

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

NAZEER BURKS

Appellant

: No. 1691 MDA 2025

Appeal from the PCRA Order Entered October 31, 2025
In the Court of Common Pleas of Lycoming County Criminal Division at
No(s): CP-41-CR-0001681-2019

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

NAZEER KEVIN BURKS

Appellant

: No. 1692 MDA 2025

Appeal from the PCRA Order Entered October 31, 2025
In the Court of Common Pleas of Lycoming County Criminal Division at
No(s): CP-41-CR-0000631-2021

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

NAZEER KEVIN BURKS

Appellant

: No. 1693 MDA 2025

Appeal from the PCRA Order Entered October 31, 2025
In the Court of Common Pleas of Lycoming County Criminal Division at
No(s): CP-41-CR-0000633-2021

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

MEMORANDUM BY DUBOW, J.:

FILED: OCTOBER 13, 2026

Appellant, Nazeer Burks, appeals from the October 31, 2025 order that dismissed as untimely his first petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §9541-46. Because Appellant failed to plead and prove an exception to the PCRA time-bar, we affirm the PCRA court's dismissal.

A detailed recitation of the procedural and factual history is unnecessary to our disposition. Briefly, Appellant pled guilty at three different docket numbers in the Lycoming Court of Common Pleas ("CCP") to various violations of the Controlled Substance Act which arose out of video-taped sales of fentanyl to a confidential informant ("CI") on October 7, 2019, and October 14, 2019. On October 15, 2021, the trial court sentenced Appellant to 5 to 10 years' incarceration (CCP Docket No. 1681-2019). On October 28, 2021, the trial court denied Appellant's motion for reconsideration seeking credit for time served. Appellant did not file an appeal and, therefore, his judgment of sentence became final on November 29, 2021. **See** Pa.R.Crim.P. 720(A)(2)(a) (instructing that notice of appeal shall be filed within 30 days of the entry of the order denying a post-sentence motion); 42 Pa.C.S. § 9545(b)(3) (explaining that for PCRA purposes, a judgment of sentence becomes final at the expiration of time for seeking appellate review).

On October 22, 2021, the trial court sentenced Appellant to 5 to 10 years' incarceration to be served concurrently (CCP Docket No. 631-2021) with his first sentence (CCP Docket No. 1681-2019), and 27 to 54 months'

incarceration to be served consecutively (CCP Docket No. 633-2021). Appellant did not appeal and, therefore, his judgments of sentence became final on November 22, 2021. **See** Pa.R.Crim.P. 720(A)(3) (providing that notice of appeal shall be filed within 30 days of imposition of sentence); 42 Pa.C.S. § 9545(b)(3).

On April 18, 2023, almost 17 months later, Appellant filed a *pro se* PCRA petition, his first, asserting ineffective assistance of trial counsel and unlawfully induced guilty pleas. PCRA Pet., 4/18/23, at 2. He attempted to invoke the governmental interference exception to the PCRA time-bar by asserting that he mailed a PCRA petition to his plea counsel, Andrea Pulizzi, Esq., in August 2022 but Attorney Pulizzi did not receive the petition due to a mailing issue. **Id.** at 3. He also attempted to invoke the newly discovered fact exception by asserting that he just learned that the CI involved in his cases violated a contract that the CI signed with the district attorney's office promising not to engage in illegal activity. **Id.** The PCRA court appointed counsel.

On October 25, 2023, counsel filed an amended PCRA petition renewing both the ineffective assistance of trial counsel and unlawfully induced guilty plea claims. PCRA Pet., 10/25/23, at ¶¶ 14-16, 21, 23-24. The petition attempted to invoke exceptions to the PCRA time-bar by asserting that Appellant contacted Attorney Pulizzi and attempted to file a PCRA petition within the one-year period and Appellant recently learned that the CI involved

in his cases signed a contract promising to refrain from criminal activity while the CI was engaged in ongoing criminal activity. **Id.** at ¶¶ 9-13, 17-20.

The PCRA court held a conference and directed PCRA counsel to file a second amended petition by November 21, 2023, “to allege a claim regarding trial counsel’s ineffectiveness in directing Petitioner to send his PCRA petition to her office for filing, and to allege facts regarding when he discovered that trial counsel had not filed the petition and when he learned of the CI’s allegedly violating their contracts by engaging in illegal activity along with any witness certifications.” Tr. Ct. Op., 10/31/25, at 3.

On November 20, 2023, counsel filed a second amended petition averring that Attorney Pulizzi, who had represented Appellant at CCP Docket No. 1681-2019, provided ineffective assistance of counsel for failing to file a PCRA petition as he had requested. PCRA Pet., 11/20/23, at ¶¶ 9, 14. Additionally, Appellant conceded that his PCRA petition was facially untimely but asserted that he should not be time-barred because he attempted to file his PCRA petition in a timely manner. **Id.** at ¶¶ 8, 13. The second amended petition abandons the additional claims that were raised in Appellant’s initial *pro se* PCRA petition and his amended petition.

On November 22, 2024, the PCRA court held a hearing on Appellant’s petition. The court heard testimony from Attorney Pulizzi; Kristen Tarantella, former paralegal for Attorney Pulizzi; and Appellant. Relevant to this appeal, Attorney Pulizzi testified that she is a private attorney with approximately 20 years of experience and had represented Appellant in his criminal matter at

CCP Docket No. 1681-2019. She explained that a few months after sentencing, Appellant contacted her through his mother to inquire about filing a PCRA petition. She set up a phone call with Appellant, explained the PCRA process, and instructed Ms. Tarentella to mail him a blank PCRA form after learning that Appellant was having trouble locating the PCRA form in prison. Attorney Pulizzi confirmed that around the spring of 2022 her office stopped receiving mail from the state prison system prompted by an investigation into a mail scam involving inmates' families sending contraband under the guise of her office. Attorney Pulizzi testified that the phones in her office remained operational and that she was able to receive phone calls and texts from Appellant's mother. Notably, Attorney Pulizzi testified that she was not representing Appellant during his PCRA proceedings and that her firm's representation ended when the 30-day appeal period expired after Appellant's sentencing.

Ms. Tarantella testified that she worked with Attorney Pulizzi as a paralegal from February 2021 until May 2023. She confirmed that she mailed a letter enclosing a blank PCRA petition to Appellant on April 15, 2022, but never received anything back. Ms. Tarantella explained that during the summer of 2022 there was a delay in mail delivery from the state prisons due to a mail code issue.

Appellant testified that he contacted Attorney Pulizzi through his mother around March or April of 2022 to raise some concerns about his sentencing. Attorney Pulizzi set up a call with the prison, listened to Appellant's concerns,

and agreed to send Appellant a PCRA form. Appellant testified that he received the form, took some time to fill it out, and mailed it back to Attorney Pulizzi around July or August of 2022. He stated that it was his understanding that by sending the PCRA form to Attorney Pulizzi, he was asking her to represent him. Appellant explained that when he did not get a response from Attorney Pulizzi he contacted her through his mother to request another PCRA form “about October, November. It was – I knew it was about due.” N.T. Hr’g, 11/22/24, 21-22. Appellant testified that he once again mailed the form to Attorney Pulizzi. He explained that he never attempted to file any petition directly with the Court of Common Pleas.

On October 31, 2025, the PCRA court issued an Opinion and Order dismissing Appellant’s PCRA petition as untimely because it failed to satisfy either the governmental interference or newly discovered facts exception to the PCRA time-bar.

Appellant filed timely notices of appeal at each docket number. This Court consolidated the appeals *sua sponte*. Both Appellant and the PCRA court complied with Pa.R.A.P. 1925.

Appellant raises the following issue for our review: “Did the trial court err by dismissing the Appellant’s PCRA petition as untimely where the evidence established that he had attempted to timely filed his petition through his trial counsel?” Appellant’s Br. at 7.

We review the denial of a PCRA petition to determine whether the record supports the PCRA court’s findings and whether its order is otherwise free of

legal error. ***Commonwealth v. Fears***, 86 A.3d 795, 803 (Pa. 2014). This Court grants great deference to the findings of the PCRA court if they are supported by the record. ***Commonwealth v. Boyd***, 923 A.2d 513, 515 (Pa. Super. 2007). “We give no such deference, however, to the court’s legal conclusions.” ***Commonwealth v. Smith***, 167 A.3d 782, 787 (Pa. Super. 2017). In addition, “[a] PCRA court passes on witness credibility at PCRA hearings, and its credibility determinations should be provided great deference by reviewing courts.” ***Commonwealth v. Johnson***, 966 A.2d 523, 539 (Pa. 2009).

As a preliminary matter, the timeliness of a PCRA petition is a jurisdictional requisite. ***Commonwealth v. Hackett***, 956 A.2d 978, 983 (Pa. 2008). Pennsylvania law is clear that no court has jurisdiction to hear an untimely PCRA petition, absent an applicable statutory exception. ***Commonwealth v. Robinson***, 837 A.2d 1157, 1161 (Pa. 2003). In order to obtain relief under the PCRA, a petition must be filed within one year from the date the judgment of sentence became final. 42 Pa.C.S. § 9545(b)(1).

Appellant’s petition is facially untimely. Pennsylvania courts may consider an untimely PCRA petition, however, if the petitioner pleads and proves one of the three exceptions to the time-bar set forth in Section 9545(b)(1): the government interference, newly discovered fact, and new constitutional right exceptions. ***Id.*** Any petition invoking a timeliness

exception must be filed within one year of the date the claim could have been presented. **Id.** at § 9545(b)(2).

The government interference exception requires proof that “the failure to raise the claim previously was the result of interference by government officials[.]” **Id.** at § 9545(b)(1)(i); **see also Commonwealth v. Abu-Jamal**, 941 A.2d 1263, 1268 (Pa. 2008). This requires the petitioner to show that, due to the interference of a government actor, “he could not have filed his claim earlier.” **Commonwealth v. Vinson**, 249 A.3d 1197, 1205 (Pa. Super. 2021) (citation omitted). The statute is clear that “[f]or purposes of this subchapter, ‘government officials’ shall not include defense counsel, whether appointed or retained.” 42 Pa.C.S. § 9545(b)(4). Moreover, our Supreme Court has consistently held that “couching a petitioner’s claims in terms of ineffectiveness will not save an otherwise untimely filed petition from the application of the time restrictions of the PCRA.” **Commonwealth v. Tedford**, 228 A.3d 891, 905 (Pa. 2020) (citation omitted).

To satisfy the newly discovered facts exception, a petitioner must plead and prove “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.” 42 Pa.C.S. § 9545(b)(1)(ii). Our Supreme Court has held that this exception “does not require any merits analysis of the underlying claim.” **Commonwealth v. Bennett**, 930 A.2d 1264, 1271 (Pa. 2007). Rather, the exception merely requires the petitioner to plead and prove two elements: “1)

the facts upon which the claim was predicated were unknown and 2) could not have been ascertained by the exercise of due diligence.” **Id.** at 1272 (emphasis and internal quotation marks omitted, citing 42 Pa.C.S. § 9545(b)(1)(ii)). Due diligence requires a petitioner to make reasonable efforts to uncover facts that may support a claim for collateral relief. **Commonwealth v. Brensinger**, 218 A.3d 440, 449 (Pa. Super. 2019) (*en banc*). A petitioner must explain why he could not have learned the new facts earlier by exercising due diligence. **Commonwealth v. Breakiron**, 781 A.2d 94, 98 (Pa. 2001). This Court has held that it is an appellant’s responsibility to call his attorney or the clerk of courts to verify filings and explained “[d]ue diligence requires that Appellant take such steps to protect his own interests.” **Commonwealth v. Carr**, 768 A.2d 1164, 1168 (Pa. Super. 2001).

Upon review, we agree with the PCRA court that Appellant failed to plead and prove either exception to the PCRA time-bar. Appellant relies on his discovery that counsel did not file a PCRA petition as requested to satisfy both the government interference and the newly-discovered fact exceptions. As noted above, defense counsel is not a government official for purposes of seeking PCRA review and allegations of ineffective assistance of counsel do not satisfy any timeliness exception.

In addition, asserting that he recently learned that his PCRA petition was not filed by Attorney Pulizzi does not satisfy the newly discovered fact exception to the PCRA’s time-bar. As the PCRA court explains, Appellant failed

to demonstrate the exercise of due diligence that is required by Section 9545(b)(1)(ii). The PCRA court opined:

The testimony presented reflects that [Appellant] maintained consistent contact with his mother throughout the relevant period and therefore, he had the means to verify whether his petition had been filed. Yet, [Appellant] waited until well after the one-year period for filing expired to take any action to ensure that his filing was received by the court. Such inaction belies any claim of reasonable diligence.

Tr. Ct. Op. at 9.

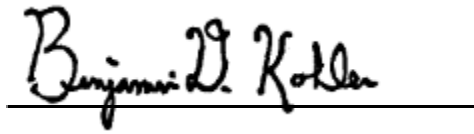
The PCRA court's conclusion is supported by the record. The PCRA court rendered its findings after consideration of the testimony presented at the hearing, and we defer to its credibility determinations. Our review discerns no error of law and Appellant has, thus, failed to convince us that the PCRA court abused its discretion in dismissing his petition as untimely.

Finally, Appellant's attempt to invoke equitable principles fails. Appellant argues that the PCRA court should consider his attempts to file the PCRA petition in a timely manner and that "fundamental fairness should permit [] Appellant to litigate his substantive claims." Appellant's Br. at 16. However, our Supreme Court has consistently held that "courts have no power to carve out equitable extensions to the PCRA's timeliness requirements." **Tedford**, 228 A.3d at 905. This Court further explained that "the period for filing a PCRA petition is not subject to the doctrine of equitable tolling, save to the extent the doctrine is embraced by Section 9545(b)(1)(i)-(iii)." **Commonwealth v. Taylor**, 283 A.3d 178, 185 (Pa. Super. 2022) (citation omitted).

As Appellant has failed to plead and prove an exception to the PCRA time-bar, we are without jurisdiction to entertain this appeal. Therefore, we affirm the trial court's order dismissing the petition as untimely.

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: 10/13/2026