APPENDIX A

DECISION AND OPINION OF STATE TRIAL COURT
CP-23-CR-0003894-2010
JUDGE RICHARD M. CAPPELLI

COPY

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

COMMONWEALTH OF PENNSYLVANIA : NO. CP-23-CR-3894-2010

V. :

: 2163 EDA 2022

SEAN BURTON :

Kelly Wear, Attorney for Commonwealth
Cheryl Sturm, Attorney for Appellant

CAPPELLI, J. OCTOBER 13, 2022

OPINION

Appellant appeals from the August 9, 2022 order dismissing the third "Petition for a New Trial Under the Post Conviction Relief Act" 42 Pa.C.S. § 9541, *et seq*. This appeal lacks merit and should be dismissed.

I. BACKGROUND AND PROCEDURAL HISTORY

On June 21, 2010 Appellant was arrested and charged with 18 Pa.C.S. § 2502(a) criminal homicide – murder of the first degree, 18 Pa.C.S. § 2702(a) aggravated assault, 18 Pa.C.S. § 3702(a) robbery of a motor vehicle, and possession of an instrument of crime, 18 Pa.C.S. § 907, for an incident arising in Springfield Township, Delaware County, Pennsylvania in which Appellant killed James Stropas after he stabbed him more than seventy times. The March 28, 2012 memorandum decision of the Pennsylvania Superior Court at 1582 EDA 2011 provides an in-depth summary of the facts of the case. Briefly, the case arose out of the relationships

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involving Appellant, Theresa Murphy, and Victim Army Sergeant James Stropas. In summary, Appellant and Ms. Murphy shared a complicated history in which they were married, divorced, remarried, and again discussing divorce. During this time, Ms. Murphy was first dating, then living with, Victim Stropas. Appellant placed a GPS device onto Victim Stropas' car, and on June 21, 2010 Appellant received an alert concerning Victim Stropas' location. Appellant approached Victim Stropas, and according to Appellant, Victim Stropas grabbed a knife and began to attack him; also according to Appellant, he was able to wrestle the knife blade from Victim Stropas and then Appellant proceeded to stab Victim Stropas in excess of 70 times. Victim Stropas died from the stabbing.

On March 21, 2011 jury trial commenced and on March 25, 2011 the jury reported a verdict of guilty for the charges of murder of the first degree and possession of an instrument of crime. On May 24, 2011 the Court imposed judgment of sentence upon Appellant to confinement in a State Correctional Institution for a term of life imprisonment without parole for the murder conviction and a consecutive minimum term of six months confinement to a maximum term of 23 months for the possession of an instrument of crime conviction.

On June 15, 2011 Appellant filed a notice of appeal. On March 28, 2012 judgment of sentence was affirmed. On April 20, 2012 Appellant filed a petition for allowance of appeal. On August 28, 2012 Supreme Court denied the petition.

On April 3, 2013 Appellant filed his first PCRA petition. On June 3, 2014 the petition was dismissed. On June 20, 2014 Appellant filed a notice of appeal. On May 5, 2015 Superior Court affirmed. On June 3, 2015 Appellant filed a petition for allowance of appeal. On November 17, 2015 the Supreme Court denied the petition.

On March 9, 2018 Appellant filed a *pro se* PCRA petition, and on April 2, 2018 Appellant filed a *pro se* PCRA petition for a new trial. On May 10, 2018 this Court dismissed Appellant's petition. On June 4, 2018 Appellant filed a *pro se* notice of appeal. On April 11, 2019 Superior Court affirmed.

On February 23, 2021 Appellant filed his third serial *pro se* PCRA petition; and on July 30, 2021 his attorney filed a supplemental PCRA petition. On October 12, 2021 Commonwealth filed a motion to dismiss the PCRA petition. On October 20, 2021 Appellant filed a response to the Commonwealth's motion.

II. DISCUSSION

The August 9, 2022 order dismissing Appellant's PCRA petition is supported by the record and free of legal error.

The PCRA provides collateral relief for persons convicted of crimes they did not commit and persons serving illegal sentences, and it is limited in scope. The PCRA absolutely is not a conduit for providing unhappy defendants with a complete do-over. The PCRA precludes relief for claims raised and decided on direct appeal and waived claims, and an appeal from the dismissal of a PCRA petition addresses only issues raised in the PCRA petition. *See* 42 Pa.C.S. §§ 9543(a)(3) and 9544.

The standard of review concerning orders determining PCRA petitions is whether the determination of the PCRA court is supported by evidence of record and free of legal error. *Commonwealth v. Pitts*, 981 A.2d 875 (Pa. 2009). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. The scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the post-conviction relief court level. *Commonwealth v. Henkel*, 90 A.3d 16 (Pa. Super. 2014). The PCRA court's credibility determinations, when supported by the record, are binding; however, Superior Court applies a *de novo* standard of review to the PCRA legal conclusions. *Commonwealth v. Johnson*, 966 A.2d 523 (Pa. 2009). Applying the scope and standard to the August 9, 2022 order dismissing Appellant's PCRA petition, the evidence of the record viewed in the light most favorable to the Commonwealth, the prevailing party at the PCRA level, supports the determination made by the PCRA court and is free from legal error. This appeal should be dismissed.

a. Appellant's third pro se PCRA petition is filed untimely and this Court did not have jurisdiction to consider the merits of Appellant's claims.

A PCRA petition must be filed within one year from the date judgment of sentence becomes final. 42 Pa.C.S. § 9545(b)(1). A judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of

the United States and Supreme Court of Pennsylvania or at the time for seeking the review. 42 Pa.C.S. § 9545(b)(3). In this case, judgment of sentence became final on November 26, 2012. The time to file a timely PCRA petition expired in 2013. This court lacks jurisdiction to consider the claims raised in the petition.

Notwithstanding the untimely nature of the petition, Appellant in this third, serial PCRA petition filed on February 23, 2021 alleges his petition satisfies two enumerated exceptions to the time for filing under the PCRA: "newly discovered fact" and "government interference". This court disagrees.

Appellant claims the newly discovered fact is the January 21, 2021 "discovery" of the VA medical records of Victim Stropas'. The newly discovered facts exception requires a petitioner to allege and prove there were facts unknown to the petitioner and they could not have been ascertained through due diligence. The timeliness exception under the PCRA is not satisfied when the facts are not actually new or newly discovered, and the information could not have been obtained earlier with the exercise of due diligence. *Commonwealth v. Graves*, 197 A.3d 1182 (Pa. Super. 2018); *Commonwealth v. Stokes*, 959 A.2d 306 (Pa. 2008). The PCRA's newly discovered facts exception does not apply in Appellant's case, and even if it does, Appellant has not shown the VA records he now possesses constitutes a newly discovered fact. The parties knew about Victim's VA records before trial began; in fact, Appellant before trial sought the records in an effort to discern information

concerning Victim Stropas' potential PTSD and treatment and considered using the records to promote a claim of self-defense; Appellant also stipulated the records should not be used during trial and agreed to the submission and sealing of the records. This court concluded there was new about the existence of the VA records and Appellant did not satisfy the newly discovered facts exception to the time limitation for filing a petition under the PCRA.

Concerning an allegation of governmental interference as an exception for a failure to timely file a PCRA petition, a petitioner must show: the failure previously to raise this claim resulted from interference by government officials. *Commonwealth v. Stokes*, 959 A.2d 306 (Pa. 2008). Petitioner makes the accusation the Commonwealth improperly withheld the VA records in violation of *Brady v. Maryland*, 373 U.S.83 (1963). The record absolutely belies Appellant's allegations: the existence of the VA records were known to Appellant (and the Commonwealth and the Court) in 2011, and Appellant agreed the records should be submitted to and sealed by the trial court. Appellant cannot and did not prove by any evidence, let alone by a preponderance of the evidence, the Commonwealth denied access to the records and he cannot show he exercised due diligence in discovering the information before 2021.

This court correctly concluded Appellant did not satisfy any exception for filing beyond the one year time limitation set forth in the PCRA and the petition was

filed untimely; this court lacked jurisdiction to consider the claims raised in it. This appeal should be dismissed.

b. Appellant did not prove by a preponderance of the evidence ineffective assistance of trial counsel.

Notwithstanding this court's determination concerning the timeliness of Appellant's PCRA petition, in an abundance of caution this court reviewed the ineffectiveness claims raised and the record of evidence. In Pennsylvania, a second or subsequent PCRA petition must present a strong *prima facie* showing of miscarriage of justice. *Commonwealth v. Stokes*, 598 A.2d 306 (Pa. 2008). Also, counsel is presumed effective and petitioner's burden is to prove otherwise. *Commonwealth v. Zook*, 887 A.2d 1218 (Pa. Super. 2010). A PCRA petitioner alleging ineffective assistance of counsel must plead and prove: 1) the legal claim underlying the ineffectiveness has arguable merit; 2) counsel's action or inaction lacked an objective reasonable basis designed to effectuate petitioner's interest; and 3) counsel's action or inaction resulted in prejudice to petitioner. *Strickland v. Washington*, 466 U.S. 668 (1984). Ineffective assistance of counsel must be the cause of the prejudice to defendant. *Commonwealth v. Pierce*, 527 A.2d 973 (Pa. 1987).

In the present case, Appellant did not present a strong *prima facie* showing concerning the existence of a miscarriage of justice. Appellant alleged trial counsel was ineffective for not introducing evidence of Victim Stropas' PTSD condition. The

record shows Appellant originally sought to have introduced in an effort to support his claim of self defense Victim Stropas' VA records concerning a PTSD diagnosis, and before trial commenced both parties agreed the VA records were inadmissible and the records were sealed. The record also shows trial counsel attempted in other ways to elicit information concerning the Victim's potential PTSD diagnosis to lend credence to the self defense claim, and the trial court repeatedly refused to allow it. Additionally when this case was on direct appeal, the Superior Court decided the trial court did not err when it did not allow evidence of Victim Stropas' PTSD and the records "do not show the 'violent propensities' required to show delf-defense". In the cautionary review of Appellant's PCRA petition, this court concluded Appellant failed to prove any part of the *Strickland* test for ineffectiveness, and certainly failed to prove all of them; the record shows the trial court did not allow, despite trial counsel's best efforts, the information concerning Victim Stropas' PTSD diagnosis from other sources. As a result this court concluded Appellant did not prove by a preponderance of the evidence trial counsel was ineffective under *Strickland*. Appellant's claim lacks merit and this appeal should be dismissed.

III. CONCLUSION

Appellant's appeal should be dismissed. This court properly determined Appellant's third serial PCRA petition was untimely and this court lacked jurisdiction to consider the claims, and notwithstanding this conclusion, following a

cautionary review of the claims, this court determined Appellant did not prove by a preponderance of the evidence he was entitled to relief under the PCRA and the claims lacked merit. This court also determined there is no other basis of relief contained in the evidence of record upon which PCRA relief could have been granted. Applying the scope and standard of review to the August 9, 2022 order dismissing Appellant's third *pro se* PCRA petition, the evidence of record contains ample support for this court's determination and viewed in the light most favorable to the Commonwealth as the prevailing party at the PCRA level, the record supports the determination of the PCRA court and is free of legal error. Even if the PCRA petition had been timely filed, for all the reasons discussed the claims contained in the petition lacked merit and should be dismissed.

BY THE COURT:

RICHARD M. CAPPELLI, J.

cc: Sara Vanore, Esquire, Law and Appeals Unit, Office of the District Attorney (via email)
Erica Bellino, Law and Appeals Unit Coordinator, Office of the District Attorney (via email)
Cheryl Sturm, Esquire, Attorney for Petitioner (via email)

APPENDIX B

DECISION AND OPINION OF PENNSYLVANIA SUPERIOR COURT
NO. 2163 EDA 2022
JUDGE PANELLA

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

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SEAN BURTON	:	
Appellant	:	No. 2163 EDA 2022

Appeal from the PCRA Order Entered August 9, 2022
In the Court of Common Pleas of Delaware County
Criminal Division at No(s): CP-23-CR-0003894-2010

BEFORE: PANELLA, P.J., DUBOW, J., and STEVENS, P.J.E.*

MEMORANDUM BY PANELLA, P.J.: **FILED SEPTEMBER 7, 2023**

Sean Burton, who is currently serving a life sentence for a murder conviction, brings this appeal from the denial of his third petition filed under the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Burton was arrested in June 2010 for the murder of James Stropas, the paramour of Burton's estranged wife. Stropas had been stabbed more than seventy times. On March 25, 2011, a jury convicted Burton of murder of the first degree and possession of an instrument of crime ("PIC"). On May 24, 2011, the trial court sentenced Burton to serve a term of life imprisonment for the murder conviction and a consecutive term of incarceration of six to twenty-three months for the PIC conviction.

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* Former Justice specially assigned to the Superior Court.

On March 28, 2012, a panel of this Court affirmed the judgment of sentence. ***See Commonwealth v. Burton***, 1582 EDA 2011, 47 A.3d 1258 (Pa. Super. filed March 28, 2012) (unpublished memorandum). Burton filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which was denied on August 28, 2012. Burton did not file a petition for writ of certiorari with the United States Supreme Court.

On February 23, 2021, Burton filed this, his third, PCRA petition. The PCRA court dismissed the petition on August 9, 2022. This timely appeal followed in which Burton raises claims challenging the PCRA court's determination that his PCRA petition was untimely filed.

Our standard of review for an order denying PCRA relief is whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. ***See Commonwealth v. Phillips***, 31 A.3d 317, 319 (Pa. Super. 2011). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***See id***.

A PCRA petition must be filed within one year of the date that the judgment of sentence becomes final. ***See*** 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence "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." 42 Pa.C.S.A. § 9545(b)(3). This time requirement is mandatory and jurisdictional in nature and goes to a court's right or competency to

adjudicate a controversy. ***See Commonwealth v. Robinson,*** 837 A.2d 1157, 1161 (Pa. 2003) (citations omitted).

Our review of the record reflects that Burton's judgment of sentence became final on November 26, 2012, ninety days after the Pennsylvania Supreme Court denied his petition for allowance of appeal and the time for filing a petition for review with the United States Supreme Court expired. ***See*** 42 Pa.C.S.A. § 9545(b)(3); U.S.Sup.Ct.R. 13. To be timely, Burton needed to file the instant PCRA petition on or before November 26, 2013. Burton did not file this PCRA petition until February 23, 2021. Accordingly, Burton's PCRA petition is patently untimely, and we lack jurisdiction to consider its merits unless he pleaded and proved a timeliness exception.

Section 9545 of the PCRA provides three exceptions that allow for review of an untimely PCRA petition: (1) the petitioner's inability to raise a claim because of governmental interference; (2) the discovery of previously unknown facts that would have supported a claim; and (3) a newly recognized constitutional right. ***See id***. A PCRA petition invoking one of these statutory exceptions must be filed within the time constraints set forth at 42 Pa.C.S.A. § 9545(b)(2). "The PCRA petitioner bears the burden of proving the applicability of one of the exceptions." ***Commonwealth v. Spotz***, 171 A.3d 675, 678 (Pa. 2017) (citation omitted).

In his brief to this Court, Burton alleges that two of the timeliness exceptions apply. ***See*** Appellant's Brief at 26-31. Burton argues the timeliness

exception under section 9545(b)(1)(ii), claiming he had newly discovered evidence in the form of a mental health records belonging to Stropas, which reflected a struggle with PTSD and an alleged propensity towards violence. In addition, Burton attempted to invoke the governmental interference exception under section 9545(b)(1)(i). Burton baldly alleges that somehow the Commonwealth hid the records from him, which amounts to a ***Brady*** violation.[1]

We cannot ignore that Burton was required to exercise due diligence in obtaining the information that forms the basis for his PCRA petition. This issue was addressed by our Supreme Court in ***Commonwealth v. Stokes***, 959 A.2d 306 (Pa. 2008). In ***Stokes***, the appellant was convicted of three counts of first-degree murder and related charges in 1983. The appellant then filed a timely direct appeal and a timely PCRA petition, which were unsuccessful.

In February of 2004, the appellant in ***Stokes*** initiated federal habeas corpus proceedings and obtained files from the United States Postal Service and the Philadelphia Police Department. He then filed a second PCRA petition alleging a ***Brady*** violation, in that the Commonwealth failed to disclose documents in the files, which contained exculpatory evidence. The appellant in ***Stokes*** claimed that he satisfied the "newly discovered fact" and "government interference" exceptions to the PCRA's timeliness requirements.

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[1] ***Brady v. Maryland***, 373 U.S. 83 (1963).

The PCRA court found the PCRA petition to be untimely and denied his petition without a hearing, and our Supreme Court ultimately affirmed on appeal.

In reaching its decision, our Supreme Court held that both exceptions mandate compliance with the time constraints set forth at 42 Pa.C.S.A. § 9545(b)(2), which "requires a petitioner to plead and prove that the information on which he relies could not have been obtained earlier, despite the exercise of due diligence." ***Stokes***, 959 A.2d at 310. Accordingly, the proper questions with respect to timeliness in ***Stokes*** were "whether the government interfered with [the a]ppellant's access to the [...] files, and whether [the a]ppellant was duly diligent in seeking those files." ***Id***.

The Court in ***Stokes*** concluded the record established that the appellant had been aware of the existence of the files prior to seeking them, and he did not claim that the Commonwealth prevented him from accessing the files earlier. Since Stokes was aware of the existence of the files prior to filing his PCRA petition, and he did not explain why he did not seek them earlier, he failed to satisfy the due diligence requirement of the time constraints set forth at 42 Pa.C.S.A. § 9545(b)(2). ***Stokes***, 959 A.2d at 311.

In addressing Burton's claim that these exceptions to the timeliness requirement of the PCRA apply here, the PCRA court stated the following:

> [Burton] claims the newly discovered fact is the January 21, 2021 "discovery" of the VA medical records of Victim Stropas. The newly discovered facts exception requires a petitioner to allege and prove there were facts unknown to the petitioner and they could not have been ascertained through due diligence. The timeliness exception under the PCRA is not satisfied when the

> facts are not actually new or newly discovered, and the information could [] have been obtained earlier with the exercise of due diligence. ***Commonwealth v. Graves***, 197 A.3d 1182 (Pa. Super. 2018); ***Commonwealth v. Stokes***, 959 A.2d 306 (Pa. 2008). The PCRA's newly discovered facts exception does not apply in [Burton's] case, and even if it does, [Burton] has not shown the VA records he now possesses constitutes a newly discovered fact. The parties knew about Victim's VA records before trial began; in fact, [Burton] before trial sought the records in an effort to discern information concerning Victim Stropas' potential PTSD and treatment and considered using the records to promote a claim of self-defense; [Burton] also stipulated the records should not be used during trial and agreed to the submission and sealing of the records. This court concluded there was [nothing] new about the existence of the VA records and [Burton] did not satisfy the newly discovered facts exception to the time limitation for filing a petition under the PCRA.
>
> Concerning an allegation of governmental interference as an exception for a failure to timely file a PCRA petition, a petitioner must show: the failure previously to raise this claim resulted from interference by government officials. ***Commonwealth v. Stokes***, 959 A.2d 306 (Pa. 2008). Petitioner makes the accusation the Commonwealth improperly withheld the VA records in violation of ***Brady v. Maryland***, 373 U.S.83 (1963). The record absolutely belies [Burton's] allegations: the existence of the VA records were known to [Burton] (and the Commonwealth and the Court) in 2011, and [Burton] agreed the records should be submitted to and sealed by the trial court. [Burton] cannot and did not prove by any evidence, let alone by a preponderance of the evidence, the Commonwealth denied access to the records and he cannot show he exercised due diligence in discovering the information before 2021.

Trial Court Opinion, 10/13/22, at 5-6.

Likewise, our review of the record reflects that Burton did not lack knowledge of, nor was he obstructed in obtaining Stropas's medical records from the VA, which were the subject of a motion to compel production filed on August 31, 2010, and attendant hearing held on September 14, 2010. On

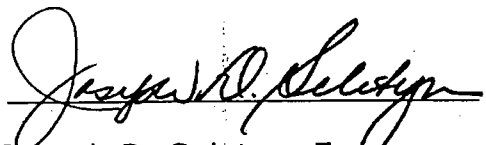
October 6, 2011, Burton filed a praecipe withdrawing his motion to compel production of Stropas's mental health records. Consequently, Burton has failed to establish that the records amount to previously unknown facts.

Moreover, Burton does not offer an explanation why he did not investigate or seek production of the records prior to the filing of the instant PCRA petition. In his reply brief filed with this Court, Burton states: "Mr. Burton's claim speaks more of his trial attorney's sloth or ignorance than a careful assessment of the facts. ... Mr. Stropas was dead, and he was in no position to assert the privilege. **Mr. Burton obtained the Stropas medical records himself. Upon Mr. Burton's request, the VA mailed Mr. Stropas'[s] medical records to Mr. Burton.**" Appellant's Reply Brief, at 7-8 (emphasis added). This admission by Burton establishes that the records were readily available from the VA. Accordingly, we conclude that Burton has failed to establish that he satisfied the time constraints set forth at 42 Pa.C.S.A. § 9545(b)(2), that the information he relied upon in filing his PCRA petition could not have been obtained earlier by the exercise of due diligence. ***See*** 42 Pa.C.S.A. § 9545(b)(2); ***Stokes***, 959 A.2d at 310.

Burton has not carried his burden to properly plead and prove the applicability of one of the exceptions. Consequently, the PCRA court did not commit any error in dismissing Burton's petition as untimely. Hence, this Court has no jurisdiction to address the merits of Burton's claims. ***See Robinson, supra***.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/07/2023

APPENDIX C

ORDER OF PENNSYLVANIA SUPREME COURT DENYING REVIEW
NO. 520 MAL 2023
JUDGE'S NAME NOT ON ORDER

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, Respondent v. SEAN BURTON, Petitioner	:	No. 520 MAL 2023 Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 6th day of February, 2024, the Petition for Allowance of Appeal is **DENIED**.

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