

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 69 MAL 2024
	:	
Respondent	:	
	:	
v.	:	Petition for Allowance of Appeal
	:	from the Order of the Superior Court
	:	
	:	
CHRISTOPHER PATRICK MCGOWAN,	:	
	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 14th day of August, 2024, the Petition for Allowance of Appeal is
DENIED.

A True Copy Elizabeth E. Zisk
As Of 08/14/2024

Elizabeth E. Zisk
Attest:
Chief Clerk
Supreme Court of Pennsylvania

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT
OF PENNSYLVANIA – FRANKLIN COUNTY BRANCH

Commonwealth of Pennsylvania

v.

Christopher McGowan,
Defendant

Criminal Action

No. 1505-2016

Honorable Angela R. Krom, Judge

APR 01 2022

ATTEST: A TRUE COPY

Megan Bekey
Dy Clerk of Courts

ORDER OF COURT

AND NOW, this 1st day of April, 2022, upon consideration of Petitioner, Christopher McGowan's Petition for Post Conviction Relief under 42 Pa.C.S. 99542 et seq. and Consolidated Memorandum of Law ("the Petition"), filed December 22, 2021, it appears the Court is unable to address the merits of Defendant's Petition because it was not timely filed.

A PCRA petition must be filed within one year of the date the petitioner's judgment of sentence became final unless he pleads and proves one of the three exceptions outlined in 42 Pa.C.S. § 9545(b)(1). Commonwealth v. Howard, 788 A.2d 351, 354 (Pa. 2002). A judgment becomes final "at the conclusion of direct review" by the Pennsylvania Supreme Court or the United States Supreme Court, or at the "expiration of the time for seeking such review." Id. at 353; see 42 Pa.C.S. § 9545(b)(3). Because the timeliness requirements of the PCRA are jurisdictional in nature, a court may not address the merits of the issues raised in an untimely petition. Commonwealth v. Jones, 54 A.3d 14, 17 (Pa. 2012).

Here, Defendant was sentenced on November 7, 2018. In the midst of issues relating to Defendant's representation, he submitted a *pro se* filing which the Superior Court construed as an appeal. The Superior Court later affirmed Defendant's judgment of sentence on January 31, 2020. Defendant thereafter filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied on September 15, 2020. Therefore, Defendant's judgment

became final ninety days later, on December 14, 2020, when the time for filing an appeal with the United States Supreme Court expired. Under the PCRA, Defendant was then required to file any petitions by December 14, 2021, one year after that date. The instant Petition was not filed until December 22, 2021. As such, it is facially untimely.

Further, we are not persuaded that an exception applies. The three exceptions to the PCRA's timeliness requirement are: "(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).

The statute explicitly requires that "the petition alleges and the petitioner proves" that one of the above exceptions applies. See 42 Pa.C.S. § 9545(b)(1). Here, the Petition does not allege anything regarding any of the timeliness exceptions nor make any attempt to prove one of them applies. Rather, Defendant alleges that the Petition was timely filed.¹ It is thus clear Defendant has failed to sufficiently plead or prove an exception.

¹ Defendant claims the Petition is timely because "a final 'Memorandum and Order' of the Trial Court was filed on October 21st, 2021." Petition, at unpaginated 4. In support, Defendant attached a copy of the docket sheet showing the entry of said Order to his Petition.

Contrary to Defendant's beliefs, this does not render his Petition timely. Review of the Order in question reveals it is from an entirely different case, namely, Jeffrey Miles v. Clerk of Courts for the Court of Common Pleas in Franklin County and Inmate Accounts Department at the State Correctional Institution in Forest, Pennsylvania, which was mistakenly filed in the instant docket. Specifically, the Order was entered by the Commonwealth Court denying Mr. Miles' request to stop deductions and return monies to his inmate account.

A simple inquiry into the filing would have made it readily apparent that it bears no relation to Defendant's case. In fact, although Defendant refers to it as "a final 'Memorandum and Order' of the Trial Court[.]" see Petition, at unpaginated 4, the docket sheet entry attached to the Petition plainly indicates it was filed by the Commonwealth

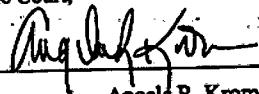
Based upon the foregoing, we are constrained to find Defendant's Petition untimely. Accordingly, this Court does not have jurisdiction to address Defendant's Petition further.

THE COURT HEREBY NOTIFIES Defendant as follows:

1. The Court intends to **DISMISS WITHOUT A HEARING** your petition for post-conviction collateral relief because the Court has determined it lacks jurisdiction over your claims. Pa.R.Crim.P. 907(1).
2. You may respond to the proposed dismissal of your petition within 20 days of the date of this Order. Pa.R.Crim.P. 907(1).

Pursuant to Pennsylvania Rules of Criminal Procedure 114, the Clerk of Courts shall immediately docket this Order and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Order, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.

By the Court,



Angela R. Krom, J.

Distribution:

Franklin County District Attorney
Lonny Fish, Esq., Counsel for Defendant
Christopher McGowan, Defendant

Court, not this Court. Defendant, and his attorney, are not permitted to now aver timeliness on the basis of this Order, especially where they made no effort to ascertain the nature of the filing and whether it impacts the timeline calculations for purposes of submitting a PCRA petition.

J-S44028-22

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

COMMONWEALTH OF PENNSYLVANIA v. CHRISTOPHER PATRICK MCGOWAN, Appellant
IN THE SUPERIOR COURT OF PENNSYLVANIA No. 784 MDA 2022 Appeal from the PCRA
Order Entered May 2, 2022 In the Court of Common Pleas of Franklin County Criminal Division
at No(s): CP-28-CR-0001505-2016 BEFORE: PANELLA, P.J., McLAUGHLIN, J., and
PELLEGRINI, J.* MEMORANDUM BY McLAUGHLIN, J.: FILED: APRIL 6, 2023 Christopher
Patrick McGowan appeals from the order denying his Post Conviction Relief Act ("PCRA")
petition as untimely. See 42 Pa.C.S.A. §§ 9541- 9546. We affirm. A jury convicted McGowan of
conspiracy to commit theft by deception. The court sentenced him to 30 to 60 months'
incarceration. We affirmed the judgment of sentence, and our Supreme Court denied allowance
of appeal in September 2020. See Commonwealth v. McGowan, No. 896 MDA 2019, 2020 WL
524847 (Pa.Super. filed Jan. 31, 2020) (unpublished memorandum), appeal denied, 239 A.3d 8
(Pa. filed Sept. 15, 2020). 1 * Retired Senior Judge assigned to the Superior Court. 1
McGowan's PCRA petition asserted that the Supreme Court denied allowance of appeal on
September 15, 2021. The dockets show that is incorrect. The Supreme Court denied allowance
of appeal on September 15, 2020. J-S44028-22 - 2 - On December 22, 2021, McGowan filed
the instant counseled PCRA petition raising claims of ineffective assistance of counsel. He
asserted that his PCRA petition was timely because "a final 'Memorandum and Order' of the
Trial Court was filed on October 21st, 2021." Petition, filed 12/22/21, at 4. The PCRA court
issued Rule 907 notice of its intent to dismiss the petition without a hearing. See Pa.R.Crim.P.
907(1). In the notice, the court explained that McGowan's petition was patently untimely. The
court also reasoned that no time-bar exception applied to overcome the timeliness requirement.
It noted that McGowan did "not allege anything regarding any of the timeliness exceptions nor
make any attempt to prove one of them" but instead alleged that his petition was timely filed.
Order of Court, filed 4/1/22, at 2 (unpaginated). Regarding the final "Memorandum and Order" to
which McGowan referred, the court stated that it had reviewed it and determined that it was an
order of the Commonwealth Court in "an entirely different case[.]" Id. at 2 n.1. It bore the
caption, "Jeffrey Miles v. Clerk of Courts for the Court of Common Pleas in Franklin County and
Inmate Accounts Department at the State Correction Institution in Forest, Pennsylvania[.]"² The
court stated that "[a] simple inquiry into the filing would have made it readily apparent that it

³ Appendix C

bears no relation to [McGowan's] case" and that "the docket sheet entry 2. See 90 M.D. 2018 (Pa.Cmwlt. filed Oct. 19, 2020). J-S44028-22 - 3 - attached to the Petition plainly indicates it was filed by the Commonwealth Court[.]” Id. McGowan did not respond to the Rule 907 notice. The court dismissed his petition, and he appealed. On appeal, he challenges the dismissal for untimeliness and raises three other claims that go to the merits of his PCRA petition. In his first issue, McGowan maintains that the PCRA court erred in dismissing his PCRA petition as untimely. He argues that the date the judgment of sentence became final is “disturbed given clerical errors by the Lower Court, namely the misdating of higher court orders.” McGowan's Br. at 11. He states that denial of allowance of appeal is listed in the electronic filing system, with a date of October 8, 2022. However, he concedes that “we now know it to be September 15th, 2020.” Id. He also notes that the lower court listed an entry on the docket titled “Memorandum and Order,” although he concedes that the entry was “erroneous.” Id. He maintains that because nothing in the docket entry “signal[ed]” that it was unrelated to McGowan's case, and he could not access the filing electronically, “it was reasonable to rely on the Lower Court's administration and believe that they had entered the final judgment of the Higher Courts on October 8th, 2021 or October 22nd, 2021.” Id. When reviewing the denial of relief under the PCRA, our review is limited to determining “whether the PCRA court's ruling supported by the record and J-S44028-22 - 4 - free of legal error.” Commonwealth v. Presley, 193 A.3d 436, 442 (Pa.Super. 2018) (citation omitted). Under the PCRA, a petition for relief must “be filed within one year of the date the judgment becomes final[.]” 42 Pa.C.S.A. § 9545(b)(1). A judgment of a 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.” Id. at § 9545(b)(3). A petition filed more than one year after the one-year deadline may only be entertained where the petition pleads and proves at least one of the time-bar exceptions: (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. Id. at § 9545(b)(1)(i)-(iii). A petition raising one of the exceptions “shall be filed within one year of the date the claim could have been presented.” Id. at § 9545(b)(2). Because the PCRA's time limit is jurisdictional in nature, a court J-S44028-22 - 5 - may not address the merits of an untimely

PCRA petition. See *Commonwealth v. Smith*, 194 A.3d 126, 132 (Pa.Super. 2018). Here, McGowan's judgment of sentence became final on December 14, 2020, when his time to file a writ of certiorari with the United States Supreme Court expired. See U.S. Sup. Ct. R. 13(1) (a petition for writ of certiorari must be filed with 90 days from the order denying discretionary review). The one year deadline therefore expired on December 14, 2021. McGowan filed the instant petition on December 22, 2021; it is facially untimely. McGowan therefore had to plead and prove at least one time-bar exception. McGowan did not plead any of the exceptions in his PCRA petition. As he failed to do so, the court committed no error in dismissing his petition as untimely. On appeal, McGowan for the first time lays claim to the governmental interference exception. However, he waived this exception by not pleading it below. See Pa.R.A.P. 302(a).

Moreover, his claim is based on the "Memorandum and Order." This erroneous filing and notation in no way interfered with McGowan's ability to assert his PCRA claims. It therefore is not a basis on which to assert the governmental interference exception. See 42 Pa.C.S.A. § 9545(b)(1)(i). To the extent McGowan claims docket entries that he admits were erroneous changed the date his judgment became final, he is incorrect. Under the PCRA, the date of finality does not turn on a party's reasonable belief about when the judgment became final. It turns on the actual date on which direct review has concluded, or on which the time to seek such review ended. J-S44028-22 - 6 - See 42 Pa.C.S.A. § 9545(b)(1), (b)(3). As we affirm the dismissal for untimeliness, we do not address McGowan's remaining claims, which go to the merits of his petition. Order affirmed. Judgment Entered. Joseph D. Seletyn, Esq. Prothonotary

Date: 4/6/2023

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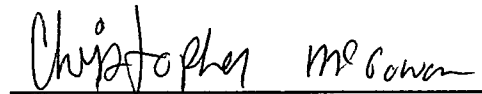
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Supreme Court of the United States
1 First Street NE,
Washington, DC 20543

Office of the Clerk
The Supreme Court of Pennsylvania, Middle District
601 Commonwealth Ave, Suite 4500
P.O. Box 62575
Harrisburg, PA 17106-2575

Office of the Clerk
The Superior Court of Pennsylvania
601 Commonwealth Ave # 1600
P.O. Box 62435
Harrisburg, PA 17106-2575

Office of the Clerk
Court of Common Pleas
Franklin County Courthouse
157 Lincoln Way East
Chambersburg, PA 17201

I, Christopher McGowan, certify first class mail service sent to parties listed above.



Christopher McGowan

Pro Se Petitioner

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Portland, Or 97229

(971)762-0038

November 8th, 2024

11-8-2024