

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CHARLES LAWSON	:	
	:	
Appellant	:	No. 58 EDA 2021

Appeal from the PCRA Order Entered November 19, 2020
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0744141-1991

BEFORE: OLSON, J., KING, J., and McCAFFERY, J.

MEMORANDUM BY KING, J.:

FILED JUNE 29, 2022

Appellant, Charles Lawson, appeals from the order entered in the Philadelphia County Court of Common Pleas, which dismissed his serial petition filed under the Post Conviction Relief Act ("PCRA").¹ We affirm.

The PCRA court set forth the relevant facts and procedural history of this case as follows:

On October 26, 1992, subsequent to a bench trial, [Appellant] was found guilty of third-degree murder, 18 Pa.C.S. § 2502(c), aggravated assault, 18 Pa.C.S. § 2702(a)(1), and possession of an instrument of crime, 18 Pa.C.S. § 907(a). Instantly, Appellant was sentenced to a mandatory term of life imprisonment for murder, two and one-half (2½) years for possession of an instrument of crime, concurrent to the life sentence, and five (5) to ten (10) years for aggravated assault, consecutive to possession of an instrument of crime, but concurrent to the life sentence, all to be served at a State Correctional

¹ 42 Pa.C.S.A. §§ 9541-9546.

Institution. Appellant filed a direct appeal whereupon [this Court] affirmed [the trial court]’s decision Appellant did not seek allocatur with the Pennsylvania Supreme Court (“Supreme Court”). On September 30, 1993, Appellant’s sentence became final upon the expiration of the thirty (30) day window for seeking allocatur. The life term was mandatory because Appellant had previously been convicted of third-degree murder in 1978 when he was seventeen (17) years old.

On August 19, 1996, Appellant timely filed a PCRA Petition, pursuant to 42 Pa. C.S. § 9541, based on an ineffective assistance of counsel claim. The court held an evidentiary hearing and then dismissed the petition after finding that Appellant had failed to prove the elements of his claim. On August 12, 1999, [this Court] affirmed the dismissal ... and, thereafter, the Supreme Court denied Appellant’s request for allocatur on January 11, 2000.

On July 15, 2004, Appellant filed a second PCRA petition, alleging after-discovered evidence.... On May 23, 2005, [the PCRA court] dismissed Appellant’s second PCRA petition as untimely, whereupon on March 1, 2006, [this Court] affirmed that dismissal.... On July 19, 2006, the Supreme Court denied allocatur.

On August 20, 2012, Appellant filed his third PCRA Petition. On February 27, 2013, the [Commonwealth] filed its Motion to Dismiss and, on March 15, 2013, [the PCRA court] dismissed Appellant’s PCRA petition without a hearing.... On April 8, 2014, [this Court] affirmed the order denying the third petition for relief.

(PCRA Court Opinion, filed April 16, 2021, at 1-3).

On March 17, 2016, Appellant filed the instant *pro se* PCRA petition. On June 6, 2016, counsel entered his appearance on behalf of Appellant and filed an amended PCRA petition on November 8, 2018. On November 8, 2019, Appellant filed a motion to compel the Commonwealth to produce the police department’s homicide file. The PCRA court denied the motion on January 16,

2020, and issued Pa.R.Crim.P. 907 notice of intent to dismiss the petition without a hearing on the same day. The PCRA court dismissed Appellant's petition on November 19, 2020, and Appellant filed a timely notice of appeal on December 18, 2020. On December 21, 2020, the PCRA court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement, and Appellant timely complied on January 11, 2021.

Appellant raises the following issues for our review:

Did the [PCRA] court err when it denied Appellant's request to have the District Attorney's Office provide the Philadelphia Police Department's Homicide file in case number CP-51-CR-0813431-1974, which was utilized to turn his 1993 conviction into a life sentence where there was evidence presented in the court below that there was police misconduct, amounting to a **Brady**^[2] violation, in that enhancing conviction, especially where the PCRA Unit of the Philadelphia District Attorney's Office now routinely agrees to such requests?

Did the [PCRA] court err when denying the PCRA Petition in failing to review the propriety of the antecedent, enhancing conviction which turned a maximum 10-20 year sentence for third-degree murder to one of life imprisonment since it appears that this Court's *en banc* decision in **Commonwealth v. Fields**, 197 A.3d 1217 (Pa.Super. 2017), held that such review was appropriate so long as the defendant is still serving the enhanced sentence, especially since the plea in the enhancing case was coerced by counsel who constructively abandoned their representation of [A]ppellant where there was insufficient evidence upon which to convict?

Did the [PCRA] court err in relying on this Court's previous decision in **Commonwealth v. Lawson**, 90 A.3d 1 (Pa.Super. 2014), where there have been changes in the

² **Brady v. Maryland**, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

case law which undercut the reasoning of this Court which was sound at the time that decision was rendered?

Did the [PCRA] Court err in not deeming this matter to be governed by the *habeas corpus* statute and therefore, letting an illegal sentence to stand?

(Appellant's Brief at 2-3).

Preliminarily, the timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Zeigler***, 148 A.3d 849 (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.A. § 9545(b)(1). A judgment of sentence is 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). The statutory exceptions to the PCRA time-bar allow for very limited circumstances under which the late filing of a petition will be excused. **See** 42 Pa.C.S.A. § 9545(b)(1).

Instantly, Appellant's judgment of sentence became final on September 30, 1993, upon expiration of the time for filing a petition for allowance of appeal with our Supreme Court. **See** Pa.R.A.P. 1113(a) (allowing 30 days to file petition for allowance of appeal). Appellant filed the current PCRA petition over 22 years later, which is patently untimely. **See** 42 Pa.C.S.A. § 9545(b)(1). Significantly, Appellant failed to plead to and prove in his current

PCRA petition any exception to the PCRA time-bar.³ **See** 42 Pa.C.S.A. § 9545(b)(1). Therefore, Appellant's petition remains time barred.⁴ **See Zeigler, supra**. Accordingly, we affirm the order denying PCRA relief.

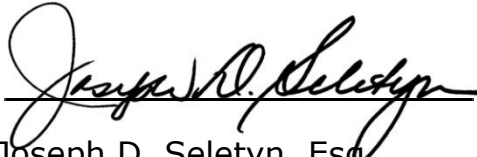
Order affirmed.

³ To the extent Appellant attempts to invoke the new constitutional right exception under Section 9545(b)(1)(iii), relying on **Montgomery v. Louisiana**, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (holding that **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) applies retroactively in cases on state collateral review), we note that this Court has previously determined **Miller** is not applicable to this case. **See Lawson, supra** at 6-7. Appellant argues that this Court's prior ruling on **Miller's** applicability is undercut by **Montgomery** because this Court partially based its disposition on the fact that **Miller** had not yet been held to apply retroactively. However, this Court also specifically held that Appellant was not entitled to relief under **Miller** in any event because he was 33 when he committed his crimes, and **Miller** applies only to individuals who were juveniles when they committed their crimes. **See Lawson, supra** at 6. Therefore, even if Appellant had properly pled the new constitutional right exception, Appellant is not entitled to relief based on this Court's prior disposition. **See** 42 Pa.C.S.A. § 9543(a)(3) (providing that to be eligible for relief under PCRA, claim must not be previously litigated).

⁴ Appellant asserts that the court should have treated his PCRA petition as a *habeas corpus* petition. Nevertheless, the PCRA is "the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including *habeas corpus* and *coram nobis*." 42 Pa.C.S.A. § 9542. "Under the plain words of the statute, if the underlying claim is one that could potentially be remedied under the PCRA, that claim is exclusive to the PCRA." **Commonwealth v. Pagan**, 864 A.2d 1231, 1233 (Pa.Super. 2004). Appellant's brief fails to provide any explanation as to why his underlying claims fall outside of the scope of the PCRA. Thus, Appellant has waived this argument. **See Commonwealth v. Hakala**, 900 A.2d 404 (Pa.Super. 2006), *appeal denied*, 589 Pa. 737, 909 A.2d 1288 (2006) (stating failure to develop argument on appeal results in waiver).

J-S02021-22

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/29/2022