EXHIBIT

A

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
vs.	:	
HASSAN WILLIAMS,	:	
Appellant	:	No. 714 EDA 2009

Appeal from the Judgment of Sentence February 23, 2009
In the Court of Common Pleas of Philadelphia County
Criminal Division, No(s): CP-51-CR-0010937-2007

BEFORE: GANTMAN, MUNDY, JJ. AND MCEWEN, P.J.E.

MEMORANDUM: **FILED APRIL 1, 2011**

Appellant, Hassan Williams, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury trial convictions for first degree murder, robbery, criminal conspiracy, and possessing instruments of crime.[1] We affirm.

The trial court opinion set forth the relevant facts of this appeal as follows:

> At approximately 1:00 a.m. on the morning of June 25, 2007, [the victim] came into Lucky Star, a Chinese take-out restaurant at 6727 Elmwood Avenue and ordered food from store owner Lin Liu.... As Liu was preparing the order, two men came into the store, shot [the victim] three times, and fired another shot that shattered the

[1] 18 Pa.C.S.A. §§ 2502(a), 3701, 903, 907 respectively.

> Plexiglass screen that separated the customers from Liu. The shattered screen injured Liu. Both [the victim] and Liu called the police. The entire incident was recorded on the store's security camera.
>
> When police arrived on the scene, they called an ambulance for [the victim], who was pronounced dead from three gunshot wounds at 2:09 a.m. Police interviewed Liu, who was frightened from the incident and could not immediately identify either shooter. However, when Liu viewed the surveillance video, he identified [Appellant] as one of the shooters. Liu was familiar with [Appellant] because [Appellant] had been in the store approximately every other day for the past four or five years.
>
> On June 26, 2007, Detective Hagan arrested [Appellant]. [Appellant] gave a statement where he admitted that, on the night of the murder, he and another man, [Co-defendant Tyreek Brown ("Co-defendant")], walked into the Lucky Star restaurant showing their guns. [Co-defendant] and [the victim] started wrestling and [Co-defendant] fired a shotgun shot that shattered the Plexiglass screen. [Appellant] admitted that he fired a shot at [the victim] and that he and [Co-defendant] took twelve dollars from [the victim] and split the money between them.

(Trial Court Opinion, filed May 28, 2009, at 4-5).

On November 8, 2007, Appellant filed a notice of alibi, indicating he would "present an alibi defense that he was not present at the time of the crime." (Notice of Alibi, filed 11/8/07, at 1). Instead, Appellant claimed he was at his home with his mother and his girlfriend on the night of the shooting. On February 5, 2008, Appellant filed a motion to sever his case from that of Co-defendant. The court granted Appellant's motion to sever on February 27, 2008.

Following trial, a jury found Appellant guilty of first degree murder, robbery, PIC, and conspiracy. On February 23, 2009, the court sentenced Appellant to life without parole, plus a consecutive term of ten (10) to twenty (20) years' imprisonment. Appellant did not file post-sentence motions.

On March 9, 2009, Appellant timely filed his notice of appeal. On March 11, 2009, Appellant filed a concise statement of matters complained of on appeal, pursuant to Pa.R.A.P. 1925(b). In his Rule 1925(b) statement, Appellant indicated the court reporter had not yet transcribed the notes of testimony, and he requested additional time to file an amended Rule 1925(b) statement. Although the court did not subsequently address Appellant's request, Appellant filed an amended Rule 1925(b) statement on June 12, 2009.

Appellant raises four issues for our review:

> WAS THE EVIDENCE INSUFFICIENT TO SUPPORT THE CONVICTIONS FOR MURDER, ROBBERY, CRIMINAL CONSPIRACY AND [PIC], PARTICULARLY SINCE APPELLANT PRODUCED AN ALIBI DEFENSE?
>
> DID [THE TRIAL COURT] ERR WHEN STATING THE ISSUES WERE WAIVED IN THE AMENDED [RULE] 1925(B) STATEMENT...WHEN [COUNSEL], ON BEHALF OF [APPELLANT], SPECIFICALLY ASKED PERMISSION IN THE ORIGINAL [RULE] 1925(B) STATEMENT...TO RAISE ADDITIONAL ISSUES ONCE THE NOTES OF TESTIMONY WERE TRANSCRIBED AND HE RECEIVED THEM?
>
> DID [THE TRIAL COURT] ERR IN ALLOWING THE JURY TO HEAR THE INFLAMMATORY 911 TELEPHONE CALL OF THE VICTIM AFTER HE WAS SHOT AND DYING? DID THE CALL

> HAVE NO EVIDENTIARY VALUE, SINCE IT CONSISTED OF A DYING VICTIM SCREAMING IN TREMENDOUS PAIN, YELLING THAT ANIMALS SHOT HIM, AND WITH CONTINUOUS, INCOHERENT SCREAMING AND CRYING? WAS THE INTRODUCTION OF THIS TAPE HIGHLY PREJUDICIAL, PARTICULARLY SINCE IT HAD NO PROBATIVE VALUE AS TO WHO COMMITTED THE CRIME? DID THIS HIGHLY EMOTIONAL TAPE TAINT THE JURY AND DENY [APPELLANT] A FAIR TRIAL?
>
> DID [THE TRIAL COURT] IMPROPERLY ALLOW REFERENCE TO THE JURY OF [APPELLANT'S] POST ARREST REFUSAL TO GIVE A VIDEOTAPED STATEMENT TO THE DETECTIVES AFTER HE GAVE A WRITTEN STATEMENT, THEREBY COMMENTING ON HIS RIGHT TO REMAIN SILENT AND THUS TAINTING THE JURY? DID THIS REFERENCE VIOLATE THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 9 OF THE PENNSYLVANIA CONSTITUTION?

(Appellant's Brief at 5-6).

In his first issue, Appellant contends the Commonwealth presented no "physical evidence" linking him to the murder. Appellant asserts the Commonwealth did not find a firearm, ammunition, or other contraband on Appellant's person or at his home. Appellant concedes Mr. Liu identified him as one of the robbers; likewise, Appellant acknowledges his inculpatory, post-arrest statement to the police. Appellant argues, however, Mr. Liu's trial testimony conflicted with statements he provided to the police after the shooting. Appellant further argues the voluntariness of his post-arrest statement was questionable due to the amount of time he spent in custody, as well as a learning disability that limits Appellant's ability to read and write. Additionally, Appellant emphasizes the testimony from his mother,

which established he did not leave their house on the night of the murder. Appellant concludes the Commonwealth presented insufficient evidence to support each of the convictions. We disagree.

When examining a challenge to the sufficiency of evidence:

> The standard we apply...is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Jones, 874 A.2d 108, 120-21 (Pa.Super. 2005) (quoting ***Commonwealth v. Bullick***, 830 A.2d 998, 1000 (Pa.Super. 2003)).

The Pennsylvania Crimes Code defines the offense of first degree murder as follows:

§ 2502. Murder

> **(a) Murder of the first degree.**—A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing.

18 Pa.C.S.A. § 2502(a). "To find a defendant guilty of first degree murder a jury must find that the Commonwealth has proven that he...unlawfully killed a human being and did so in an intentional, deliberate and premeditated manner." ***Commonwealth v. Sattazahn***, 563 Pa. 533, 540, 763 A.2d 359, 363 (2000), *judgment aff'd*, 537 U.S. 101, 123 S.Ct. 732, 154 L.Ed.2d 588 (2003).

> It is the element of a willful, premeditated and deliberate intent to kill that distinguishes first-degree murder from all other criminal homicide. Specific intent to kill may be inferred from the defendant's use of a deadly weapon upon a vital [part] of the victim's body.

Id. at 540-41, 763 A.2d at 363 (internal citations omitted).

The Crimes Code defines the offense of robbery as follows:

> **§ 3701. Robbery**
>
> **(a) Offense defined.—**
>
> (1) A person is guilty of robbery if, in the course of committing a theft, he:
>
> * * *
>
> (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury;
>
> * * *

18 Pa.C.S.A. § 3701(a)(1)(ii).

Section 907 of the Crimes Code provides:

§ 907. Possessing instruments of crime

(a) Criminal instruments generally.—A person commits a misdemeanor of the first degree if he possesses any instrument of crime with intent to employ it criminally.

18 Pa.C.S.A. § 907(a).

Section 903 of the Crimes Code provides:

§ 903. Criminal conspiracy

(a) Definition of conspiracy.—A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

* * *

18 Pa.C.S.A. § 903(a).

To sustain a conviction for criminal conspiracy, the Commonwealth must establish that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy.

Commonwealth v. Hennigan, 753 A.2d 245, 253 (Pa.Super. 2000) (quoting ***Commonwealth v. Rios***, 546 Pa. 271, 283, 684 A.2d 1025, 1030 (1996), *cert. denied*, 520 U.S. 1231, 117 S.Ct. 1825, 137 L.Ed.2d 1032 (1997)).

Instantly, Mr. Liu testified he owns and operates the Lucky Star restaurant. At approximately 1:00 a.m. on June 25, 2007, the victim entered the restaurant and placed an order with Mr. Liu. After receiving the order, Mr. Liu went to the kitchen to prepare the food. While in the kitchen, Mr. Liu heard people arguing near the counter area. Mr. Liu approached the counter to look for the cause of the commotion, and he saw the victim with two other men. One of the men held a large gun. When Mr. Liu saw the gun, he turned around to retreat to the kitchen. At that point, Mr. Liu heard gunshots. One of the shots struck a Plexiglass window, which separated the front of the restaurant from the kitchen. The window shattered, with debris striking Mr. Liu's right arm.

Following the gunshots, Mr. Liu looked towards the counter. Mr. Liu did not see anyone, so he decided to call the police. Thereafter, Mr. Liu found the victim lying on the floor in the front of the restaurant. The victim had been shot, and he "acted like he wanted [Mr. Liu] to help him." (***See*** N.T. Trial, 12/3/08, at 25.) Mr. Liu informed the victim Mr. Liu had already called the police.

Significantly, the restaurant had a security camera mounted outside the Plexiglass window, facing the front of the restaurant. After the police arrived, they reviewed the security camera footage with Mr. Liu. Based on this footage, Mr. Liu identified Appellant as one of the men arguing with the victim. Mr. Liu knew Appellant, "[b]ecause he came to [the] store very

often," and he was one of Mr. Liu's neighbors. (***Id.*** at 18). Mr. Liu had known Appellant for "four or five years," and Appellant came to the restaurant "almost every other day" during that period. (***Id.*** at 19-20).

In addition to Mr. Liu's identification, Appellant had made a post-arrest statement that Detective Hagan read into the record. The relevant portion of the statement of provides:

> "Then me and [Co-defendant] walk in the Chinese store with our guns out. The [victim] puts the money either in [Co-defendant's] hands or on the counter. [Co-defendant] and the [victim] started wrestling and [Co-defendant] fires a shot from the shotgun. The [victim] falls to the floor. I put my left hand up and I fire one shot at [the victim]. We run out the door and run down Bonafon Street."

(***See*** N.T. Trial, 12/4/08, at 24.) After the shooting, Appellant and Co-defendant split the money they took from the victim. (***Id.*** at 27). Appellant also gave his gun to Co-defendant, who disposed of the firearms. (***Id.*** at 25).

Here, the evidence established that Appellant entered the restaurant with Co-defendant, shot the victim, stole money from the victim, and split the robbery proceeds with Co-defendant. The jury found the Commonwealth's evidence credible, and we will not disturb the jury's determination. ***See Commonwealth v. Wilson***, 825 A.2d 710 (Pa.Super. 2003) (holding sufficiency of evidence review does not include assessment of credibility of witness' testimony). Thus, sufficient evidence supported Appellant's convictions.

In his second issue, Appellant asserts he timely filed his original Rule 1925(b) statement. Appellant claims he could not raise all of his appellate issues at that time, because the court reporter had yet to transcribe the notes of testimony. Appellant maintains his original Rule 1925(b) statement included a proper request for additional time to file an amended Rule 1925(b) statement. Appellant contends the trial court did not respond to his request to file an amended Rule 1925(b) statement; nevertheless, Appellant filed an amended Rule 1925(b) statement. Appellant complains the court found he had waived the claims raised in the amended Rule 1925(b) statement, even though Appellant complied with the requirements of ***Commonwealth v. Gravely***, 601 Pa. 68, 970 A.2d 1137 (2009). Appellant concludes he properly preserved the issues raised in his amended Rule 1925(b) statement, and this Court must address the merits of these issues on appeal. We agree.

"If the judge entering the order giving rise to the notice of appeal...desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal." Pa.R.A.P. 1925(b). "The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing and service of the [Rule 1925(b)] Statement." Pa.R.A.P. 1925(b)(2). "In

extraordinary circumstances, the judge may allow for the filing of [an] amended or supplemental Statement *nunc pro tunc*." ***Id.***

"[W]hile [Rule 1925(b)(2)] clearly envisions requests for extensions, it is not explicit as to the method by which an appellant must proceed. Its plain language requires an 'application' by the appellant within the initial 21-day period and some assertion...of good cause. But the...Rule provides little more." ***Gravely, supra*** at 80, 970 A.2d at 1144. Consequently, our Supreme Court determined "an appellant who seeks an extension of time to file a [Rule 1925(b)] Statement must do so by **filing a written** application with the trial court, setting out good cause for such extension, and requesting an order granting the extension." ***Id.*** at 82, 970 A.2d at 1145 (emphasis in original). "The failure to file such an application within the 21-day time limit set forth in Rule 1925(b)(2) will result in waiver of all issues not raised by that date." ***Id.***

Instantly, Appellant filed his original Rule 1925(b) statement on March 11, 2009. The original Rule 1925(b) statement included the following application to file an amended Rule 1925(b) statement:

> Present counsel respectfully requests the time to file an Amended [Rule] 1925(b) Statement once the notes of testimony are transcribed. [Counsel] has tried many trials in the last three months and does not recall the specifics in terms of objections during this trial. He believes there were some objections to the District Attorney's closing speech, but he does not have the benefit of the notes of testimony and does not recall the specifics. The notes of testimony are ordered. [Counsel] would ask for additional time to file any other additional issues.

(***See*** Rule 1925(b) Statement, filed 3/11/09, at 2-3.) The trial court did not respond to Appellant's application, and Appellant filed an amended Rule 1925(b) statement on June 12, 2009. The amended Rule 1925(b) statement included the third and fourth issues Appellant now raises on appeal.[2]

Here, Appellant took adequate steps to comply with Rule 1925(b)(2). Appellant acted promptly, making his application to file an amended Rule 1925(b) statement in writing within two days of filing the notice of appeal. Appellant made his request on the record, explaining he could not evaluate certain issues without the benefit of the notes of testimony. Thus, we cannot conclude Appellant waived the issues presented in his amended Rule 1925(b) statement. ***See Gravely, supra***; Pa.R.A.P. 1925(b)(2). We now address the claims raised in that statement.

In his third issue, Appellant contends the court permitted the Commonwealth to play the recording of the victim's 911 call. Appellant asserts the 911 recording includes the victim's screams, cries, and other unintelligible statements. Appellant argues the recording did not have any evidentiary value, as the victim failed to provide a description or identification of the shooters. Appellant insists the prejudicial nature of the

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[2] In a supplemental opinion, the trial court concluded Appellant had waived the issues raised in the amended Rule 1925(b) statement. The court, however, addressed the merits of these issues "in the interests of judicial economy...." (***See*** Supplemental Trial Court Opinion, filed 7/7/09, at 2.)

911 recording outweighed its probative value, if any, and the recording served only to inflame the passions of the jury. Appellant concludes the court abused its discretion in permitting the jury to hear the 911 recording. We disagree.

"Admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion." ***Commonwealth v. Drumheller***, 570 Pa. 117, 135, 808 A.2d 893, 904 (2002), *cert. denied*, 539 U.S. 919, 123 S.Ct. 2284, 156 L.Ed.2d 137 (2003) (quoting ***Commonwealth v. Stallworth***, 566 Pa. 349, 363, 781 A.2d 110, 117 (2001)).

> Admissibility depends on relevance and probative value. Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact.

Drumheller, supra (quoting ***Stallworth, supra*** at 363, 781 A.2d at 117-18). "An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record." ***Commonwealth v. Hyland***, 875 A.2d 1175, 1186 (Pa.Super. 2005), *appeal denied*, 586 Pa. 723, 890 A.2d 1057 (2005).

"Demonstrative evidence such as photographs, motion pictures, diagrams, and [tape recordings] have long been permitted to be entered into

evidence provided that the demonstrative evidence fairly and accurately represents that which it purports to depict." ***Commonwealth v. Serge***, 586 Pa. 671, 682, 896 A.2d 1170, 1177 (2006), *cert. denied*, 549 U.S. 920, 127 S.Ct. 275, 166 L.Ed.2d 211 (2006). "The overriding principle in determining if any evidence, including demonstrative, should be admitted involves a weighing of the probative value versus prejudicial effect. We have held that the trial court must decide first if the evidence is relevant and, if so, whether its probative value outweighs its prejudicial effect." ***Id.*** "'Unfair prejudice' means a tendency to suggest decision on an improper basis or divert the jury's attention away from its duty of weighing the evidence impartially." ***Commonwealth v. Wright***, 599 Pa. 270, 325, 961 A.2d 119, 151 (2008).

Instantly, the victim's 911 call lasted one minute and fifteen seconds. The call commenced with the 911 dispatcher asking about the circumstances of his emergency. The victim initially screamed and then asked the dispatcher for help. The victim informed the dispatcher he had just been shot, he repeated his plea for help, he provided the address for the restaurant (67th and Elmwood Streets), he indicated his belief that he was about to die, and he told the dispatcher he was inside a store. At that point, the call ended. The contents of the 911 recording confirmed certain aspects of the testimony from Mr. Liu and the police witnesses. Although the 911 recording included screaming and other unintelligible statements, the

inflammatory nature of this brief recording did not outweigh its probative value. We agree with the trial court's conclusion that the recording "was not any more emotionally disturbing than photographs we show the jurors as a rule when they're necessary." (***See*** Supplemental Trial Court Opinion at 3.) In light of the applicable scope and standard of review, the trial court did not abuse its discretion in admitting the 911 recording. ***See Drumheller, supra***. ***Compare Commonwealth v. Groff***, 514 A.2d 1382 (Pa.Super. 1986), *appeal denied*, 515 Pa. 619, 531 A.2d 428 (1987) (holding court erroneously admitted 911 tape made during course of murder, where inflammatory nature of evidence outweighed probative value; however, admission of tape constituted harmless error where Commonwealth presented overwhelming evidence of guilt).

In his fourth issue, Appellant complains Detective Hagan read Appellant's post-arrest statement into the record. After reading the statement into the record, Detective Hagan said Appellant had declined to have his statement videotaped. Appellant concludes Detective Hagan's response constituted an improper reference to Appellant's right to remain silent, and the trial court should have granted a mistrial on this basis. We disagree.

"A mistrial is an 'extreme remedy' that is only required where the challenged event deprived the accused of a fair and impartial trial." ***Commonwealth v. Laird***, 605 Pa. 137, ___, 988 A.2d 618, 638 (2010),

cert. denied, ___ U.S. ___, 131 S.Ct. 659, 178 L.Ed.2d 492 (2010). "The denial of a mistrial motion is reviewed for an abuse of discretion." ***Id.***

"It is axiomatic that a defendant enjoys a Constitutional right to remain silent and that it is a violation of that right where reference is made to the accused's post-arrest silence." ***Commonwealth v Messersmith***, 860 A.2d 1078, 1093 (Pa.Super. 2004), *appeal denied*, 583 Pa. 688, 878 A.2d 863 (2005) (quoting ***Commonwealth v. Nolen***, 535 Pa. 77, 86, 634 A.2d 192, 197 (1993)).

> "[I]t is irrelevant whether a defendant elects to assert the constitutional right to remain silent from the outset or makes a voluntary statement and then asserts the right." The reference to post-arrest silence is not permitted. Nor may a prosecutor make references to the defendant's resumption of silence.

Commonwealth v. Duffey, 579 Pa. 186, 203, 855 A.2d 764, 774-75 (2004) (quoting ***Commonwealth v. DiPietro,*** 538 Pa. 382, 386, 648 A.2d 777, 779 (1994)).

Instantly, the Commonwealth questioned Detective Hagan about Appellant's adoption of his post-arrest statement:

> [DETECTIVE HAGAN]: The next form we use is called...Statement Adoption Attestation. All it means is he attested to what he told us is true and correct and to the best of his belief.
>
> * * *
>
> [COMMONWEALTH]: And did you read that to him?
>
> [DETECTIVE HAGAN]: Yes.

> [COMMONWEALTH]: Following your reading it to him, what, if anything, did he do?
>
> [DETECTIVE HAGAN]: He signed it under "Signature Of Witness."
>
> * * *
>
> [COMMONWEALTH]: Now, following the adoption of his statement, did you provide him with any other opportunity?
>
> [DETECTIVE HAGAN]: Yes. We also provided an opportunity to have his statement videotaped. And the way we usually do that is just a summary of the statement that we actually recorded. And he refused to do that.

(***See*** N.T. Trial, 12/4/08, at 30-31.) Defense counsel immediately objected and moved for a mistrial. The trial transcripts make clear the Commonwealth did not attempt to elicit a comment from Detective Hagan about any "resumption of silence" on Appellant's part. ***See Duffey, supra***.

> Allowing testimony that [Appellant] did not accept the detective's offer to videotape his statement is not a comment on his right to remain silent rather, it was offered to explain why the statement was not videotaped.
>
> * * *
>
> The Commonwealth was entitled to show that [Appellant] was offered this opportunity, but declined. Without this fact, the jury might have inferred that the police purposely failed to video the statement, and therefore, the statement was not genuine or was the result of police fabrication.

(***See*** Supplemental Trial Court Opinion at 5-6). We agree. Thus, Appellant is not entitled to relief on his fourth issue. ***See Laird, supra***. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

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Date: APR 1 2011

EXHIBIT

B

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

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
HASSAN WILLIAMS	:	
Appellant	:	No. 1214 EDA 2022

Appeal from the PCRA Order Entered April 22, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0010937-2007

BEFORE: DUBOW, J., KUNSELMAN, J., and KING, J.

MEMORANDUM BY DUBOW, J.: **FILED MAY 04, 2023**

Appellant, Hassan Williams, appeals *pro se* from the April 22, 2022 order entered in the Philadelphia County Court of Common Pleas dismissing his second petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-46, as untimely. Because Appellant's PCRA Petition was patently untimely and Appellant has failed to plead and prove an exception to the PCRA time bar, we affirm the PCRA court's dismissal.

The relevant facts and procedural history are as follows. On February 23, 2009, the trial court sentenced Appellant to life without parole, plus a consecutive 10 to 20 years of imprisonment following his jury conviction of first-degree murder, robbery, possession of an instrument of crime, and conspiracy.

On April 1, 2011, this Court affirmed Appellant's judgment of sentence. ***Commonwealth v. Williams***, 29 A.3d 821 (Pa. Super. 2011) (unpublished

memorandum). On August 30, 2011, the Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal. ***Commonwealth v. Williams***, 27 A.3d 225 (Pa. 2011). Appellant did not seek further review of his judgment of sentence, which, thus, became final on November 28, 2011. ***See*** 42 Pa.C.S. § 9545(b)(3); U.S. Sup. Ct. R. 13 (petition for writ of *certiorari* must be filed within 90 days of final judgment).

On January 20, 2012, Appellant filed a PCRA Petition in which he raised, *inter alia*, several unsuccessful claims of ineffective assistance of trial counsel.

On June 13, 2019, Appellant *pro se* filed the instant Petition, his second, asserting that the trial court erred in refusing to grant a mistrial after a Commonwealth witness referred to Appellant's post-arrest silence. Appellant subsequently filed four supplemental PCRA petitions, in which he raised claims that: (1) trial counsel had been ineffective for not challenging witness testimony identifying Appellant as the perpetrator of the underlying crime;[1] (2) the trial court should have suppressed an incriminating statement he made to police "as the product of unnecessary delay between arrest and arraignment";[2] and (3) the trial court erred in allowing the jury to hear a recording of the victim's 911 call.

On February 18, 2022, the PCRA court issued a Pa.R.Crim.P. 907 Notice of the court's intent to dismiss Appellant's PCRA Petition without a hearing as

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[1] Appellant raised this claim in two supplemental PCRA Petitions.

[2] "Brief in Support of the Existing P.C.R.A. Supplement of Pleading to Enjoin Additional Claim," 5/6/21, at 2.

untimely. Appellant responded, *inter alia*, that "[a]ll of the issues raised . . . are clearly meritorious" and that he timely filed his petition.[3] On April 22, 2022, the PCRA court issued an order dismissing Appellant's PCRA Petition as untimely. This timely *pro se* appeal followed.[4]

Appellant raises the following issues for our review:

I. Was [] Appellant's PCRA timely filed and did the PCRA court err when it chose not to consider the Petition as such?

II. Did the PCRA court err in refusing to consider the meritorious claim of the [t]rial [c]ourt erring in refusing to grant a mistrial after the Commonwealth questioned Detective Hagan about [] Appellant's post-arrest silence?

III. Did the PCRA court err when it failed to consider the meritorious claim of Appellant's coerced confession should have been suppressed prior to trial?

IV. Did the PCRA court err when it chose not to consider the meritorious claim of trial counsel being ineffective for failing to challenge the identification testimony of the Commonwealth's main witness?

Appellant's Brief at 8.

We review the denial of a PCRA petition to determine whether the record supports the PCRA court's findings and whether its order is otherwise free of legal error. ***Commonwealth v. Fears***, 86 A.3d 795, 803 (Pa. 2014). This

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[3] Response to Rule 907 Notice, 2/25/22, at 1-2 (unpaginated). Appellant did not support his bald claim that he timely filed this PCRA petition by invoking any of the exceptions to the PCRA's jurisdictional time-bar.

[4] The PCRA court did not order Appellant to file a Pa.R.A.P. 1925(b) Statement. However, on May 3, 2022, the PCRA court issued an opinion in which it explained that it dismissed Appellant's PCRA Petition because it was untimely and Appellant had failed to plead and prove any of the exceptions to the PCRA's time bar.

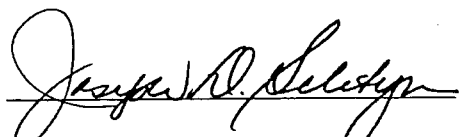
Court grants great deference to the findings of the PCRA court if they are supported by the record. ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007). "We give no such deference, however, to the court's legal conclusions." ***Commonwealth v. Smith***, 167 A.3d 782, 787 (Pa. Super. 2017).

The timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Zeigler***, 148 A.3d 849, 853 (Pa. Super. 2016). A PCRA petition, including a second or subsequent petition, must be filed within one year of the date the underlying judgment of sentence becomes final. 42 Pa.C.S. § 9545(b)(1). Appellant's Petition, filed nearly eight years after his judgment of sentence became final, is facially untimely. However, Pennsylvania courts may consider an untimely PCRA petition if an appellant pleads and proves one of the three exceptions set forth in Section 9545(b)(1) within one year of the date the claim could have been presented. 42 Pa.C.S §§ 9545(b)(1)(i-iii),(b)(2).

Our review of Appellant's *pro se* PCRA Petition and the supplements he filed thereto reveal that he utterly failed to plead, let alone prove, the applicability of any of the PCRA's timeliness exceptions. Therefore, this Court, like the PCRA court, is without jurisdiction to consider the merits of this appeal. We, thus, affirm the PCRA court's order dismissing Appellant's petition.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/4/2023

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