

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

RUBIN M. PABON

Appellant

: No. 189 MDA 2026

Appeal from the PCRA Order Entered December 31, 2025
In the Court of Common Pleas of Dauphin County Criminal Division at
No(s): CP-22-CR-0003906-2004

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
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v.

RUBIN M. PABON

Appellant

: No. 379 MDA 2026

Appeal from the PCRA Order Entered December 31, 2025
In the Court of Common Pleas of Dauphin County Criminal Division at
No(s): CP-22-CR-0003907-2004

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY PANELLA, P.J.E.:

FILED: OCTOBER 13, 2026

Rubin M. Pabon appeals *pro se* from the order entered in the Court of Common Pleas of Dauphin County dismissing his Post Conviction Relief Act¹ (“PCRA”) petition as untimely.² We affirm.

¹ 42 Pa.C.S.A. §§ 9541-9546.

² This Court consolidated these matters *sua sponte* on March 23, 2026.

On October 25, 2004, Pabon was charged with various offenses at two separate dockets relating to the sexual abuse of his former paramour's minor daughters that transpired over a period of several years. Following a jury trial, Pabon was convicted of rape of a child, statutory sexual assault, sexual assault, indecent assault of a complainant less than thirteen years of age, indecent assault without consent, and corruption of minors³ at CP-22-CR-0003906-2004 on September 15, 2005. On that same date, Pabon was convicted of rape of a child, statutory sexual assault, sexual assault, aggravated indecent assault of a child,⁴ aggravated indecent assault of a complainant less than thirteen years of age,⁵ indecent assault without consent, indecent assault of a complainant less than thirteen years of age, corruption of minors, and terroristic threats⁶ at CP-22-CR-0003907-2004. On April 24, 2006, the court sentenced Pabon on both dockets to a total aggregate term of twenty to forty years' imprisonment. Pabon filed a motion for modification of his sentence, which the court denied on May 9, 2006. On August 15, 2006, this Court quashed Pabon's direct appeal as untimely.

³ 18 Pa.C.S.A. §§ 3121(c), 3122.1, 3124.1, 3126(a)(7), 3126(a)(1), and 6301(a), respectively.

⁴ 18 Pa.C.S.A. § 3125(b).

⁵ 18 Pa.C.S.A. § 3125(a)(7).

⁶ 18 Pa.C.S.A. § 2706.

On February 23, 2007, Pabon filed his first PCRA petition, and the PCRA court appointed counsel. On April 30, 2007, the PCRA court reinstated Pabon's direct appeal rights *nunc pro tunc*. On February 25, 2009, a panel of this Court affirmed Pabon's judgment of sentence. Pabon filed a petition for allowance of appeal, which was denied by our Supreme Court on August 19, 2009. Pabon filed a subsequent PCRA petition on August 23, 2010, and the court again appointed PCRA counsel. Following an evidentiary hearing, the PCRA court dismissed Pabon's second petition on July 25, 2012.

On August 23, 2024, Pabon filed the instant PCRA petition in which he claims that his sentence was illegally imposed and unconstitutional in that it was imposed pursuant to the 5th edition of the sentencing guidelines and requires resentencing in accordance with either the 7th or 8th edition of the sentencing guidelines. **See** PCRA Petition, 8/23/24, at 5-6, 13-14. The Commonwealth filed a court-ordered response on December 11, 2024, in which it maintained Pabon's petition was untimely filed and that he failed to establish an exception to the PCRA's timeliness requirement. On June 23, 2025, the PCRA court entered an order and opinion in which it indicated its intent to dismiss Pabon's petition without further proceedings, pursuant to Pa.R.Crim.P. 907, upon determining that Pabon's petition was untimely and that the court lacked jurisdiction to consider the merits of the claims raised therein. **See** Memorandum Opinion, 6/23/25, at 5. The PCRA court entered a final order dismissing Pabon's petition on December 31, 2025, and Pabon

timely filed a notice of appeal. On March 3, 2026, the PCRA court issued an opinion pursuant to Pa.R.A.P. 1925(a), in which it incorporated the reasons for denying Pabon's petition set forth in its June 23, 2025 opinion.

On appeal, Pabon presents the following question for our review:

Did the sentencing court commit error when the court imposed sentences it had no statutory jurisdiction or authority to impose, which exceeded the maximum guideline range of punishment to warrant a correction, modification, [] or immediate discharge from state custody based on the court's *void ab initio* sentences?

Appellant's Brief, at 18 (unnecessary capitalization, punctuation, emphases, and quotation marks omitted).

"When reviewing an order denying a PCRA petition, we examine whether the determination of the PCRA court is supported by the record and free of legal error." ***Commonwealth v. Giles***, 357 A.3d 555, 559 (Pa. Super. 2026) (citation omitted). In conducting our review, "[w]e consider the record in the light most favorable to the prevailing party at the PCRA level[] and grant great deference to the PCRA court's findings that are supported [by] the record." ***Id.*** (internal quotation marks and citation omitted). However, we review the PCRA court's legal conclusions *de novo*. ***See id.***

"It is well-established that, if a PCRA petition is untimely, courts lack jurisdiction over the claims and cannot grant relief." ***Commonwealth v. Thomas***, 357 A.3d 469, 475 (Pa. Super. 2026) (citation omitted). Because the PCRA's timeliness requirement is jurisdictional in nature, "a PCRA court must, before considering the merits of a claim asserted in a PCRA petition,

first make a threshold determination whether the claim was timely filed.” **Commonwealth v. Brown**, 358 A.3d 469, 503 (Pa. 2026) (brackets, internal quotation marks, and citation omitted). “The timeliness of a PCRA petition is a question of law, and therefore our standard of review is *de novo* and our scope of review is plenary.” **Giles**, 357 A.3d at 559 (internal quotation marks and citation omitted).

To be considered timely, a PCRA petition “shall be filed within one year of the date the judgment becomes final[.]” 42 Pa.C.S.A. § 9545(b)(1). For purposes of the PCRA, “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).

If a PCRA petition is untimely, the jurisdictional time-bar can only be overcome if the petitioner alleges and proves one of the three statutory exceptions, as set forth in 42 Pa.C.S.A. § 9545(b)(1). The three narrow statutory exceptions to the one-year time-bar are as follows: (1) interference by government officials in the presentation of the claim; (2) newly-discovered facts; and (3) an after-recognized constitutional right. [**See** 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii).] A petition invoking an exception to the jurisdictional time-bar must be filed within one year of the date that the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2). If a petitioner fails to invoke a valid exception to the PCRA time-bar, courts are without jurisdiction to review the petition and provide relief.

Thomas, 357 A.3d at 475-76 (case citations, quotation marks, and brackets omitted).

In the case *sub judice*, the trial court imposed Pabon's sentence on April 24, 2006. This Court affirmed Pabon's judgment of sentence on February 25, 2009, and our Supreme Court denied his petition for allowance of appeal on August 19, 2009. Thus, Pabon's judgment of sentence became final on or about November 19, 2009, and Pabon had until November 19, 2010 to file a timely PCRA petition. Accordingly, the PCRA court correctly concluded that the instant petition, filed on August 23, 2024, is patently untimely.

Notably, Pabon does not even attempt to invoke a statutory exception to the PCRA's jurisdictional time-bar in either his PCRA petition or his appellate brief. **See** PCRA Petition, 8/23/24, at 1-24; Appellant's Brief, at 1-35.⁷ Although the argument presented in Pabon's brief is convoluted, he seemingly suggests that the mere promulgation of subsequent editions of the sentencing guidelines renders his sentence, which was imposed pursuant to the 5th edition of the sentencing guidelines, unconstitutional. **See** Appellant's Brief, at 19-25. Accordingly, Pabon suggests that the untimeliness of his petition does not preclude PCRA recovery because his unconstitutional sentence was necessarily illegal, and a legality of sentence claim is unwaivable, as section 9542 of the PCRA "specifically permits the courts of the Commonwealth to

⁷ "We emphasize that it is the petitioner who bears the burden to allege and prove that one of the timeliness exceptions applies." **Giles**, 357 A.3d at 560 (citation omitted).

grant relief from an ‘illegal sentence’ at any[]time.” **Id.** at 24 (unnecessary capitalization and emphasis omitted). We disagree.

“It is well-settled that the PCRA timeliness requirement is mandatory and jurisdictional; therefore, no court may disregard, alter, or create equitable exceptions to the timeliness requirement in order to reach the substance of a petitioner’s arguments.” **Commonwealth v. Williams**, 324 A.3d 569, 576 (Pa. Super. 2024) (internal quotation marks, brackets, and citation omitted).

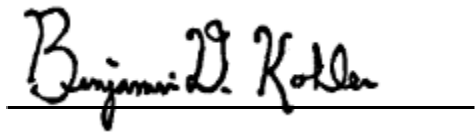
The PCRA provides the sole means for obtaining collateral review of a judgment of sentence. [**See** Pa.C.S.A. § 9542.] A court may entertain a challenge to the legality of the sentence so long as the court has jurisdiction to hear the claim. In the PCRA context, jurisdiction is tied to the filing of a timely PCRA petition. Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA’s time limits or one of the exceptions thereto. Thus, a collateral claim regarding the legality of a sentence can be lost for failure to raise it in a timely manner under the PCRA.

Commonwealth v. Ballance, 203 A.3d 1027, 1031 (Pa. Super. 2019) (brackets and citation omitted). Thus, while “[a] challenge to the legality of an appellant’s sentence raised in a **timely** PCRA petition is always subject to review[,]” **Commonwealth v. Munoz-Rodriguez**, 326 A.3d 952, 958-59 (Pa. Super. 2024) (internal quotation marks and citations omitted; emphasis added), Pabon’s petition, filed on August 23, 2024, is facially untimely, and he has failed to plead or prove the applicability of a timeliness exception. **Commonwealth v. Mucci**, 327 A.3d 1223, 1235 (Pa. Super. 2024) (legality of sentencing claim is cognizable under the PCRA but subject to the PCRA timeliness provisions).

Accordingly, the PCRA court properly determined that it lacked jurisdiction to consider the merits of Pabon's claims and dismissed his petition.

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/13/2026