

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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|------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
|                              | : | PENNSYLVANIA             |
|                              | : |                          |
| v.                           | : |                          |
|                              | : |                          |
|                              | : |                          |
| VANN L. BAILEY               | : |                          |
|                              | : |                          |
| Appellant                    | : | No. 283 WDA 2026         |

Appeal from the PCRA Order Entered February 2, 2026  
In the Court of Common Pleas of Allegheny County Criminal Division at  
No(s): CP-02-CR-0003434-1989

BEFORE: BOWES, J., OLSON, J., and MURRAY, J.

MEMORANDUM BY OLSON, J.:

**FILED: September 28, 2026**

Appellant, Vann L. Bailey, appeals from an order entered on February 2, 2026, denying his petition under the Post-Conviction Relief Act (PCRA), 42 Pa. C.S.A. §§ 9541-9546. Appellant's latest petition alleged a due process violation at his sentencing hearing. After careful review, we conclude that Appellant's petition was untimely and no timeliness exception applied. We therefore affirm the denial of Appellant's PCRA petition.

This Court previously adopted the trial court's statement of the facts as follows:

The jury could properly have found, taking the evidence in the light most favorable to the verdict winner, the Commonwealth, that the evidence revealed the following. The victim, M.P., resided on Belasco Street in the Beechview section of Pittsburgh. On March 4, 1989, at approximately 1:45 a.m., she was upstairs, cleaning the bathroom, when she heard her dogs barking. The victim went to the top of the steps and two of the dogs came up the stairs with chicken in their mouths. Realizing she had not made any chicken, she went downstairs. As she went through the

hall doorway, she glanced into the dining room and saw [Appellant] bending over her purse.

[Appellant] demanded all of her money and said that he knew she had received her "check" that day. He picked up a knife and started toward her. The knife, which did not belong to the victim, had a serrated blade, approximately ten (10) inches long, and no handle. The victim tried to explain to [Appellant] that she had direct deposit but [Appellant] said, "Don't fool with me. You give me all your money and don't hide any of it or hold any of it back or I'll kill you." [Appellant] told the victim to turn around and as she did he pushed her into the refrigerator. Then he grabbed her around the neck and made stabbing motions at her chest. [Appellant] told the victim to get on the floor. He pulled her T-shirt up over her head, pulled her pants off, and inserted his penis in her vagina.

[Appellant] then grabbed the victim by the left shoulder, with knife in hand, and took the victim upstairs to the bedroom. He forced the victim to get on top of him and again penetrated her vagina. [Appellant] said, "Don't even think about calling the police after I leave because I have a police scanner at home and if you call the police I'll know that you did and I will come back and will kill you." During this time, [Appellant] admitted that he had "popped" the front lock to enter the house.

[Appellant] told the victim that she was a beautiful woman and that he had been watching her for the last three weeks. He then put his hand on the victim's head and forced her to put his penis in her mouth. Sometime later, he ejaculated in her mouth, which she spit into an ashtray. The victim was afraid to defend herself because she knew [Appellant] could overpower her. [Appellant] fell asleep and the victim ran to the emergency phone on the corner of Hampshire and Belasco to contact the police.

Officer William G. Ford, Jr. entered the victim's home and found [Appellant] naked in bed, under the covers. He retrieved a broken knife from the dresser and the ashtray. There were scratch marks or gouges on the striker plate of the door, which could not be locked.

Officer Vivian Andrews interviewed the victim. She observed cuts on the victim's chest, arms and wrists. [Appellant] was transported to Zone 1 and, during the course of being searched,

a screwdriver, pliers and some chicken bones were found in his coat pocket.

The victim was taken to Magee Women's Hospital where she was examined. . . . The victim sustained the following injuries: puncture lesions on the right forearm and left breast; lacerations of sidewalls of the vagina and right and left forearms; and abrasions on the left forearm, left thigh, sternum area and vulva. The puncture wounds and/or lacerations were consistent with knife wounds. The injuries to the vaginal area were consistent with penetration, but not with normal intercourse, due to the degree of trauma.

Evidence was submitted to the Allegheny County Department of Laboratories and examined by criminalist Sarah McLaughlin. The bed sheet contained several stains. The bloodstains on the sheet were consistent with the blood type of the victim. The semen stain was consistent with the semen of [Appellant]. Spermatozoa, consistent with [Appellant,] were present with respect to the oral swabs, ashtray and toilet paper. Hair on the victim's T-shirt was consistent with the pubic hair of [Appellant]. [Appellant's] pubic hair contained pubic hair and head hair consistent with that of the victim.

***Commonwealth v. Bailey***, 2014 WL 10965766, \*1-\*2 (Pa. Super. Apr. 7, 2014), *citing* Trial Court Opinion, 8/3/1990, at 2-4 (additional citations omitted).

On December 11, 1989, a jury convicted Appellant of one count each of burglary, 18 Pa.C.S.A. § 3502, rape, 18 Pa.C.S.A. § 3121(1), possessing instruments of crime, 18 Pa.C.S.A. § 907(a), involuntary deviate sexual intercourse (ISDI), 18 Pa.C.S.A. §§ 3121(1) and 3121(2), recklessly endangering another person, 18 Pa.C.S.A. § 2705, aggravated assault, 18 Pa.C.S.A. § 2702(a)(4), and terroristic threats, 18 Pa.C.S.A. § 2706. The trial court sentenced Appellant to a term of 10 to 20 years' incarceration for each of the burglary, rape, and ISDI charges, and 5 to 10 years for the aggravated

assault charge. No further penalties were imposed for the charges of possessing instruments of crime, recklessly endangering another person, and terroristic threats. The court ordered the sentences to run consecutively, resulting in an aggregate sentence of 35 to 70 years' incarceration.

Appellant moved to vacate his sentence, arguing aggravated assault should have merged with either rape or ISDI. The court denied that motion on March 9, 1990. Appellant subsequently appealed his judgment of sentence to this Court, which affirmed on May 29, 1991. Our Supreme Court later denied Appellant's petition for allowance of appeal.

On November 16, 1992, Appellant filed a *pro se* petition pursuant to the PCRA alleging ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and constitutional error in the trial process. The court appointed PCRA counsel and counsel filed an amended petition. The court dismissed Appellant's petition without hearing on January 7, 1994. This Court affirmed denial on March 14, 1995, and our Supreme Court later denied Appellant's petition for allowance of appeal.

Appellant filed several serial PCRA petitions between 2005 and 2016, all of which were dismissed as untimely. On April 3, 2025, he filed the present PCRA petition, which the PCRA court, on January 28, 2026, dismissed as untimely. This appeal followed.

On appeal, Appellant admits his PCRA petition is facially untimely. He contends, however, that the newly-discovered facts exception to the PCRA's time bar applies. 42 Pa.C.S.A. § 9545(b)(1)(ii). More specifically, Appellant

alleges that he filed the instant petition based upon recently-acquired information regarding the sentence his brother (Kamau Bailey) received for intimidating the victim, M.P., prior to Appellant's sentencing hearing in this case. By way of background, at sentencing, the Commonwealth advised the court that the victim would not be present to testify because she had been harassed by Kamau Bailey, Appellant's brother, who had been sentenced to 90 days' probation for this conduct. **See** N.T., 2/26/1990, at 26-27.

Appellant alleges that he only recently learned (on April 14, 2024, after receiving Kamau's criminal history records) that his brother did not receive 90 days' probation for witness intimidation, as the Commonwealth alleged. Appellant argues that this brother's criminal history materially contradicts information presented at sentencing to explain the continued impact of Appellant's conduct on M.P. Therefore, according to Appellant, the Commonwealth violated his right to due process by forwarding inaccurate information to support Appellant's sentence. Appellant asserts that this constitutional violation entitles him to collateral relief under 42 Pa.C.S.A. § 9543(2)(i). **See** 42 Pa.C.S.A. § 9543(2)(i) (providing that a petitioner shall be eligible for relief whenever it is established that a constitutional violation has so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place).

If a PCRA petition is untimely, neither the trial court nor an appellate court have jurisdiction, and neither may reach the petition's substantive claims. **See Commonwealth v. Branthafer**, 315 A.3d 113, 120-121 (Pa.

Super. 2024), *appeal denied*, 333 A.3d 1266 (Pa. 2025), *citing* ***Commonwealth v. Reid***, 235 A.3d 1124, 1143 (Pa. 2020) (additional citation omitted); ***see also Commonwealth v. Stahl***, 292 A.3d 1130, 1134 (Pa. Super. 2023). A PCRA petition must be filed within one year of the date upon which the judgment becomes final, unless a timeliness exception applies. ***See*** 42 Pa.C.S.A. § 9545(b)(1). In the present appeal, Appellant agrees that his petition is untimely but invokes the newly-discovered facts exception.

A petition invoking a timeliness exception must be filed within one year of the date upon which that claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2). The newly-discovered facts exception to the PCRA's time bar applies if "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[.]" ***Id.*** The language of section 9545(b)(1)(ii) "plainly calls for a circumstance-dependent analysis of the petitioner's knowledge" of the fact in question. ***Commonwealth v. Small***, 662 Pa. 309, 335 (2020) (rejecting presumption that facts available through public records cannot qualify as newly-discovered facts and noting that, instead, judicial analysis must focus upon a petitioner's actual knowledge or lack thereof).

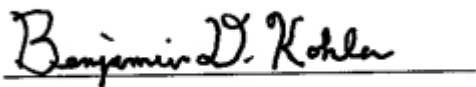
A circumstance-dependent analysis of Appellant's knowledge here forecloses his argument that his April 14, 2024 receipt of his brother's criminal information constituted a newly-discovered fact. In Appellant's second PCRA petition, filed on August 19, 2004, Appellant took issue with the same sentencing statement by the Commonwealth that he challenged here.

Appellant wrote in his 2004 petition that his brother did not receive 90 days' probation and that his brother was prepared to testify to that fact. The certified record makes clear that Kamau's criminal history record obtained by Appellant served only as an alternate source for a fact he had known at least as early as April 14, 2004. But new sources of previously known facts do not trigger the newly-discovered facts exception. ***Commonwealth v. Graves***, 197 A.3d 1182, 1187-1188 (Pa. Super. 2018); ***Small***, 662 Pa. at 341-342.

For the foregoing reasons, we conclude Appellant failed to meet his burden of establishing the applicability of the newly-discovered facts exception to the PCRA time bar. As such, Appellant's April 3, 2025 PCRA petition is untimely and the PCRA court lacked jurisdiction to consider its merits.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

DATE: 09/28/2026