

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

No. 242 MAL 2019

Respondent

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

v.

DAVID STEWARD,

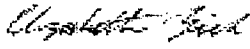
Petitioner

ORDER

PER CURIAM

AND NOW, this 22nd day of October, 2019, the Petition for Allowance of Appeal  
is DENIED.

A True Copy Elizabeth E. Zisk  
As Of 10/22/2019

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

DAVID STEWARD

Appellant

No. 3196 EDA 2018

Appeal from the Order Entered October 10, 2018  
In the Court of Common Pleas of Montgomery County Criminal Division  
at No(s): CP-46-CR-0020805-1986

BEFORE: BOWES, J., DUBOW, J., and FORD ELLIOTT, P.J.E.

MEMORANDUM BY BOWES, J.:

**FILED MARCH 27, 2019**

David Steward appeals *pro se* from the order that dismissed his petition filed pursuant to the Post Conviction Relief Act ("PCRA"). We affirm.

A jury convicted Appellant of first-degree murder and other crimes for the 1986 shooting of Michael Groll, M.D. Evidence against Appellant included his oral and written admissions, his drawing of the Grolls' bedroom and the positions of all persons present at the time of the murder, and the identification testimony of Dr. Groll's wife. Appellant was sentenced to life imprisonment, this Court affirmed,<sup>1</sup> and our Supreme Court denied his petition for allowance of appeal. ***Commonwealth v. Steward***, 775 A.2d 819

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<sup>1</sup> Appellant's first PCRA petition resulted in the reinstatement of his direct appeal rights in 1999.

(Pa.Super. 2001) (unpublished memorandum), *appeal denied*, 792 A.2d 1253 (Pa. 2001).

Appellant filed subsequent PCRA petitions which resulted in no relief. He filed the petition at issue on June 8, 2018, claiming therein that his trial counsel was ineffective in advocating a verdict of second-degree murder without discussing the strategy with Appellant or obtaining his consent to do so. PCRA Petition, 6/8/18, at 4. Acknowledging that his petition was facially untimely, he claimed that the exception for a newly-recognized, retroactively-applicable constitutional right gave the court jurisdiction. *Id.* at 3 (citing **McCoy v. Louisiana**, 138 S. Ct. 1500 (2018)).

The PCRA court issued notice of its intent to dismiss the petition without a hearing as untimely, noting that the **McCoy** decision did not apply because Appellant's counsel never admitted to the jury that Appellant was guilty of murder. Notice of Intent to Dismiss, 8/23/18, at 4. Appellant filed a response to the notice, contending that the PCRA court erroneously relied upon transcripts that did not include his counsel's closing argument, and that other documents show that counsel indeed "pled [Appellant] guilty to murder in his closing argument[.]" Objection to Notice of Intent to Dismiss, 9/14/18, at 3.

The PCRA court dismissed Appellant's petition by order of October 10, 2018. Appellant filed a timely notice of appeal, and both he and the PCRA court complied with Pa.R.A.P. 1925. On appeal, Appellant raises four issues claiming PCRA court error.

"Our standard of review of a PCRA court's dismissal of a PCRA petition is limited to examining whether the PCRA court's determination is supported by the record evidence and free of legal error." **Commonwealth v. Whitehawk**, 146 A.3d 266, 269 (Pa.Super. 2016).

We begin by noting that Appellant has been litigating the issue of counsel's decision to plead to the jury for Appellant's life since at least 2000. At various times the issue has been found to be waived because counsel's closing argument was not transcribed and Appellant failed to prove counsel was ineffective in failing to order the transcripts. **See, e.g., Steward**, 775 A.2d 819 (unpublished memorandum at 26-32) (finding issue waived without prejudice to raise it in a PCRA petition). In one of his appeals, Appellant did file a statement in the absence of a transcript pursuant to Pa.R.A.P. 1923. Based upon that filing and several newspaper articles about the trial, the PCRA court determined that counsel did indeed argue, *inter alia*, that the killing was not premeditated and that Appellant should not receive the death penalty because he showed remorse by confessing. PCRA Court Opinion, 4/16/03, at 14. However, the PCRA court concluded that Appellant failed to allege that counsel lacked Appellant's consent, and in any event, was a reasonable strategy. **Id.** at 18. This Court affirmed that decision, adopting the PCRA court's opinion. **Commonwealth v. Steward**, 142 EDA 2003 (Pa.Super. October 20, 2003) (unpublished memorandum at 3).

Accordingly, there appears to be merit in Appellant's contentions that the PCRA court erred in concluding there was no support in the record for his claim that counsel conceded Appellant's guilt in the closing argument. Nonetheless, we conclude that none of Appellant's claims of error entitles him to relief because he has failed to establish that the PCRA court or this Court has jurisdiction to address the substantive merits of his petition.

It is well-settled that the timeliness of a post-conviction petition is jurisdictional. *See, e.g., Commonwealth v. Lewis*, 63 A.3d 1274, 1280-81 (Pa.Super. 2013) (quoting *Commonwealth v. Chester*, 895 A.2d 520, 522 (Pa. 2006) ("[I]f a PCRA petition is untimely, neither this Court nor the [PCRA] court has jurisdiction over the petition. Without jurisdiction, we simply do not have the legal authority to address the substantive claims.")). Generally, a petition for relief under the PCRA, including a second or subsequent petition, must be filed within one year of the date the judgment of sentence is final unless the petition alleges, and the petitioner proves, that an exception to the time for filing the petition is met, and that the claim was raised within one year of the date on which it became available. 42 Pa.C.S. § 9545(b).

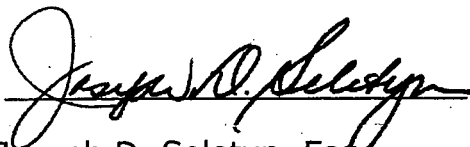
Appellant contends that he properly invoked the exception found at 42 Pa.C.S. § 9545(b)(1)(iii), which applies where "the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively." As

noted, Appellant sought to satisfy the exception's requirements by relying upon the High Court's decision in **McCoy**.

In **McCoy**, the Court held that criminal defendants have a Sixth Amendment right to reject the opinion of counsel that acknowledging guilt is the best way to avoid a death sentence and insist on maintaining innocence. **McCoy, supra** at 1509. Assuming *arguendo* that this decision constitutes the recognition of a new constitutional right, Appellant has not established that the Court held the decision applies retroactively to cases on collateral review. Our Supreme Court has expressly stated that "the language 'has been held' in 42 Pa.C.S. § 9545(b)(1)(iii) means that a retroactivity determination must exist at the time that the petition is filed." **Commonwealth v. Abdul-Salaam**, 812 A.2d 497, 502 (Pa. 2002). Thus, Appellant's petition was properly dismissed as untimely filed, and no relief is due.<sup>2</sup>

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 3/27/19

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<sup>2</sup> If the Supreme Court issues a decision providing that **McCoy** does apply retroactively on collateral review, Appellant may then file a petition within one year of that decision invoking § 9545(b)(1)(iii).

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	NO. CP-46-CR-0020805-1986
	:	
	:	
vs.	:	
	:	
	:	Superior Court: 3196 EDA 2018
DAVID STEWARD	:	
	:	

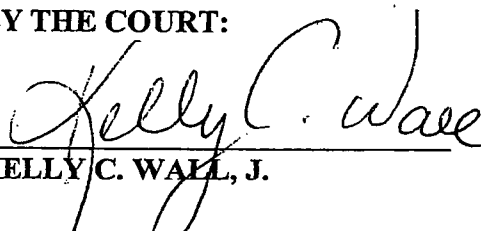
Wall, J.

November 19, 2018

**OPINION**

Defendant, David Steward, files the instant appeal from a "Final Order of Dismissal of PCRA Petition" issued by this Court and filed on October 10, 2018. The undersigned directs the Pennsylvania Superior Court to the "Notice of Intention to Dismiss Defendant's PCRA Petition Without a Hearing Pursuant to Pennsylvania Rule of Criminal Procedure 907(1)" (filed August 23, 2018) as the place where the reasons for this Order may be found.

BY THE COURT:

  
KELLY C. WALL, J.

Copies mailed on November 19, 2018 to:

David Steward, Defendant/Pro Se, #AY-9770, SCI Huntingdon, 1100 Pike Street, Huntingdon,  
PA 16654-1112 (Certified Mail – Return Receipt Requested/Regular Mail)

Robert M. Falin, Esq., District Attorney's Office (Interoffice Mail)

Clerk of Courts



Judicial Assistant

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA-  
CRIMINAL DIVISION

2018 OCT 25 AM 9:58

COMMONWEALTH OF PENNSYLVANIA

NO. CP-46-CR-0020805-1986

v.

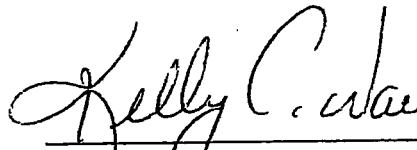
DAVID STEWARD

**FINAL ORDER OF DISMISSAL OF PCRA PETITION**

AND NOW, this 10<sup>th</sup> day of October, 2018, following a review of Defendant's PCRA petition and Defendant's Objection to Court's Notice of Intention to Dismiss PCRA Petition filed September 14, 2018, it is hereby **ORDERED** and **DECREED** that Defendant's PCRA Petition is hereby **DISMISSED**, without a hearing, for all of the reasons set forth in this Court's Notice Pursuant to Pa.R.Crim.P. 907(1) of Intention to Dismiss Defendant's PCRA Petition Without a Hearing, dated August 23, 2018.

Defendant is hereby advised of his right to appeal from this final order of dismissal of his PCRA petition, within thirty (30) days of the date of this order, to the Pennsylvania Superior Court. Defendant is further advised that he may proceed with such appeal from this Final Order of Dismissal either on his own or with the aid of private counsel engaged by him.

BY THE COURT:

  
KELLY C. WALL, J.

Copy of this Notice mailed  
to the following on 10/10/2018:

David Steward, #AY-9770, SCI Huntingdon, 1100 Pike Street, Huntingdon, PA 16654-1112  
(Certified Mail – Return Receipt Requested/Regular Mail)  
Robert M. Falin, Esquire, District Attorney's Office (Interoffice mail)

DM

Judicial Assistant

Original of this Notice filed in the Office of the Clerk of Courts.



IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA-  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : NO. CP-46-CR-0020805-1986  
v. :  
DAVID STEWARD :

NOTICE OF INTENTION TO DISMISS DEFENDANT'S PCRA PETITION WITHOUT  
A HEARING PURSUANT TO PENNSYLVANIA RULE OF  
CRIMINAL PROCEDURE 907(1)

AND NOW, this 23 day of August, 2018, the Court hereby gives notice to David Steward  
("Steward" or "Defendant") of its intention to dismiss his PCRA Petition without a hearing.

After a review of the petition and the court file, we have determined that Steward is not  
entitled to PCRA relief and no purpose will be served by any further proceedings.

FACTUAL AND PROCEDURAL HISTORY

On New Year's Day 1986, two (2) intruders broke into the home of Michael and Mary  
Groll. After one (1) intruder shot and killed Michael Groll, the other intruder took a ring and  
money from Mary Groll.

On January 14, 1986, a criminal complaint was issued against Steward charging him with  
the following as a result of this criminal act: (1) Murder First Degree; (2) Murder Second  
Degree; (3) Murder Third Degree; (4) Aggravated Assault; (5) Robbery; (6) Burglary; (7) Theft  
by Unlawful Taking; (8) Possessing Instruments of Crime; (9) Criminal Conspiracy; (10)  
Receiving Stolen Property; (11) Recklessly Endangering Another Person; and (12) Firearms not  
to be Carried without a License.

Although given his *Miranda* rights when taken into custody, Steward gave an oral  
statement implicating himself in the crime. He subsequently signed a written waiver of his rights,

a confession and made a drawing of the victims' bedroom and the guns used in the murder. Mary Groll later picked Steward out of a line-up. A Suppression Hearing was held on May 19, 1986, at which time the Court determined that Mary Groll's identification of Steward was reliable. Additionally, Steward's statement was found admissible because it was given knowingly, intelligently and voluntarily.

A jury trial was held in this case commencing on June 2, 1986. Steward was represented by a privately retained attorney, Arthur James, Esq. After nine (9) days of trial, the jury found Steward guilty of first-degree murder, aggravated assault, robbery, burglary, theft by unlawful taking, possession of an instrument of crime, criminal conspiracy, receiving stolen property, reckless endangerment and carrying firearms without a license.

At the sentencing hearing, Attorney James requested that the Court allow witnesses to testify on his client's behalf in this capital murder case, which was granted. Upon hearing all the testimony and evidence at the death phase of the hearing, the jury sentenced Steward to life imprisonment on May 12, 1987. At no time during the jury trial or the sentencing hearing was there an admission by Attorney James that his client was guilty of the crimes charged against him.

Steward is currently before this Court on his fourth PCRA application. He has previously filed appeals, habeas corpus proceedings and three (3) PCRA petitions. In his present PCRA Petition, Steward contends that he is eligible for relief based on the claim that his constitutional rights were violated and there was ineffective assistance of counsel. He supports his claim by citing the U.S. Supreme Court case of *McCoy v. Louisiana*, \_\_ U.S. \_\_, 138 S.Ct. 1500 (May 14, 2018).

## DISCUSSION

Initially, we must determine whether there is jurisdiction to consider Steward's claim. Section § 9545(b)(1) of the Sentencing Code, 42 Pa C.S.A. § 9545(b)(1), mandates that PCRA petitions be filed within one (1) year of the date that Defendant's judgment of sentence became final. Any PCRA petition filed after the expiration of this one (1) year filing period must establish that one (1) of the three (3) statutory exceptions contained within 42 Pa.C.S.A. §9545(b)(1)(i-iii) is applicable in order for the petition to be considered. Additionally, 42 Pa.C.S.A. § 9545(b)(2) mandates that any petition invoking an exception to the PCRA's time requirements be filed "within sixty (60) days of the date the claim could have been presented." *See*, 42 Pa.C.S.A. § 9545(b)(2). If a PCRA petition is untimely filed, it is a well-settled principle of law that a court lacks jurisdiction to address the claims contained therein. *Commonwealth v. Boyd*, 923 A.2d 513, 515 (Pa. Super. 2007) citing *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780 (2000).

In the case at bar, it has been over thirty (30) years since Steward's judgment of sentence became final for purposes of this PCRA. The instant Petition filed on June 8, 2018 is clearly untimely. However, Steward alleges in his Petition that his current claims fall within the exception set forth in 42 Pa.C.S.A. §9545(b)(1)(iii), which allows for a claim to be considered if "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." He also asserts that his present petition is timely in that he filed within sixty (60) days of the issuance of the *McCoy* decision. *See*, 42 Pa.C.S.A. § 9545(b)(2)

Steward claims that the U.S. Supreme Court case of *McCoy v. Louisiana*, supra, applies to his case. "In *McCoy*, the Court considered whether it is unconstitutional to allow defense counsel to concede guilt over a defendant's unambiguous objection in a capital murder case." *U.S. v Francisco Gonzalez Jose*, \_\_ U.S.\_\_, 2018 WL 3747449, \*3 (U.S. District Court, E.D. Pa., August 7, 2018) The Court in *McCoy* held that a defendant has the constitutional right to insist that trial counsel refrain from admitting his guilt in a capital murder case over his unambiguous objection.

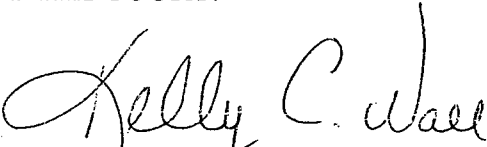
There is no question that Steward filed his present PCRA petition within sixty (60) days of the issuance of the *McCoy* decision. See, 42 Pa.C.S.A. § 9545(b)(2) Therefore, the issue before this Court is whether Steward's constitutional rights were violated by his counsel having admitted his guilt to the jury during the sentencing phase over Steward's unambiguous objection, thereby resulting in ineffective assistance of counsel. The Court finds that the facts of this case do not fall within the parameters of the *McCoy* decision.

Nowhere in the record of this case does Attorney James ever admit to the jury that Steward is guilty of murder. In fact, it is by Steward's own written confession that any admission of guilt was admitted into the record before the jury. Such admission was found by the Trial Court at the Suppression Hearing to have been made knowingly, intelligently and voluntarily by Steward. These facts do not fall within the scope of the Supreme Court's decision in *McCoy v. Louisiana*, supra. Therefore, Steward has no argument based upon the claim that his constitutional rights were violated and he had ineffective assistance of counsel.

CONCLUSION

For the reasons stated herein, this Court determines that Steward's petition is meritless and, consequently, he should not be afforded any relief. Steward is hereby notified that he may respond to this notice of the Court's intention to dismiss his PCRA petition within twenty (20) days of the date of this notice.

BY THE COURT:

  
\_\_\_\_\_  
KELLY C. WALL, J.

Copy of this Notice mailed  
to the following on August 23, 2018:

David Steward, #AY-9770, SCI Huntingdon, 1100 Pike Street, Huntingdon, PA 16654-1112  
(First-class mail)

Robert M. Falin, Esquire, District Attorney's Office (Interoffice mail)

  
\_\_\_\_\_  
Judicial Assistant

**Original of this Notice filed in the Office of the Clerk of Courts.**