising claims of trial court error, prosecutorial misconduct, and ineffective assistance of counsel was facially untimely. As a prefatory matter, the timeliness of a PCRA petition is a jurisdictional requisite. *Commonwealth v. Robinson*, 12 A.3d 477 (Pa. Super. 2011). A PCRA petition, including a second or subsequent petition, shall be filed within one year of the date the underlying judgment becomes final. 42 Pa. Cons. Stat. § 9545(b)(1). A judgment is deemed 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).

Petitioner's judgment of sentence became final for PCRA purposes on April 5, 2010, ninety days after the Pennsylvania Supreme Court denied *allocatur* and time period for filing a petition for writ of *certiorari* in the United States Supreme Court expired. *See id.*; U.S. Sup. Ct.

R. 13 (effective January 1, 1990). Petitioner's petition, filed on December 29, 2015 was therefore untimely by approximately four years. *See 42 Pa. Cons. Stat. § 9545(b)(1).*

B. Petitioner was not eligible for a limited timeliness exception found in 42 Pa. Cons. Stat. § 9545(b)(1)(i)-(iii).

Despite the one-year deadline, the PCRA permits the late filing of a petition where a petitioner alleges and proves one of the three narrow exceptions to the mandatory time-bar found in subsections 9545(b)(1)(i)-(iii). To invoke an exception, a petition must allege and the petitioner must prove:

- (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.

Id. § 9545(b)(1)(i)-(iii).

Although Petitioner's instant petition contains language reciting portions of the PCRA's statutory time-bar, he failed to meaningfully plead any of the exceptions enumerated within it. Instead, Petitioner primarily presented allegations of counsel malfeasance sparsely interwoven with fragmented, undeveloped references to the time-bar. Petitioner's attempt to raise layered claims of ineffectiveness was therefore insufficient to satisfy his burden of proof under section 9545(b)(1). *See Commonwealth v. Wharton*, 886 A.2d 1120, 1127 (Pa. 2005) ("it is well settled that allegations of ineffective assistance of counsel will not overcome the jurisdictional timeliness requirements of the PCRA.").

Moreover, despite accurately echoing our Supreme Court's uneasiness regarding the difficulty of challenging PCRA counsel's performance in practice,⁸ Petitioner's contention that his petition should be deemed timely filed because he is challenging the effectiveness of his original post-conviction counsel has been unequivocally rejected.⁹ See *Commonwealth v. Robinson*, 139 A.3d 178, 186 (Pa. 2016) ("This Court has never suggested that the right to effective PCRA counsel can be enforced via an untimely filed PCRA petition.").

Finally, even if counsel malfeasance composed the timeliness exception, Petitioner failed to file his instant petition within sixty days from the conclusion of appellate review on July 29, 2015. See 42 Pa. Cons. Stat. § 9545(b)(2) (requiring any petition invoking one or more of these exceptions must be filed within 60 days from the date that the claim could have been presented). Petitioner therefore failed to sufficiently invoke an exception to the PCRA's statutory time-bar.

C. Petitioner was not entitled to habeas corpus relief based upon the Department of Corrections' lack of a written sentencing order.

This court did, however, evaluate Petitioner's claim that the Department of Corrections ("DOC") lacked legal authority for his continued detention due to the lack of a written sentencing order, in contravention of 42 Pa. Cons. Stat. § 9764(a)(8) (relating to information required upon commitment and subsequent disposition), and 37 Pa. Code § 91.3 (reception of inmates). See *Joseph v. Glunt*, 96 A.3d 365 (Pa. Super. 2014) (concluding that the PCRA did not subsume an illegal-sentence claim based on the inability of the DOC to produce a written

⁸ In *Commonwealth v. Holmes*, 79 A.3d 562 (Pa. 2013), our Supreme Court opined that "there is no formal mechanism in the PCRA for a second round of collateral attack focusing upon the performance of PCRA counsel, much less is there a formal mechanism designed to specifically capture claims of trial counsel ineffectiveness defaulted by initial-review PCRA counsel." *Holmes*, 79 A.3d at 583–584. The *Holmes* Court continued that it "has struggled with the question of how to enforce the 'enforceable' right to effective PCRA counsel within the strictures of the PCRA, as the statute was amended in 1995." *Id.* at 584.

⁹ See PCRA petition, 12/29/15 at 21.

sentencing order). Upon reviewing the criminal docket through the Common Pleas Case Management System, the sentence imposed by the Honorable Kathryn Lewis on February 3, 2006 was accurately docketed by the Clerk of Courts of this court. The Superior Court of Pennsylvania has held that even when the DOC lacks possession of a written sentencing order, it has continuing authority to detain a prisoner. *Id.* at 372.

IV. CONCLUSION

Mr. Edwards' renewed efforts to obtain collateral relief were unavailing. Petitioner failed to demonstrate that his PCRA petition satisfied an exception to the PCRA's statutory time-bar. Petitioner's alternative challenge to the legality of his detention, although reviewed outside the framework of the PCRA, was nevertheless meritless. Accordingly, for the reasons stated herein, the decision of the court dismissing the PCRA petition and denying habeas corpus relief should be affirmed.

BY THE COURT:



LEON W. TUCKER, J. /NV

**Additional material
from this filing is
available in the
Clerk's Office.**