

APPENDIX “A”

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 307 EAL 2023
	:	
Respondent	:	
	:	
v.	:	Petition for Allowance of Appeal
	:	from the Order of the Superior Court
	:	
	:	
KALEEL HINTON,	:	
	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 27th day of February, 2024, the Petition for Allowance of Appeal
is **DENIED**.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION

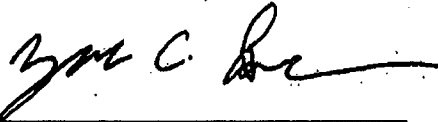
FILED
SEP 18 2023
PCRA Unit
CP Criminal Branch

Commonwealth of Pennsylvania	:	Common Pleas Term
	:	
VS.	:	
	:	
	:	CP-51-CR-0010622-2012 ✓
	:	CP-51-CR-0010621-2012 ✓
	:	CP-51-CR-0010600-2012 ✓
Kaleel Hinton	:	CP-51-CR-0010599-2012 ✓
	:	CP-51-CR-0010598-2012 ✓
	:	CP-51-CR-0010597-2012 ✓
	:	CP-51-CR-0010596-2012 ✓
	:	CP-51-CR-0010595-2012 ✓

PCRA Order

AND NOW, this 18th day of September, 2023, it is hereby **ORDERED AND DECREED** that petitioner's Post Conviction Relief Act Petition, in the nature of a request for *nunc pro tunc* reinstatement of the right to file a petition for allowance of appeal to the Supreme Court of Pennsylvania is **GRANTED**, pursuant to the newly discovered facts exception and Commonwealth v. Bennett (593 Pa. 382 (2007)). Counsel is to file a petition within 30 days of this order.

By the Court:



The Honorable Zachary C. Shaffer

APPENDIX “B”

FILED

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


2018 JUL 24 PM 3:50

**OFFICE OF JUDICIAL RECORDS
CRIMINAL DIVISION
FIRST JUDICIAL DISTRICT
OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0010595-2012
	:	CP-51-CR-0010596-2012
	:	CP-51-CR-0010597-2012
	:	CP-51-CR-0010598-2012
	:	CP-51-CR-0010599-2012
	:	CP-51-CR-0010600-2012
	:	CP-51-CR-0010621-2012
	:	CP-51-CR-0010622-2012
	:	
	:	1531 EDA 2018
	:	
	:	
	:	

V.

CP-51-CR-0010598-2012 Comm. v. Hinton, Kaleel
Opinion



KALEEL HINTON

MEANS, J.

JULY 23, 2018

PCRA OPINION

FACTUAL HISTORY

With respect to docket CP-51-CR-0010595-2012, on March 29, 2012, Kaleel Hinton ("Defendant") approached Troy Marshall, Jr. at 54th Street and Woodland Avenue in the city and county of Philadelphia and pointed a gun at him. Defendant told him "Run your pockets." Defendant stole Mr. Marshall's wallet, cell phone and headphones. He also took the Mr. Marshall's ATM card and demanded its PIN, threatening him by saying that if the number was incorrect, "We're having problems."

With respect to docket CP-51-CR-0010596-2012, on June 4, 2012, the Defendant robbed Nicole Wimbush at gunpoint at 1337 South 58th Street in Philadelphia, taking her money.

On June 5, 2012, with respect to docket CP-51-CR-0010621-2012, Defendant robbed Jason Stokes at gunpoint at 4923 Walton Street, stealing his wallet and cellphone.

With respect to docket CP-51-CR-0010597-2012, the Defendant robbed both Carin Hubbard and Tigist Abdi at gunpoint on June 13, 2012, at 6600 Essington Avenue in Philadelphia, taking their money.

With respect to dockets CP-51-CR-0010598-2012, CP-51-CR-0010599-2012, CP-51-CR-0010622-2012 and CP-51-CR-0010600-2012, which all correspond to separate incidents occurring on the same day, June 26, 2012, Defendant committed a series of robberies. In the first of these, Defendant robbed Kalpesh Patel and Kunal Bakhru at gunpoint at 58th Street and Whitfield Avenue, taking their money. Defendant then robbed Paramjit Sing at gunpoint at 7239 Elmwood Avenue, taking his money. On that same day, Defendant was found to be in possession of marijuana at 5970 Springfield Avenue. Defendant also robbed Md. Alm, Zenebe Bekele and Shahzad Malik at gunpoint at 4201 Walnut Street, taking their money.

PROCEDURAL HISTORY

On March 22, 2013, Defendant pled guilty before this Court to Robbery and related charges on the aforementioned dockets in exchange for a sentence of incarceration of 15 to 30 years, to be followed by 10 years' probation. Defendant did not file a direct appeal. On February 25, 2015, Defendant filed a *pro se* petition under the Post Conviction Relief Act ("PCRA"). Counsel was then appointed and counsel filed an amended petition on August 19, 2015. The Commonwealth filed its response on November 20, 2017. On April 30, 2015, this Court denied Defendant's petition. On May 30, 2018, Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania.

LEGAL ISSUES

A. DEFENDANT'S PCRA PETITION IS UNTIMELY, AND HE HAS ALSO FAILED TO CLAIM OR ESTABLISH ANY EXCEPTION TO THE PCRA TIMELINESS REQUIREMENT.

The PCRA petition filed by the Defendant is untimely. *See* 42 Pa.C.S.A § 9545(b)(1). “Under the amended PCRA, all petitions, including second and subsequent, must be filed within one year of the date on which the judgement becomes final, unless one of the three statutory exceptions ... applies” *Commonwealth v. Yarris*, 731 A.2d 581, 587 (Pa. 1999). “Judgement 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.” 42 Pa.C.S.A § 9545(b)(2). As to when the judgement becomes final, *see Commonwealth v. Whitney*, 817 A.2d 473, 477 (Pa. 2003); *Commonwealth v. Fahy*, 737 A.2d 214, 218 (Pa. 1999); 42 Pa.C.S.A § 9545(b)(1). When the timeliness requirement is not met, the Court no longer has jurisdiction to hear the petition. “This Court has consistently upheld and repeatedly noted the jurisdictional nature of the PCRA time requirement”. *See Commonwealth v. Rienzi*, 827 A.2d 369, 371 (Pa. 2003). As a result, when the PCRA is filed outside of the one year time requirement, the courts may not consider the petition unless the petitioner pleads and proves that any of the following three narrowly tailored exceptions apply; (1) The claim was not previously raised because of interference by government officials in violation of state or federal constitutions; (2) the claim is based on facts that were not previously known to the petitioner and could not have been discovered through the exercise of due diligence; or (3) the petition asserts a constitutional right recognized by either the Supreme Court of the United States or the Supreme Court of Pennsylvania after the one year deadline and has been asserted to apply retroactively. 42 Pa.C.S.A § 9545(b)(1)(i)-(iii); *see also Commonwealth v. Whitney*, 817 A.2d at 477-478. In addition, the stated narrowly tailored

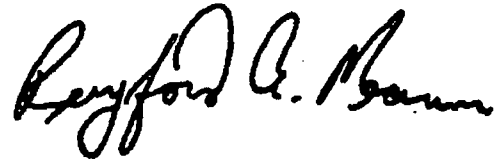
exceptions require the petitioner to file the PCRA petition with the claimed exception within 60 days of the date the claim could have been presented. 42 Pa.C.S.A § 9545(b)(2).

In this case, the Defendant filed his petition outside of the one year filing period. Defendant's judgements of sentence became final - pursuant to 42 Pa.C.S.A § 9545(b)(3) - on April 22, 2013, thirty days after he was sentenced. At that point, he became time barred from filing a direct appeal to the Superior Court of Pennsylvania. As such, the Defendant had one year from that date to file a PCRA petition, making his PCRA deadline approximately April 22, 2014. The Defendant did not file his PCRA until February 25, 2015, roughly twenty-two months after his sentence was imposed, rendering the petition untimely and stripping this Court of jurisdiction to consider the petition. At no point in his petition does Defendant acknowledge the fact that his filing is time barred, nor does he claim any of the recognized exceptions. The Defendant claims that his trial counsel was ineffective in failing to file timely appeals. However, a claim of ineffective assistance of counsel does not qualify a petitioner for PCRA relief outside of the timeliness requirement. *See Commonwealth v. Abu-Jamal*, 833 A.2d 719, 724 (Pa. 2003) ("Couching claims in ineffectiveness terms does not save an untimely petition"); *Commonwealth v. Breakiron*, 781 A.2d 94, 100 (Pa. 2001) ("Our Court has expressly rejected attempts to utilize ineffective assistance of counsel claims as a means of escaping jurisdictional time requirements for filing a PCRA petition"); *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 785 (Pa. 2000) ("A claim of ineffective assistance of counsel does not save an otherwise untimely petition for view on the merits"). As Defendant's petition is time barred and he claims no recognized exception, this Court lacks jurisdiction to hear the petition and properly denied it as untimely.

CONCLUSION

Based on the above reasons, the judgement of this Court must not be disturbed.

BY THE COURT:

A handwritten signature in cursive script, reading "Raymond A. Means". The signature is written in black ink and is positioned above a horizontal line.

Means, J.

APPENDIX “C”

J-S06026-19

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

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

KALEEL HINTON

Appellant

No. 1531 EDA 2018

Appeal from the PCRA Order April 30, 2018
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0010595-2012,
CP-51-CR-0010596-2012, CP-51-CR-0010597-2012,
CP-51-CR-0010598-2012, CP-51-CR-0010599-2012,
CP-51-CR-0010600-2012, CP-51-CR-0010621-2012,
CP-51-CR-0010622-2012

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

MEMORANDUM BY DUBOW, J.:

FILED MAY 01, 2019

Appellant, Kaleel Hilton, appeals from the April 30, 2018 Order, entered in the Philadelphia County Court of Common Pleas, dismissing his first Petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-9546, as untimely. After careful review, we affirm.

On November 28, 2012, Appellant entered negotiated guilty pleas at eight separate docket numbers to numerous counts of Robbery, Possession of a Prohibited Firearm, and Carrying a Firearm without a License¹ arising from

¹ 18 Pa.C.S. §§ 3701(a)(1)(ii); 6105(a)(1); and 6106(a)(1), respectively.

a series of robberies he committed between June 4, 2012, and June 26, 2012.² On March 22, 2013, the trial court sentenced Appellant to an aggregate term of 15 to 30 years' incarceration followed by 10 years' probation.³

Appellant did not file a Post-Sentence Motion or a direct appeal from his Judgment of Sentence. Thus, Appellant's sentence became final on April 22, 2013.⁴ **See** 42 Pa.C.S. § 9545(b)(3) (providing "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[]").

On February 25, 2015, Appellant *pro se* filed the instant PCRA Petition, in which he claimed that he is serving an illegal sentence pursuant to ***Alleyne v. United States***, 133 S.Ct. 2151 (U.S. 2013), and that his counsel had been ineffective for failing to file a direct appeal. Brief in Support of PCRA Petition, 2/25/15, at 1-3. The PCRA court appointed counsel who filed an Amended Petition on May 25, 2017, reiterating Appellant's ineffectiveness of counsel claim.

On November 20, 2017, the Commonwealth filed a Motion to Dismiss Appellant's PCRA Petition as untimely.

² In exchange for Appellant's plea, the Commonwealth dismissed numerous other charges.

³ The court did not sentence Appellant to a mandatory minimum sentence.

⁴ April 21, 2013, the thirtieth day after entry of Appellant's Judgment of Sentence, fell on a Sunday. **See** 1 Pa.C.S. § 1908.

On February 26, 2018, the PCRA court notified Appellant of its intent to dismiss his Petition as untimely without a hearing pursuant to Pa.R.Crim.P. 907. Appellant did not file a response to the Court's Rule 907 Notice.

On April 30, 2018, the PCRA court dismissed Appellant's Petition. This timely appeal followed.

Appellant raises the following issue on appeal:

Did the Honorable PCRA [c]ourt err when it dismissed [Appellant's] Petition for being untimely when, it certainly appeared that previous counsel was ineffective and where counsel abandoned [Appellant]?

Appellant's Brief at 3.

"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. Root***, 179 A.3d 511, 515-16 (Pa. Super. 2018) (citation omitted). This Court grants great deference to the findings of the PCRA court if they are supported by the record. ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007). We give no such deference, however, to the court's legal conclusions. ***Commonwealth v. Ford***, 44 A.3d 1190, 1194 (Pa. Super. 2012).

Before we may consider the merits of Appellant's claim, we must determine whether there is jurisdiction to consider the PCRA petition. ***Commonwealth v. Furgess***, 149 A.3d 90, 92 (Pa. Super. 2016) (citation omitted). "The timeliness of a post-conviction petition is jurisdictional." ***Id.*** (citation omitted). 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 became final unless the petition alleges and the petitioner proves one of the three exceptions to the time limitations for filing the petition set forth in Section 9545(b)(1) of the PCRA;⁵ and the petitioner filed the petition within 60 days of the date the exception could first have been presented.⁶ ***Id.*** Here, Appellant's Judgment of Sentence became final on April 22, 2013. Appellant's PCRA Petition, filed on February 25, 2015, is patently untimely.

⁵ **(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.

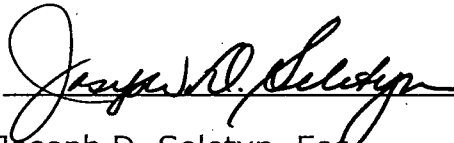
42 Pa.C.S. § 9545(b)(1)(i)-(iii).

⁶ **See** 42 Pa.C.S § 9545(b)(2).

Appellant has not invoked or argued that any timeliness exception applies to his claim that his counsel was ineffective.^{7, 8} Rather, in both his Amended Petition and his Brief to this Court, Appellant merely asserts that his counsel was ineffective for failing to file a direct appeal on his behalf. **See** Amended Petition, 5/25/17, at 4-6; Appellant's Brief at 7-11. Claims of ineffective assistance of counsel do not excuse the failure to timely file a PCRA Petition. **Commonwealth v. Wharton**, 886 A.2d 1120, 1127 (Pa. 2005). Accordingly, we are without jurisdiction to review Appellant's issue.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/1/19

⁷ Although Appellant cites **Alleyne, supra**, in his Brief to this Court, the holding in **Alleyne** does not establish a timeliness exception for ineffective assistance of counsel claims.

⁸ Effective December 24, 2018, Section 9545(b)(2) now provides that "[a]ny petition invoking an exception . . . shall be filed within one year of the date the claim could have been presented."

APPENDIX

D