

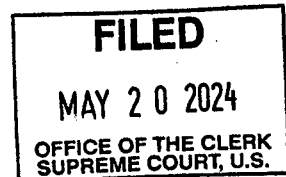
No. _____

ORIGINAL

23-7593

IN THE

SUPREME COURT OF THE UNITED STATES



Kaleel Hinton — PETITIONER
(Your Name)

vs.

COMMONWEALTH OF PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF PENNSYLVANIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

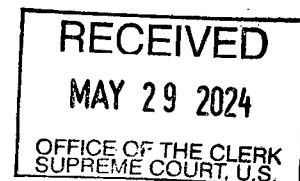
PETITION FOR WRIT OF CERTIORARI

Kaleel Hinton
(Your Name)

501 Huntingdon 1100 Pike Street
(Address)

Huntingdon, PA 16654
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

A. Do Special and important reasons exist and should Writ of CERTIORARI be granted as the PCRA Court erred in dismissing the PCRA as untimely, where Petitioner was abandoned by Plea-Counsel who failed to file a motion to reconsider sentence and direct appeal, where PCRA Petition was facially untimely, and where Petitioner has a meritorious issue pertaining to the legality of his sentence resulting from the holding in Alleyne?

(Answered in the negative by the courts below).

B. Do Special and important reasons exist where Petitioner filed a facially untimely PCRA Petition that does not, at first blush, directly satisfy one of the time-bar exceptions to the PCRA, but where Petitioner was unaware of the time limitations in which to file a PCRA, and where the purpose of Pa.R. (Crim.P. 704(c)(3)) is to ensure fair sentencing procedures, does due process require that in addition to being advised of the right to file a post-sentencing motion and direct appeal, that he should also be advised at sentencing of the PCRA's one year time constraint, and that in the interest of justice and pursuant to notions of fair play, should his Petition should be deemed timely filed, *nonc pro tunc*?

(Not addressed by the courts below).

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	3
JURISDICTION.....	4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE WRIT	7-21
CONCLUSION.....	22

INDEX TO APPENDICES

APPENDIX A	ORDER REINSTATING, NUNC PRO TUNC, RIGHT TO FILE PETITION FOR ALLOWANCE OF APPEAL
APPENDIX B	PCRA COURT OPINION.....
APPENDIX C	SUPERIOR COURT OPINION.....
APPENDIX D	SUPREME COURT OF PENNSYLVANIA OPINION....
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Alleyne v. U.S.</u> , 133 S.Ct. 2151, 186 L.Ed. 2d 314 (2013).....	
<u>Apprendi v. New Jersey</u> , 530 U.S. 466, 120 S.Ct. 2348,.....	
<u>County of Sacramento v. Lewis</u> , 523 U.S. 833, 840, 118 S.Ct. 1708, 140 L.Ed. 2d 1043 (1998).....	
<u>Daniels v. Williams</u> , 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed 2d 662 (1986).....	
<u>Kentucky Dept of Corr. v. Thompson</u> , 490 U.S. 454, 459-60, 109 S.Ct. 1904, 104 L.Ed. 2d 506 (1989).....	
<u>Lasser v. Dep't of Soc. Serv. of Durham County</u> , 452 U.S. 18, 24-25, 101 S.Ct. 2153, 68 L.Ed. 2d 640 (1981).....	
<u>Patterson v. New York</u> , 432 U.S. 197, 202, 97 S.Ct. 2319, 2323, 53 L.Ed. 2d 281 (1977).....	
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984).....	
<u>United States v. Cronin</u> , 466 U.S. 648 (1984).....	
<u>Commonwealth v. Aaron Bradley</u> , 261 A.2d 381, 401 (Pa. 2021).....	
<u>Commonwealth v. Albrecht</u> , 606 Pa. 64, 994 A.2d 1091 (2010).....	

STATUTES AND RULES

42 Pa. C.S.A. § 9781 (a).....
42 Pa. C.S.A. § 9543-9545.....
Pa. R. Crim. P. 704.....
N.J. Ct. R. 3:21-4 (h) (1)

OTHER

(Continued TABLE OF AUTHORITIES CITED) 2 OF 2

- Commonwealth v. Krassus, 764 A.2d 20, 27 (Pa. 2008).....
- Commonwealth v. Lasser, 722 A.2d 657 (Pa. 1998).....
- Commonwealth v. Moto, 611 Pa. 95, 23 A.2d 989, 1001 (2011).....
- Commonwealth v. Pierce, 527 A.2d 972 (Pa. 1987).....
- Commonwealth v. Robinson, 575 Pa. 500, 837 A.2d 1157 (2003).....
- Commonwealth v. Turner, 80 A.2d 754, 762-764 (Pa. 2013).....
- Commonwealth v. Alcorn, 703 A.2d 1054 (Pa. Super. 1997).....
- Commonwealth v. Brady, 741 A.2d 758 (Pa. Super. 1999).....
- Commonwealth v. Bronough, 670 A.2d 147 (Pa. Super. 1995).....
- Commonwealth v. Cardwell, 105 A.2d 748, 750 (Pa. Super. 2014).....
- Commonwealth v. Hudson, 485 A.2d 487 (Pa. Super. 1984).....
- Commonwealth v. Muhammed, 992 A.2d 897, 903 (Pa. Super. 2010).....
- Commonwealth v. Patterson, 940 A.2d 493, 499 (Pa. Super. 2007).....
- Commonwealth v. Penrose, 669 A.2d 996 (Pa. Super. 1995).....
- Commonwealth v. Poplawski, 852 A.2d 323 (Pa. Super. 2004).....

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the ~~3022222~~ State Trial court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 27th February, 2024
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 42 Pa.C.S.A. § 9781 (a)
- 42 Pa.C.S.A. § 9543-9545
- Pa. R. Crim. P. 704
- N.J. Ct. R. 3:21-4 (h) (i)

STATEMENT OF THE CASE

The order that is the subject of this petition is the dismissal of the PCRA Petition that was entered on April 30, 2018. The order was entered by the Honorable Rayford Means of the Court of Common Pleas of Philadelphia County on CP-51-CR-0010595-2012, 0010596-2012, 0010597-2012, 0010598-2012, 0010599-2012, 0010600-2012, 0010621-2012, 0010622-2012.

The PCRA Court filed its opinion on July 24, 2018. APPENDIX B. THE Superior Court affirmed the dismissal of the PCRA Petition in an order and Memorandum Opinion addressing the appeal, which was filed on May 1, 2019. APPENDIX C.

On September 18, 2023, the Honorable Zachary C. Shaffer, who presides over this matter after the retirement of Judge Means, entered an order reinstating the petitioner's right to file a petition for allowance of appeal, *nunc pro tunc*, APPENDIX A.

On May 22, 2023, Judge Shaffer entered an order reinstating the right to file a petition for allowance of appeal, *nunc pro tunc*.

On September 18, 2023, the PCRA Court reissued an order reinstating the right to file a petition for allowance of appeal, *nunc pro tunc*.

On February 27, 2024, the PENNSYLVANIA Supreme Court denied Petitioner's allowance of appeal petition.

V. REASONS FOR ALLOWANCE OF APPEAL

A. Special and important reasons exist and allocatur should be granted as the PCRA court erred in dismissing the PCRA as untimely, where petitioner was abandoned by plea-counsel who failed to file a motion to reconsider sentence and direct appeal, where PCRA petition was facially untimely, and where petitioner has a meritorious issue pertaining to the legality of his sentence resulting from the holding in Alleyne.

Special and important reasons exist and allocatur should be granted.

Here, the issue raised pertains to the legality of the sentence; "[t]he defendant or the Commonwealth may appeal as of right the legality of the sentence." 42 Pa.C.S.A. §9781(a). In Pennsylvania, as to illegal sentences, "Issues relating to the legality of a sentence are questions of law[.] . . . Our standard of review over such questions is *de novo* and our scope of review is plenary." Commonwealth v. Cardwell, 105 A.3d 748, 750 (Pa. Super. 2014). Moreover, the legality of a criminal sentence is non-waivable, and may be "raise[d] and review[ed] ... *sua sponte*." Commonwealth v. Muhammed, 992 A.2d 897, 903 (Pa. Super. 2010).

As to PCRA, generally, a PCRA petition must be filed within one year of the judgment becoming final, unless the petitioner satisfies one of the exceptions under the PCRA statute. (42 Pa.C.S.A. § 9545(b)(3), Commonwealth v. Alcorn, 703 A.2d 1054 (Pa. Super. 1997). The timeliness requirements of the PCRA are

jurisdictional in nature and a PCRA court cannot hear untimely petitions. Commonwealth v. Albrecht, 606 Pa. 64, 994 A.2d 1091 (2010); Commonwealth v. Robinson, 575 Pa. 500, 837 A.2d 1157 (2003). A facially untimely PCRA petition will be considered timely if a petitioner meets one of the enumerated exceptions to the time-bar set forth in section 9545(b)(1)(i)-(iii).

Here, the petitioner was formally sentenced on March 22, 2013. Although he requested that they be filed, neither a post-sentence motion nor a direct appeal were filed. That means that the judgment of sentence became final on April 22, 2013. Petitioner had until April 22, 2014—one year from the date that the judgment of sentence became final, in which to file a timely PCRA petition. (42 Pa.C.S.A. § 9545(b)(1)) However, he filed a *pro se* PCRA petition on February 25, 2015, which was facially untimely.

Petitioner asserts that he requested that plea-counsel file a post-sentence motion and an appeal. Again, this was not done. Petitioner later inquired as to the status of his appeal and per the petitioner, he was advised by counsel that the period in which to file an appeal had transpired; that no appeal had been filed. This was *per se* ineffective assistance of counsel. In Pennsylvania, the *per se* ineffective assistance of counsel standard has been used where a petitioner established that he requested counsel to file a post-sentence motion or a notice of appeal, and counsel failed to do so. Commonwealth v. Hudson, 485 A.2d 487 (Pa.

Super. 1984); United States v. Cronin, 466 U.S. 648 (1984). In such cases, petitioners have been granted relief in the form of an appeal *nunc pro tunc*, without reference to the merits of the issues that would have been raised on direct appeal. Commonwealth v. Bronaugh, 670 A.2d 147 (Pa. Super. 1995). A petitioner's claim has arguable merit if counsel's acts or omissions conflict with a constitutional guarantee, a statute, rule of procedure or an established precedent. Commonwealth v. Brady, 741 A.2d 758 (Pa. Super. 1999); Commonwealth v. Lassiter, 722 A.2d 657 (Pa. 1998); Commonwealth v. Penrose, 669 A.2d 996 (Pa. Super. 1995); Commonwealth v. Poplawski, 852 A.2d 323 (Pa. Super. 2004).

In addition to the *per se* standard in Pennsylvania, when a claim of ineffective assistance of counsel is asserted in this Commonwealth, the claim is evaluated pursuant to the three-prong test set out in Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1987). The first two prongs concern counsel's performance. A petitioner must prove that the issue underlying the claim of ineffectiveness has arguable merit and that counsel's act or omission was not reasonably designed to advance the interest of the petitioner. The third prong, prejudice, is met if a petitioner shows there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984).

In addition to *per se* ineffective assistance of counsel, petitioner also argues that plea-counsel was also ineffective under the general standard, to which the three-prong test is applied.

On June 17, 2013, the United States Supreme Court entered its ruling in Alleyne v. U.S., 133 S.Ct. 2151, 186 L.Ed. 2d 314 (2013). Here, petitioner cites Alleyne. In Alleyne, the United States Supreme Court held that any element or fact that increases the mandatory minimum of a sentence, must be proved beyond a reasonable doubt. (Id.) This effectively made illegal, mandatory minimum sentences (other than recidivism statutes) (See also Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)). In Apprendi, the United States Supreme Court held that facts increasing a maximum sentence must be admitted by the defendant or found by a jury beyond a reasonable doubt. (Id.)

Unfortunately, Alleyne is open to those on direct appeal, but not on collateral review. Stated differently, in addition to the *per se* ineffective assistance of counsel for the failure to file a post-sentence motion and direct appeal as was requested by the petitioner, the plea-counsel was also ineffective for not following up with petitioner immediately once Alleyne was issued, which was just a few months after petitioner's sentencing. In petitioner's matter, he pled to numerous armed robberies, and therefore mandatory minimums were invoked at the time.

Failure to file a post-sentence motion and a notice of appeal was *per se* ineffective, and prejudice to the petitioner is presumed. As to plea-counsel's failure to circle-back with petitioner once the Alleyne matter came down, there is no reasonable basis for counsel to fail to consult with petitioner as the decision affected his situation. This omission lacked any reasonable basis in furthering petitioner's interests. But-for this omission, petitioner would have been on direct appellate review, would have fallen under the umbrella of Alleyne, and would have had his sentence vacated and likely would have had the opportunity to further request to withdraw his plea.

Special and important reasons exist and allocatur should be granted.

B. Special and important reasons exist and allocatur should be granted where petitioner filed a facially untimely PCRA petition that does not directly satisfy one of the time-bar exceptions to the PCRA, but where petitioner was insufficiently aware of the time limitations in which to file a PCRA, and where the purpose of Pa.R.Crim.P. 704(C)(3) is to ensure fair sentencing procedures, due process requires that in addition to being advised of the right to file a post-sentence motion and direct appeal, that he should also be advised at sentencing of the PCRA's one year time constraint, and that in the interest of justice and pursuant to notions of fair play, therefore his petition should be deemed timely filed, *nunc pro tunc*.

Petitioner acknowledges that his PCRA petition was facially untimely. However, petitioner asserts that procedural due process warrants that at the time of

sentencing, he also be advised of the one year time constraint of the PCRA. Therefore, in the interest of justice and pursuant to notions of fair play and due process, his PCRA petition should be deemed timely filed, *nunc pro tunc*.

Petitioner's PCRA petition was untimely and does not at first blush expressly satisfy one of the time-bar exceptions of the PCRA statute. He asserts he was insufficiently aware of the PCRA filing time constraints. Petitioner asserts that his petition should be deemed timely, in the interest of justice and pursuant to notions of fair play and procedural due process. He argues that under procedural due process, that in addition to being advised at sentencing of his right to file a post-sentence motion within ten days and appeal with 30 days, he should also be advised of the PCRA time-constraints.

Here, Petitioner was not advised of the PCRA time constraints at the time of sentencing. (N.T., 3/22/13, pp. 3-7) Also, he was not expressly advised of his right to file an appeal, which will be addressed later. (*Id.*) Petitioner was sentenced on March 22, 2013. Petitioner did not file any post-sentence motion and did not file a direct appeal. However, he proffers that he indeed told plea-counsel at the bar of the court that he wanted a motion to reconsider the sentence and an appeal. Therefore, the judgment of sentence became final on April 22, 2013 (30th day landed on a Sunday), as that is the time in which to file a notice of appeal for direct appeal, which again, was not done by plea-counsel. Accordingly, petitioner had

until April 22, 2014 in order to file a timely PCRA petition. Petitioner filed his *pro se* PCRA petition on February 25, 2015, which was untimely, as it was not filed within one year after the judgment of sentence becoming final.

The PCRA statute, 42 Pa. C.S.A. § 9543-9545, in pertinent part, provides:

§ 9543. Eligibility for relief.

(a) **General rule.**--To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(ii) awaiting execution of a sentence of death for the crime;

(iii) serving a sentence which must expire before the person may commence serving the disputed sentence; or

(iv) has completed a sentence of imprisonment, probation or parole for the crime and is seeking relief based upon DNA evidence obtained under section 9543.1(d) (relating to postconviction DNA testing).

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v) (Deleted by amendment).

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

§ 9545. Jurisdiction and proceedings.

(a) Original jurisdiction.--Original jurisdiction over a proceeding under this subchapter shall be in the court of common pleas. No court shall have authority to entertain a request for any form of relief in anticipation of the filing of a petition under this subchapter.

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within one year of the date the claim could have been presented.

(3) For purposes of this subchapter, 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.

(4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.

(42 Pa. C.S.A. § 9543-9545)

Satisfying none of the timeliness exceptions (petitioner makes alternative argument, however, at the end of this section) under the PCRA statute, the petitioner makes a procedural due process argument. The PCRA court ruled that the petitioner does not satisfy any of the time-bar exceptions of the PCRA timeliness requirement, and as a result, the PCRA court states that it does not have the jurisdiction over the substantive issues. (PCRA court Opinion, July 23, 2018, p. 3) This is true as the PCRA statute is written. However, the petitioner proffers that procedural due process requires that petitioner should have been advised at sentencing of the one year time constraint of a PCRA petition, and that such a requirement would be a necessary safeguard protection of substantive claims that would otherwise not be addressed due to untimely filing.

Rule 704, as explained by this Court, stands for the following, in relevant part:

Rule 704(C)(3)(a) states that, at the time of sentencing, "[t]he judge shall determine on the record that the defendant has been advised ...", *inter alia*, "of the right to file a post-sentence motion and to appeal, ... [and] of the time within which the defendant must exercise those rights." Pa.R.Crim.P. 704(C)(3)(a) (emphasis added). The Comment to this Rule provides that "[t]his rule is intended to promote ... fair sentencing procedures ... by requiring that the defendant be fully informed of his or her post-sentence rights and the procedural requirements which must be met to preserve those rights." Pa. R.Crim.P. 704

Commonwealth v. Patterson, 940 A.2d 493, 499 (Pa. Super. 2007).

The fairness and procedural due process safeguards of this Rule should be extended to include being advised of the one year time constraint for filing a PCRA petition. Stated differently, this Rule is firmly rooted in procedural due process considerations, and therefore being advised of the PCRA time-constraints is a natural and necessary extension.

Petitioner further points to the following:

The Fourteenth Amendment provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law," and protects "the individual against arbitrary action of government," Kentucky Dept. of Corr. v. Thompson, 490 U.S. 454, 459-60, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989) (internal citations omitted). Similarly, Article I, Section 9 of the Pennsylvania Constitution guarantees a criminal defendant the right to due process of law. These two due process provisions are largely coextensive. Commonwealth v. Moto, 611 Pa. 95, 23 A.3d 989, 1001 (2011). The constitutional right to due process guarantees more than fair process, covering a substantive sphere as well, "barring certain government actions regardless of the fairness of the procedures used to implement them." County of Sacramento v. Lewis, 523 U.S. 833, 840, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998) (citing Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986)). "Due process" is not susceptible to precise definition; rather, the phrase expresses the requirement 764*764 of "fundamental fairness," a requisite "whose meaning can be as opaque as its importance is lofty." Lassiter v. Dep't of Soc. Serv. of Durham County, 452 U.S. 18, 24-25, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981).

In terms of procedural due process, government is prohibited from depriving individuals of life, liberty, or property, unless it provides the process that is due. While not capable of an exact definition, the basic elements of procedural due process are adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case. Wright, 961 A.2d at 132; Commonwealth v. Thompson, 444 Pa. 312, 281 A.2d 856, 858 (1971). Thus, courts examine procedural due process questions in two steps: the first asks whether there is

a life, liberty, or property interest that the state has interfered with; and the second examines whether the procedures attendant to that deprivation were constitutionally sufficient. Thompson, 490 U.S. at 460, 109 S.Ct. 1904.

Commonwealth v. Turner, 80 A.3d 754, 763-764 (Pa. 2013)

Additionally, “[t]he due process inquiry, in its most general form, entails an assessment as to whether the challenged proceeding or conduct “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” Commonwealth v. Kratsas, 764 A.2d 20, 27 (Pa. 2008)(Citing Patterson v. New York, 432 U.S. 197, 202, 97 S.Ct. 2319, 2323, 53 L.Ed.2d 281 (1977)).

Petitioner argues that his right to effective and competent counsel under the United States (6th Amendment as incorporated by the 14th Amendment) and Pennsylvania Constitutions (Article 1 § 9) were violated, as a result of ineffective assistance of counsel. Furthermore, petitioner’s liberty interest is at issue. Petitioner argues that it is likewise insufficient to not be advised of the one year time constraints of the PCRA. In addition to being advised of his right to file post-sentence motions within ten days of sentencing and an appeal within 30 days, Petitioner argues that procedural due process warrants being advised of the one year time constraint in which to file a timely PCRA petition.

Not being advised of this resulted in an untimely PCRA petition, and now facing having his substantive claims not heard due to this untimeliness. Being

advised of such an important time filing constraint is as important as being advised of post-sentence and appellate rights. The PCRA is another layer that ensures that convictions are not the result of actions or omissions that undermine the truth-determining process. Because it is such an important part of the system, one that may be used to grant redress for certain convictions, he should have—pursuant to procedural due process—been advised at sentencing of the PCRA’s one year time constraint, and that such a procedural safeguard is one that is “rooted in the traditions and conscience of our people as to be ranked as fundamental.”

In the State of New Jersey, for instance, the safeguards at sentencing are as follow, in pertinent part:

Rule 3:21-4. Sentence

(h) Reasons for Sentence. At the time sentence is imposed the judge shall state reasons for imposing such sentence including findings pursuant to the criteria for withholding or imposing imprisonment or fines under N.J.S.A. 2C:44-1 to 2C:44-3; the factual basis supporting a finding of particular aggravating or mitigating factors affecting sentence; and, if applicable, the reasons for ordering forfeiture of public office, position or employment, pursuant to N.J.S.A. 2C:51-2.

(i) Notification of Right to Appeal and to File Petitions for ***Post-Conviction Relief***. After imposing sentence, whether following the defendant's plea of guilty or a finding of guilty after trial, the court shall advise the defendant of the right to appeal and, if the defendant is indigent, of the right to appeal as an indigent. ***The court shall also inform the defendant of the time limitations in which to file petitions for post-conviction relief.***

NJ Ct.R. 3:21-4(h)(i)(emphasis added)

In New Jersey, the right to file an appeal and petitions for post-conviction relief are explained at sentencing, to specifically include, "The court shall also inform the defendant of the time limitations in which to file petitions for post-conviction relief." This addition in New Jersey is a safeguard that should be included in Pennsylvania, as it is petitioner's contention that it is warranted by due process. The procedural safeguards incorporated to the State of New Jersey are the same that are incorporated to the Commonwealth of Pennsylvania.

Accordingly, procedural due process warrants that petitioner should be advised at the time of sentencing of the one year time constraint in which to file a PCRA petition, and because procedural due process warrants this, then petitioner's *pro se* PCRA petition should be deemed timely filed, *nunc pro tunc*. The petitioner asserts that had he known, he would have filed timely. When he was firmly made aware, it became untenable to file due to prison officials. The Superior Court very much disagreed, and the petitioner respectfully disagrees with the Superior Court. (Commonwealth v. Kaleel Hinton, 1531 EDA 2018, J-S06026-19, May 1, 2019, p.5)

However, although the petitioner incorporates equitable elements that his petition should be deemed timely, they are primarily based on due process, as explained in the foregoing. Moreover, if the Superior Court does not have the authority to change the law, the petitioner argues that this Court does.

Requiring that defendants be advised at sentencing of the PCRA time-constraints would be a modest change that would ensure very important due process rights of the defendants.

For the foregoing reasons, special and important reasons exist and allocatur should be granted. This Honorable Court should consider the value in this added procedural safeguard that defendants should be advised of.

Additional arguments for consideration, in the alternative

Lastly, petitioner would like to raise the following. At the sentencing, it is not entirely clear if the petitioner was sufficiently advised of his right to file an appeal. After the sentence was imposed, the sentencing court stated the following:

THE COURT: Ten days as to the modify period (unintelligible).

DEFENSE COUNSEL: Yes.

THE COURT: All motion to (unintelligible) attorney (unintelligible) free of charge. He can go back.

(N.T., 3/22/13, p.7)

Here, it seems that the plea-court and the plea-counsel were remiss in failing to make clear, on the record, what the petitioner's appellate rights were. Petitioner argues that this amounts to an administrative break-down on the part of the plea-court, and ineffective assistance of plea-counsel. (See Commonwealth v. Robinson, 781 A.2d 152, 158 (Pa.Super.2001), rev'd on other grounds at 575 Pa. 500, 837 A.2d 1157 (2003)(Pennsylvania Supreme Court declining to quash

untimely appeal where appellant was not at fault)(See also 42 Pa. C.S.A. § 9543 (a)(2)(iv) “ The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court”)) Nonetheless, petitioner still had the wherewithal to request of plea-counsel to file a post-sentence motion *and* appeal, and even if *arguendo*, he did not, the plea-court's failure amounted to government interference, and plea-counsel was ineffective and PCRA counsel was also ineffective for failing to raise this in an amended PCRA petition. (See Commonwealth v. Aaron Bradley, 261 A.3d 381, 401 (Pa. 2021)(“[A] PCRA petitioner may, after a PCRA court denies relief, and after obtaining new counsel or acting *pro se*, raise claims of PCRA counsel's ineffectiveness at the first opportunity to do so, even if on appeal.”))

Special and important reasons exist and allocatur should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kaleel Hinton

Date: 5-17-24