

**FILED****IN THE COURT OF COMMON PLEAS  
2018 SEP 24 AM 10:53 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION****OFFICE OF JUDICIAL RECORDS  
CRIMINAL DIVISION  
FIRST JUDICIAL DISTRICT  
OF PENNSYLVANIA****COMMONWEALTH**

:

**CP-51-CR-1001311-2000**

:

**vs.**

:

:

**ROBERT MARCELIS**

:

**SUPERIOR COURT  
2054 EDA 2018****BRINKLEY, J.****SEPTEMBER 21, 2018****OPINION**

Defendant Robert Marcelis filed a petition for relief pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9541 et seq. (eff. Jan. 16, 1996), claiming that he is serving an illegal sentence. After independent review of Defendant's counseled PCRA Petition, the Commonwealth's Motion to Dismiss, and the record, this Court dismissed Defendant's petition without a hearing based upon lack of merit. Defendant filed a timely appeal that raised one issue: whether this Court properly dismissed Defendant's PCRA petition without a hearing. This Court's decision should be affirmed.

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Opinion



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## FACTS AND PROCEDURAL HISTORY

On April 30, 2000, Defendant robbed four different women at separate times and locations on the streets of Philadelphia. On February 22, 2001, the Honorable James J. Fitzgerald, III, found Defendant guilty of three counts of robbery (F1, F2, and F3), two counts of simple assault, four counts of theft, recklessly endangering another person, and other related charges. Sentencing was deferred until May 4, 2001, when Judge Fitzgerald imposed a sentence of 25 to 50 years incarceration on the charge of F1 robbery and lesser concurrent sentences on the remaining charges. The 25 to 50 year sentence was issued pursuant to a mandatory minimum sentence triggered by Defendant's prior conviction for a crime of violence. Pa.C.S. § 9714(a)(2). Defendant appealed his convictions to the Superior Court, which affirmed the Trial Court's judgment of sentence on October 8, 2002. Defendant petitioned the Supreme Court for allowance of Appeal, which was denied on April 29, 2003.

In 2004, Defendant filed a *pro se* PCRA petition. Defendant subsequently filed an Amended Petition, which was dismissed on February 27, 2006. Defendant appealed to the Superior Court, which affirmed dismissal on June 1, 2007. Defendant petitioned the Supreme Court for allowance of appeal, which was denied on November 27, 2007.

On May 1, 2017, Defendant filed his second PCRA petition claiming that he was issued a mandatory minimum sentence rendered unconstitutional by Alleyne v. United States, 570 US. 99 (2013). Defendant claims to meet the timeliness exception due to a change in constitutional law. 42 Pa.C.S. § 9545(b)(1)(iii).

On November 7, 2017, the Commonwealth filed a letter in brief. The Commonwealth claimed Defendant's petition was untimely as it was filed more than 60-days after Alleyne was decided and that it was unmeritorious because Alleyne was not retroactive, so did not apply to

Defendant's convictions.

On May 8, 2018, after a thorough review of the record, this Court issued a Notice of Intent to Dismiss pursuant to Pa.R.Crim.P. 907. Defendant did not file a response. On June 8, 2018, this Court dismissed Defendant's PCRA petition for lack of merit. On July 5, 2018, Defendant filed an appeal to Superior Court.

## ISSUE

### **I. WHETHER THIS COURT PROPERLY DISMISSED DEFENDANT'S PETITION WITHOUT A HEARING BASED UPON LACK OF MERIT.**

## DISCUSSION

### **I. THIS COURT PROPERLY DISMISSED DEFENDANT'S PETITION WITHOUT A HEARING BASED UPON LACK OF MERIT.**

The court's scope of review is limited to the findings of the PCRA court and the evidence on the record of the PCRA court's hearing, viewed in light most favorable to the prevailing party. Commonwealth v. Fahy, 959 A.2d 312, 316 (Pa. 2008). The burden is on the petitioner in the PCRA petition to demonstrate by a preponderance of the evidence that he or she is eligible for PCRA relief. 42 Pa.C.S. § 9543.

In Pennsylvania, all petitions under the PCRA, including subsequent petitions, must be filed within one year of the date the judgment becomes final, unless the petition alleges, and the petitioner proves, an exception to the one-year time period. 42 Pa.C.S. § 9545. The exceptions to the filing deadline are the following:

- (i) the failure to raise this claim previously was the result of interference by government officials with 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). The time “limitations are mandatory and are interpreted literally; thus, a court has no authority to extend filing periods except as statute permits.” Commonwealth v. Fahy, 737 A.2d 214, 222 (Pa. 1999). “If the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed without hearing because Pennsylvania courts are without jurisdiction to consider the merits of the petition.” Commonwealth v. Perrin, 947 A.2d 1284, 1285 (Pa. Super. 2008).

In the case at bar, Defendant’s judgment of sentence became final on July 28, 2003, ninety days after the Supreme Court denied his petition for review. Defendant had one year, until July 28, 2004, to file a timely PCRA petition. Therefore, his petition is untimely and he is afforded no relief unless he proves one of the exceptions to the time bar under 42 Pa.C.S. § 9545(b).

Defendant attempts to invoke the retroactive application of a newly announced constitutional right exception based upon the United States Supreme Court’s holdings in Alleyne v. United States. 570 U.S. 99 (2013). To satisfy the newly-announced constitutional right exception, a defendant must demonstrate: (1) that the right asserted is a new constitutional right that was recognized by the Supreme Court of the United States or the Pennsylvania Supreme Court, and (2) that the right has been held by that court to apply retroactively. Commonwealth v. Wojtaszek, 951 A.2d 1169, 1171 (Pa. Super. 2008). The decision in Alleyne was announced by the Supreme Court of the United States on June 17, 2013, nearly a decade after Defendant’s sentence became final. In July 2016, the Pennsylvania Supreme Court explicitly held that Alleyne does not apply retroactively on post-conviction review. Commonwealth v. Washington, 142 A.23d 810, 820 (Pa. 2016) (“We hold that Alleyne does not apply retroactively to cases pending on collateral review”). The contention that a newly-recognized right should be extended to others

does not render a petition seeking such an expansion of the right timely pursuant to 42 Pa.C.S. §9545(b)(1)(iii). Commonwealth v. Batts, 163 A.3d 410, 452 (Pa. June 26, 2017).

Furthermore, even if Alleyne was retroactive on collateral review, Defendant would have been required to file his petition within 60-days of the decision. 42 Pa.C.S. 9545(b)(2). Defendant did not file the instant petition until May 1, 2017, which was almost 4 years after Alleyne was announced.

Accordingly, this claim fails and no relief is due.

## **CONCLUSION**

After review of the applicable case law, testimony and statutes, this Court committed no error. Defendant's PCRA petition was properly dismissed based upon lack of merit. Accordingly, this Court's decision should be affirmed.

**BY THE COURT:**

 J.