

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JAMES EARL GEORGE	:	
	:	
Appellant	:	No. 134 WDA 2026

Appeal from the PCRA Order Entered December 24, 2025
In the Court of Common Pleas of Butler County Criminal Division at
No(s): CP-10-CR-0000330-2007

BEFORE: PANELLA, P.J.E., KING, J., and LANE, J.

MEMORANDUM BY KING, J.:

FILED: August 20, 2026

Appellant, James Earl George, appeals from the order entered in the Butler County Court of Common Pleas, which dismissed as untimely his petition filed pursuant to the Post Conviction Relief Act ("PCRA").¹ We affirm.

The relevant facts and procedural history of this matter are as follows. On November 13, 2008, a jury convicted Appellant of rape by threat of forcible compulsion, involuntary deviate sexual intercourse by forcible compulsion, unlawful restraint, sexual assault, and terroristic threats. On February 27, 2009, the court sentenced Appellant to an aggregate term of 300 to 600 months' incarceration. This Court affirmed his judgment of sentence, and on September 26, 2011, the Supreme Court of Pennsylvania denied Appellant's petition for allowance of appeal. ***See Commonwealth v. George***, No. 570

¹ 42 Pa.C.S.A. §§ 9541-9546.

WDA 2009 (Pa.Super. filed Sep. 3, 2010) (unpublished memorandum), *appeal denied*, 612 Pa. 697, 30 A.3d 487 (2011).

Subsequently, Appellant litigated unsuccessful serial PCRA petitions. Appellant filed the instant petition on October 6, 2025, and a supplemental petition on October 9, 2025. In the petitions, Appellant contended that the governmental interference and newly-discovered facts time-bar exceptions applied to his case, averring that the government had withheld exculpatory evidence in violation of ***Brady v. Maryland***, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Appellant further asserted that a detective at his suppression hearing had given perjured testimony. Appellant attached to his petition, the original criminal complaint in his case prepared by Sgt. Mark Peffer. Appellant argued that the officer's "false testimony" was allowed at the suppression hearing and was not corrected, despite being contradicted by the affidavit of probable cause.² (***See*** Appellant's PCRA Petition, 10/6/25, at 13-14). Appellant argued that the record was unclear whether the affidavit was "disclosed" to trial counsel and then he later claimed that the affidavit

² Pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-67.3104, Appellant asked for a copy of his criminal complaint and copies of police dispatch transcripts. The first request was granted; the second was denied as they were records of a criminal investigation. Additionally, Appellant requested photos of his residence on the morning of December 8, 2007, and the educational background and resume of the Pennsylvania State Police analyst who had performed the serology analysis. The denial letter did not address Appellant's latter two requests. It does not appear from the documents provided that Appellant challenged that denial, nor does he elaborate on them further in this appeal.

was not disclosed to trial counsel.³

On November 12, 2025, the court sent Appellant notice pursuant to Pa.R.Crim.P. 907 that his petition would be dismissed as untimely. On December 24, 2026, the court formally dismissed Appellant's petition. On January 23, 2026, Appellant timely filed a notice of appeal. On February 17, 2026, the court ordered Appellant to file a Pa.R.A.P. 1925(b) statement of matters complained of on appeal. On March 10, 2026, Appellant timely complied.

On appeal, Appellant raises the following issues for our review:

1. Did the PCRA court err and/or abuse its discretion in denying post conviction relief on the claim of whether Appellant is entitled to an evidentiary hearing in this matter based on timeliness of petition under 42 Pa.C.S.A. § 9545(b)(2)?
2. Did the [A]ssistant [D]istrict [A]ttorney Mark Lope, allow perjured testimony go uncorrected when Butler Police Officer Mayhugh testified that he did not respond to defendant's home or search defendant's home without a valid warrant contradicting the affidavit of probable cause?
3. Was counsel for the defen[s]e, David DeFazio, give ineffective assistance of counsel by not seeking the two officers who were the first officers who responded to defendant's home and who violated defendant's 4th amend right of illegal search/creating a false crime scene at defendant's suppression hearing and by not requesting that

³ This certified record belies this claim. The certified record contains the criminal complaint with the affidavit of probable cause, as well as an "Affidavit of Rights" signed by Appellant, which indicated that Appellant had been informed of his various rights and that he had **received a copy of the criminal complaint**. (**See** Affidavit of Probable Cause, 2/14/07; Affidavit of Rights, 2/14/07).

evidence of photographs be presented that was taken by [B]utler police officer Cheryl Litz and for not challenging the perjured testimony of officer Mayhugh which contradicted the affidavit of probable cause?

(Appellant's Brief at v-vii) (some internal quotation marks omitted).

The timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Hackett***, 598 Pa. 350, 956 A.2d 978 (2008), *cert. denied*, 556 U.S. 1285, 129 S.Ct. 2772, 174 L.Ed.2d 277 (2009). Pennsylvania law makes clear that no court has jurisdiction to hear an untimely PCRA petition. ***Commonwealth v. Robinson***, 575 Pa. 500, 837 A.2d 1157 (2003). The PCRA requires a petition, including a second or subsequent petition, to be filed within one year of the date the underlying judgment becomes final. 42 Pa.C.S.A. § 9545(b)(1). "[A] judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review." 42 Pa.C.S.A. § 9545(b)(3).

To obtain merits review of a PCRA petition filed more than one year after the judgment of sentence became final, the petitioner must allege and prove:

(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.A. § 9545(b)(1)(i)-(iii). Importantly, “[a]ny petition invoking an exception provided in paragraph (1) shall be filed within one year of the date the claim could have been presented.” 42 Pa.C.S.A. § 9545(b)(2).

“The proper question with respect to [the governmental interference] timeliness exception is whether the government interfered with Appellant’s ability to present his claim and whether Appellant was duly diligent in seeking the facts on which his claims are based.” ***Commonwealth v. Chimenti***, 218 A.3d 963, 975 (Pa.Super. 2019), *appeal denied*, 658 Pa. 538, 229 A.3d 565 (2020) (internal citation omitted). In other words, an appellant is required to show that he would have filed his claim sooner, if not for the interference of a government actor. ***Commonwealth v. Staton***, 646 Pa. 284, 184 A.3d 949 (2018). Where a petitioner’s allegation of governmental interference is based on an alleged ***Brady*** violation, “the proper questions with respect to timeliness in this case are whether the government interfered with Appellant’s access to the [allegedly withheld evidence], and whether Appellant was duly diligent in seeking [that evidence].” ***Commonwealth v. Stokes***, 598 Pa. 574, 581, 959 A.2d 306, 310 (2008).

To meet the newly-discovered facts timeliness exception set forth in Section 9545(b)(1)(ii), a petitioner must demonstrate “he did not know the facts upon which he based his petition and could not have learned those facts

earlier by the exercise of due diligence.” **Commonwealth v. Howard**, 285 A.3d 652, 659 (Pa.Super. 2022). Due diligence demands that a PCRA petitioner take reasonable steps to protect his own interests. **Id.** “A petitioner must explain why he could not have learned the new fact(s) earlier with the exercise of due diligence.” **Id.** The focus of the exception is on [the] newly discovered facts, not on a newly discovered or newly willing source for previously known facts.” **Commonwealth v. Burton**, 638 Pa. 687, 704, 158 A.3d 618, 629 (2017) (internal citation and quotation marks omitted).

Instantly, Appellant’s judgment of sentence became final on December 26, 2011,⁴ ninety days after our Supreme Court denied Appellant’s petition for allowance of appeal following his direct appeal. **See** U.S.Sup.Ct.R. 13 (stating appellant must file petition for writ of *certiorari* with United States Supreme Court within ninety days after entry of judgment by state court of last resort). Appellant filed his current PCRA petition on October 6, 2025, which is patently untimely. **See** 42 Pa.C.S.A. § 9545(b)(1).

Here, Appellant’s argument section raises numerous issues regarding the suppression hearing in his case, as well as with his trial. Regarding the applicability of the time-bar exceptions, he claims that on June 27, 2025, he received material in the mail pursuant to a RTKL request and subsequently filed the petition subject to this appeal. However, Appellant does not explain

⁴ The 90-day period fell on Sunday, December 25, 2011. **See** 1 Pa.C.S.A. § 1908 (providing that “when the last day of [a] period shall fall on a Saturday or Sunday ... such day shall be omitted from the computation”).

what he requested or why he requested it, or why he was not able to request this information at an earlier date.⁵ Consequently, Appellant has failed to prove applicability of a time-bar exception. At best, Appellant suggests that the information subject to his RTKL request was kept from him by the government; however, Appellant does not claim that the Commonwealth in any way prevented him from filing that request, nor does he explain why he waited over a decade from when his judgment of sentence became final to file the request. We reiterate that “[a]ny petition invoking an exception provided in paragraph (1) shall be filed within one year of the date the claim could have been presented.” 42 Pa.C.S.A. § 9545(b)(2). On this record, we discern no error in the court’s conclusion that Appellant failed to overcome the jurisdictional hurdle. ***See Hackett, supra. See also Chimenti, supra; Howard, supra.*** Accordingly, we affirm.

Order affirmed.

⁵ As noted above, the record indicates that Appellant requested a copy of the criminal complaint and received it; his request for dispatch transcripts was denied. Appellant does not include this information in his brief.

Additionally, on appeal, Appellant attempts to raise claims of ineffective assistance of counsel but does not argue a time-bar exception regarding those claims. ***See Commonwealth v. Gamboa Taylor***, 562 Pa. 70, 80, 753 A.2d 780, 785 (2000) (observing that claim of ineffective assistance of counsel does not save otherwise untimely PCRA petition for review on merits).

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 8/20/2026