

Following trial, a jury convicted [Appellant] of one count each of aggravated assault—attempt to cause serious bodily injury, simple assault, recklessly endangering another person, disorderly conduct, and harassment.^[2] At trial, the victim testified ... [Appellant] kicked and punched her in the head, face, and mouth while she was on the ground. The assault was captured on video, which the jury viewed. At some point during the altercation, the victim was rendered unconscious, and she later went to the hospital. The victim sustained facial and dental injuries.

Following [Appellant's] conviction, the court sentenced [Appellant] to ten to twenty years' incarceration.^[3] [Appellant] filed a post-sentence motion, which was denied, followed by [a] timely appeal.

Commonwealth v. Ruiz, No. 929 WDA 2022, unpublished memorandum at 1-2 (Pa. Super. filed Mar. 17, 2023). On direct appeal, Appellant solely challenged the sufficiency of the evidence to sustain his aggravated assault

² 18 Pa.C.S. §§ 2702(a)(1), 2701(a)(1), 2705, 5503(a)(1), and 2709(a)(1), respectively.

³ Relevant to Appellant's issue herein, we note he received a mandatory-minimum sentence of 10 years under 42 Pa.C.S. § 9714, which states, in pertinent part:

(a) Mandatory sentence.--

(1) Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence, be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).

42 Pa.C.S. § 9714(a)(1).

conviction. ***Id.*** at 2. This Court affirmed his judgment of sentence, after which our Supreme Court denied his subsequent petition for allowance of appeal on August 9, 2023. ***See Commonwealth v. Ruiz***, 303 A.3d 117 (Pa. 2023). Accordingly, Appellant's judgment of sentence became final on November 7, 2023, when his time to file a petition for writ of *certiorari* with the United States Supreme Court expired. ***See*** U.S.Sup.Ct.R. 13(1) (stating a petition for writ of *certiorari* must be filed within 90 days of the entry of judgment).

On August 25, 2025, Appellant filed a *pro se* PCRA petition. Therein, he claimed the United States Supreme Court's decision in ***Erlinger*** created "a new substantive rule of constitutional law" that is "fully retroactive on direct [appeal] and collateral [review]." *Pro Se Petition*, 8/25/25, at 3. Additionally, although Appellant did not discuss the holding of ***Erlinger*** or how it applies to his case, he contended his "two strike" sentence under 42 Pa.C.S. § 9714 is "now plainly unconstitutional and void *ab initio* under the Fifth, Sixth, and Fourteenth Amendments and ***Erlinger***." ***Id.*** at 4.

Attorney Hathaway was appointed to represent Appellant. On October 13, 2025, counsel filed a petition to withdraw and no-merit letter, concluding Appellant's petition is untimely and his reliance on ***Erlinger*** does not meet any timeliness exception. On November 4, 2025, the PCRA court issued a Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's petition without a hearing, also finding Appellant's petition is untimely and he has failed to plead or prove the applicability of any timeliness exception. Appellant did not

respond, and on February 2, 2026, the court issued an order dismissing his petition. On March 2, 2026, Appellant filed a timely, *pro se* notice of appeal. Two days later, the court issued an order granting Attorney Hathaway's petition to withdraw. However, on March 25, 2026, the court issued an order vacating its March 2, 2026 order and directing Attorney Hathaway to represent Appellant in this appeal.

On June 22, 2026, Attorney Hathaway filed a petition to withdraw and ***Turner/Finley*** no-merit letter with this Court. Therefore, we must begin by determining if Attorney Hathaway has satisfied the requirements for withdrawal.

Counsel petitioning to withdraw from PCRA representation must proceed ... under [***Turner/Finley*** and] ... must review the case zealously. ***Turner/Finley*** counsel must then submit a "no-merit" letter to the trial court, or brief on appeal to this Court, detailing the nature and extent of counsel's diligent review of the case, listing the issues which petitioner wants to have reviewed, explaining why and how those issues lack merit, and requesting permission to withdraw.

Counsel must also send to the petitioner: (1) a copy of the "no merit" letter/brief; (2) a copy of counsel's petition to withdraw; and (3) a statement advising petitioner of the right to proceed *pro se* or by new counsel.

[W]here counsel submits a petition and no-merit letter that ... satisfy the technical demands of ***Turner/Finley***, the court—trial court or this Court—must then conduct its own review of the merits of the case. If the court agrees with counsel that the claims are without merit, the court will permit counsel to withdraw and deny relief.

Commonwealth v. Doty, 48 A.3d 451, 454 (Pa. Super. 2012) (citation omitted).

In this case, Attorney Hathaway has filed a petition to withdraw and a no-merit letter discussing the single issue Appellant wishes to have reviewed. Counsel indicates the nature and extent of his review of that claim and explains why it is meritless. Attached to his petition to withdraw, Attorney Hathaway included a letter addressed to Appellant informing him that counsel is withdrawing, stating counsel has enclosed his no-merit letter, and advising Appellant he has the right to retain private counsel or proceed *pro se*. Accordingly, Attorney Hathaway has satisfied the first four requirements for withdrawal under ***Turner/Finley***. Next, we will conduct our own independent assessment of the record to determine if the issue presented in Appellant's petition is meritless.

This Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. ***Commonwealth v. Ragan***, 923 A.2d 1169, 1170 (Pa. 2007). We must begin by addressing the timeliness of Appellant's petition, because the PCRA time limitations implicate our jurisdiction and may not be altered or disregarded in order to address the merits of a petition. ***Commonwealth v. Bennett***, 930 A.2d 1264, 1267 (Pa. 2007). Under the PCRA, any petition for post-conviction relief, including a second or subsequent one, must be filed within one year of the date the

judgment of sentence becomes final, unless one of the following exceptions set forth in 42 Pa.C.S. § 9545(b)(1)(i)-(iii) applies:

(b) Time for filing petition.--

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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. § 9545(b)(1)(i)-(iii). Additionally, section 9545(b)(2) requires any petition attempting to invoke one of these exceptions “be filed within one year of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2).

Here, Appellant’s judgment of sentence became final on November 7, 2023, and thus, he had until November 7, 2024, to file a timely petition. Consequently, his petition filed on August 25, 2025, is facially untimely. For this Court to have jurisdiction to review the merits thereof, Appellant must prove that he meets one of the exceptions to the timeliness requirements set forth in 42 Pa.C.S. § 9545(b).

Instantly, Appellant did not explicitly invoke a timeliness exception in his *pro se* petition. However, he seemingly attempts to meet the new-retroactive-right exception of section 9545(b)(1)(iii) by claiming ***Erlinger*** created a new constitutional right that renders his mandatory-minimum sentence illegal.⁴ However, Appellant cannot rely on that decision to obtain relief in his untimely PCRA petition. First, this Court has recognized ***Erlinger*** has not been held to apply retroactively. ***See Commonwealth v. Pittman***, No. 1069 MDA 2025, unpublished memorandum at 10 (Pa. Super. filed Feb. 6, 2026) (confirming none of the decisions Pittman relied on to attempt to meet the new-retroactive-right exception, including ***Erlinger***, “have been held to apply retroactively”).⁵ Second, as Attorney Hathaway points out, ***Erlinger*** was decided on June 21, 2024, yet Appellant did not file his instant petition until over one year later, on August 25, 2025. ***See*** No-Merit Letter at 4. Therefore, Appellant also cannot satisfy section 9545(b)(2).⁶

⁴ Although legality of sentencing claims are generally not waivable and are cognizable under the PCRA, a petitioner must first satisfy the PCRA time limits in order to obtain review of such claims. ***See Commonwealth v. Fahy***, 737 A.2d 214, 223 (Pa. 1999) (holding that claims challenging the legality of sentence are subject to review within PCRA, but must first satisfy the PCRA’s time limits).

⁵ Pursuant to Pa.R.A.P. 126(b), non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value.

⁶ We also note that, even if Appellant’s claim did satisfy an exception, ***Erlinger*** does not render his sentence illegal. In ***Erlinger***, the Court analyzed an enhanced sentencing scheme found in the Armed Career Criminal Act, which increased the maximum penalty faced by a defendant if he or she had “three
(Footnote Continued Next Page)

As Appellant's PCRA petition is patently untimely, and he has failed to plead or prove the applicability of any timeliness exception, or that he can meet section 9545(b)(2), we discern no error or abuse of discretion in the PCRA court's dismissing his petition. Additionally, we grant Attorney Hathaway's petition to withdraw.

Order affirmed. Petition to withdraw granted.

prior convictions for 'violent felonies' or 'serious drug offense[s]' that were 'committed on occasions different from one another.'" **Erlinger**, 602 U.S. at 825 (citation omitted). Specifically, the High Court addressed whether "a judge may decide that a defendant's past offenses were committed on separate occasions under a preponderance of the evidence standard or whether the Fifth and Sixth Amendment require a unanimous jury to make that determination beyond a reasonable doubt." **Id.** Ultimately, the Court determined the different-occasions inquiry was a fact that increased the prescribed range of penalties to which a criminal defendant was exposed and, therefore, it must be found by a "unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." **Id.** at 835 (citing **Apprendi v. New Jersey**, 530 U.S. 566, 490 (2000)).

Presumably, Appellant believes the holding in **Erlinger** renders his mandatory sentence under section 9714 unconstitutional because a jury did not find the fact triggering applicability of that statute, *i.e.*, that he previously committed a 'crime of violence.' However, the United States Supreme Court held in **Almendarez-Torres v. United States**, 523 U.S. 224 (1998), that the fact of a prior conviction may be found by a judge at the time of sentencing, rather than by the jury, even if the prior conviction results in an enhancement that increases the statutory maximum sentence. Importantly, the **Erlinger** Court explicitly said its decision does not overrule **Almendarez-Torres**. **See Erlinger**, 602 U.S. at 838-39 (declining to "revisit **Almendarez-Torres**" where that case "persists as a 'narrow exception' permitting judges to find only 'the fact of a prior conviction[,]'") and in **Erlinger**, the court "had to do more" by finding the defendant's offenses had "occurred on at least three separate occasions"). Thus, we would conclude **Erlinger** does not render Appellant's sentence, which is based on his prior conviction of a crime of violence, unconstitutional or illegal.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 09/28/2026