NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
RUSSELL CARY OWENS	:	
Appellant	:	No. 668 WDA 2026

Appeal from the PCRA Order Entered April 9, 2026
In the Court of Common Pleas of Crawford County Criminal Division at No(s): CP-20-CR-0000483-2017

BEFORE: OLSON, J., NICHOLS, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED: November 13, 2026**

Appellant, Russell Cary Owens, appeals from the order of the Court of Common Pleas of Crawford County that dismissed his untimely petition filed pursuant to the Post-Conviction Relief Act, 42 Pa.C.S. § 9541, *et seq.* ("PCRA"). In the petition, he collaterally challenged his *nolo contendere* plea convictions for five counts of recklessly endangering another person ("REAP").[1] The PCRA court dismissed the petition because it was untimely filed and Appellant did not properly invoke an exception to the PCRA time-bar. We affirm.

Appellant was charged with aggravated assault and REAP for sexual encounters with different women after he was made aware of his HIV status

---

* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. § 2705.

and denied to each woman, before having unprotected intercourse with them, that he had any communicable disease. ***See*** N.T. Plea Hearing, 8/2/18, 19-22. As part of the plea negotiations, the Commonwealth agreed to drop all of the aggravated assault charges and the remaining REAP charges in exchange for Appellant's *nolo contendere* plea to five counts of REAP and an agreed-upon sentencing recommendation of twelve to twenty-four months on each conviction to be served consecutively to each other and the sentence he was then serving in another criminal matter.[2] ***See id.***, 26-33; Appellant's Motion Requesting to Be Sentenced at Time of Plea, 7/26/18, ¶ 3 (negotiated sentence terms); Sentence Order, 8/3/18; Plea Agreement, 8/3/18; Written Plea Colloquy, 8/3/18.

The PCRA court accurately described the subsequent procedural history of the case, as follows:

> [Appellant] did not file a post-sentence motion or a direct appeal, and thus his judgment of sentence became final for PCRA purposes on September 3, 2018. ***See*** [42 Pa.C.S. § 9545(b)(1), (3)].
>
> [Appellant's] "Motion for Correction of Sentence" dated June 2, 2025, and docketed on June 12, 2025 (the "Motion"), was regarded as a PCRA petition, and Christopher D. Ferry, Esq., was appointed to represent him. Order & Am. Order, 6/13/25 (docketed 6/16/25, 1/8/26). [Appellant] then [filed] a *pro se* "Motion for Post Conviction Collateral Relief," docketed on January 5, 2026 (the "Petition"), which was directed to both this case and [CP-20-CR-0001146-2016]. Attorney Ferry was granted sixty

---

[2] Appellant was then serving a sentence of six to fifteen years imposed on September 4, 2017, at CP-20-CR-0001146-2016. ***See*** PCRA Court Memorandum and Order, 3/16/25, 2 n.3.

> days from January 8, 2026, to file an amended petition as to the instant case (only) and […] timely complied.

PCRA Court Memorandum and Order, 3/16/25, 1-2 (noting PCRA court's intent to dismiss the petition). ***See also*** Appellant's *Pro Se* Motion for Correction of Sentence, 6/12/25 (alleging statute of limitations violation); PCRA Court Order, 6/16/25 (deeming motion a PCRA petition and appointing counsel); Appellant's *Pro Se* PCRA Petition, 1/5/26; Amended PCRA Petition, 3/9/26.

On April 8, 2026, the PCRA court issued a written order dismissing Appellant's PCRA petition without a hearing. ***See*** PCRA Court Order, 4/8/26 (dismissing petition). Appellant timely filed a notice of appeal. ***See*** Notice of Appeal, 5/7/26. The PCRA court and Appellant complied with Pennsylvania Rule of Appellate Procedure 1925(b). ***See*** Pa.R.A.P. 1925(b); PCRA Court Order, 5/13/26; Appellant's Statement of Errors Complained of on Appeal, 6/3/26 (raising nine errors); Pa.R.A.P. 1925 Opinion, 6/5/26.

In his brief, Appellant presents four questions for our review:

1. Whether the PCRA court erred in finding that the Appellant's PCRA petition was time-barred and denying the Appellant an evidentiary hearing?
2. Whether the PCRA court erred in failing to find trial counsel ineffective when trial counsel failed to timely file a pre-trial motion to dismiss the charges for [REAP] and for failing to notify Appellant that the REAP counts were barred by the statute of limitations?
3. Whether the PCRA court erred in failing to find trial counsel ineffective for permitting a plea of *nolo contendere* to be taken to charges that could not be sustained at trial since they were time-barred and then failing to file a post-sentence motion to challenge the legality of the sentence and plea?

4. Whether the PCRA court erred in not finding trial counsel ineffective for not presenting the Appellant's mental health condition and military service record to the court as a mitigating factor at sentencing?

See Appellant's Brief, 3-4 (suggested answers 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. ***See Commonwealth v. Drummond***, 285 A.3d 625, 633 (Pa. 2022). We "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 in the record." ***Commonwealth v. Diaz***, 183 A.3d 417, 421 (Pa. Super. 2018) (internal quotation marks and citations omitted). Our standard of review of a PCRA court's legal conclusions, however, is *de novo*. ***Commonwealth v. Johnson***, 289 A.3d 959, 979 (Pa. 2023).

"Crucial to the determination of any PCRA appeal is the timeliness of the underlying petition. Thus, we must first determine whether the instant PCRA petition was timely filed." ***Commonwealth v. Brown***, 141 A.3d 491, 499 (Pa. Super. 2016) (citation omitted). "The timeliness requirement for PCRA petitions is mandatory and jurisdictional in nature, and the court may not ignore it in order to reach the merits of the petition." ***Id.*** (internal quotation marks and citation omitted); ***see also Commonwealth v. Fantauzzi***, 275 A.3d 986, 994 (Pa. Super. 2022) ("the timeliness of a PCRA petition is jurisdictional and [] if the petition is untimely, courts lack jurisdiction over the petition and cannot grant relief"); ***Commonwealth v. Callahan***, 101 A.3d

118, 121 (Pa. Super. 2014) ("[a]s a threshold jurisdictional matter, however, the timeliness of the PCRA petition must be addressed") (citation omitted).

A PCRA petition must be filed within one year of the date that judgment of sentence becomes final. ***See*** 42 Pa.C.S. § 9545(b)(1). A judgment of sentence becomes final for purposes of the PCRA "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. § 9545(b)(3). The "period for filing a PCRA petition is not subject to the doctrine of equitable tolling; instead, the time for filing a PCRA petition can be extended only if the PCRA permits it to be extended, *i.e.*, by operation of one of the statutorily enumerated exceptions to the PCRA time-bar." ***Commonwealth v. Ali***, 86 A.3d 173, 177 (Pa. 2014) (internal quotation marks and citation omitted).

Appellant was sentenced on August 2, 2018. Neither a post-sentence motion nor a notice of appeal was filed prior to the expiration of the appeal period on Monday, September 3, 2018.[3] Therefore, Appellant's judgment of sentence became final on that date. ***See Commonwealth v. Brown***, 943

---

[3] Because the thirty-day deadline for filing the notice of appeal fell on Saturday, September 1, 2018, Appellant would have had until Monday, September 3, 2018, to file an appeal. ***See*** Pa.R.A.P. 107 incorporating by reference rules of construction in Pennsylvania Rules of Judicial Administration including R.J.A. 107(a)-(b), relating to computation of time to exclude first date and include last date of time period, generally, but to omit the last date if it falls on Saturday, Sunday, or a legal holiday); ***see also*** Pa.R.A.P. 903(a) (general rule requiring notices of appeal to be filed "within 30 days after the entry of the order from which the appeal is taken").

A.2d 264, 268 (Pa. 2008) (stating "in circumstances in which no timely direct appeal is filed relative to a judgment of sentence, and direct review is therefore unavailable, the one-year period allowed for the filing of a post-conviction petition commences upon the actual expiration of the time period allowed for seeking direct review, as specified in the PCRA"). Accordingly, Appellant had until September 3, 2019, to file a timely PCRA petition. ***See*** 42 Pa.C.S. § 9545(b)(1).

The *pro se* motion to correct sentence, filed on June 12, 2025, was facially untimely. Indeed, Appellant conceded in his counseled amended petition that the *pro se* motion and *pro se* PCRA petition were untimely filed. ***See*** Amended PCRA Petition, 3/9/26, ¶ 17. "If a PCRA petition is untimely filed, the jurisdictional time-bar can only be overcome if the petitioner alleges and proves one of the three statutory exceptions[.]" ***Fantauzzi***, 275 A.3d at 996. These exceptions are colloquially known as exceptions for governmental interference, a newly-discovered fact, or a newly-recognized constitutional right that applies retroactively. ***See*** 42 Pa.C.S. § 9545(b)(1). Moreover, Appellant had to plead and prove that he filed his petition within one year of the date any claims for application of the statutory time-bar exceptions "could have been presented." 42 Pa.C.S. § 9545(b)(2). "[I]t is the petitioner who bears the burden to allege and prove that one of the timeliness exceptions applies." ***Commonwealth v. Marshall***, 947 A.2d 714, 719 (Pa. 2008).

In his amended PCRA petition, Appellant alleged that his claim met the requirements for the newly-discovered fact exception. ***See*** Amended PCRA

Petition, 3/9/26, ¶ 18. He alleged that he "suffers from severe health and mental health maladies," and "did not gain insight into his mental health issues until the Spring of 2023." ***Id.***, ¶19-20. He alleged that from that point forward, he became invested in his treatment or the lack thereof from the Department of Corrections. ***See id.***, ¶ 21. He "received a specific mental health diagnosis" on December 31, 2024. ***Id.***, ¶ 22. Although Appellant had "several significant health setbacks[,]" he filed his motion in June "upon learning of the issue regarding the statute of limitations." ***Id.***, ¶ 23. Counsel then incorporated the specific details regarding Appellant's mental health and the chronology associated therewith as set forth in the *pro se* PCRA petition. ***See id.***, ¶ 24.

In his *pro se* petition, Appellant alleged that symptoms of Post-Traumatic Stress Disorder ("PTSD") "emerged in Seeking Safety therapeutic group (DOC)," and he was ultimately diagnosed by a prison psychiatrist with PTSD from combat trauma. *Pro Se* PCRA Petition, 1/5/26, 3. Notably, he did not acknowledge the existence of the PCRA time-bar or the newly-discovered fact exception in his *pro se* petition. He alleged the ineffective assistance of counsel for failing to "uncover and present" evidence of his mental health or impairment "as defense or mitigation" and for failing to raise a statute of limitations objection. ***Id.*** He attached to the *pro se* petition documents purporting to be medical records in support of the diagnosis. ***See id.***, 4 & Attachments.

In further explanation of his mental health history, Appellant asserted that he was in the United States Military from 1985 until 1994. ***See*** *Pro Se* PCRA Petition, 1/5/26, 8. "He struggled with adjusting to civilian life as classic symptoms of PTSD began to manifest[,] like hypervigilance, sleep disturbances, irritability, aggression, impulse control[,] and behavior changes[,] along with a notable loss in his field of vision, […] all of which were observed by his family, but not by [Appellant] until the Spring of 2023." ***Id.*** He admits that "[i]n hindsight," there were many indications, including "failed marriages, numerous job changes," that were "living testaments to the decades of maladjustment and cyclical criminal behavior that impacted victims, family and [Appellant] from undiagnosed and untreated mental health and neurological injuries from his military service." ***Id.*** His recovery began in January 2023 when he transferred to the Veteran Services Unit at SCI-Mercer and took part "in numerous veteran therapeutic groups." ***Id.*** He sought assistance through the Department of Corrections, but "his requests were ultimately ignored and denied." ***Id.***, 9. He then found help through veterans' assistance groups. ***See id.*** On December 31, 2024, Appellant "was diagnosed with PTSD from combat related trauma with dissociation," with additional diagnoses following a stroke, multiple traumatic brain injuries, meningioma, and ischemic optic neuropathy. ***Id.*** He alleged that the "evidence of PTSD and other diagnosed neurological injuries would have been relevant to his defense and sentencing" underlying his claim of ineffective assistance of trial counsel. ***Id.***, 10.

On appeal, Appellant argues that the facts necessary to establish the newly-discovered fact exception to the time-bar "require his testimony at an evidentiary hearing." Appellant's Brief, 12. He states that he "had difficulty in obtaining treatment while incarcerated," but "gained insight into the fact that he has mental health issues that impair his ability to function." ***Id.*** It was not until December 31, 2024, that he "received a diagnosis," of PTSD as a result of events that occurred during his military service, and "was able to treat his impairment." ***Id.*** He alleges that the treatment while incarcerated has helped him "to reverse his mental health circumstances and gain competence that he did not have in 2018." ***Id.***

> Thereafter, [] Appellant learned of the issues involving the statute of limitations and that nothing was presented to the trial court regarding his military service and mental health condition.
>
> Being severely mentally disabled for an extended period of time after his military service through his incarceration[,] the Appellant was not in a position to know that the statute of limitations had expired with respect to the charges subject to his plea. There could be no factual basis to argue that the REAP charges would end in a conviction.

Id., 13.[4]

---

[4] ***But see Commonwealth v. Rossetti***, 863 A.2d 1185, 1190 n.5 (Pa. Super. 2004) (finding a statute of limitations claim explicitly waived but stating that it would also be meritless because the "Appellant deserves no remedy where he attempted to manipulate the criminal justice process by first requesting a charge on a lesser included offense, only to seek dismissal of the conviction when he is convicted on that charge").

Appellant discusses our Supreme Court's decision in ***Commonwealth v. Cruz***, 852 A.2d 287 (Pa. 2004). He argues that, like the petitioner in ***Cruz***, he was entitled to a hearing to prove he was "incompetent throughout the period during which his right to file a PCRA petition lapsed" and "timely filed his petition after he became sufficiently competent to ascertain the facts upon which his underlying claims are predicated." Appellant's Brief, 14.

"Broad claims of mental illness do not satisfy a statutory exception to the PCRA time-bar." ***Commonwealth v. Shaw***, 217 A.3d 265, 270 (Pa. Super. 2019) (citing ***Commonwealth v. Hoffman***, 780 A.2d 700, 701 (Pa. Super. 2001)). In ***Cruz,*** "our Supreme Court carved out a narrow exception to the general rule where a PCRA petitioner's mental incompetence prevented him from filing a timely PCRA petition." ***Shaw***, 217 A.3d at 270. That is, "in some circumstances, claims that were defaulted due to the PCRA petitioner's mental incompetence may qualify under the statutory [newly-discovered fact] exception." ***Commonwealth v. Liebensperger***, 904 A.2d 40, 46 (Pa Super. 2006) (quoting ***Cruz,*** 852 A.2d at 293). "[T]he general rule remains that mental illness or psychological condition, absent more, will not serve as an exception to the PCRA's jurisdictional time requirements." ***Shaw***, 217 A.3d at 271.

Here, the PCRA court recognized that a "mental infirmity that previously had prevented the discovery and presentation of PCRA-cognizable claims may qualify the afflicted petitioner" for a time-bar exception. PCRA Court Memorandum and Order, 3/16/25, 4 (citing ***Cruz***). Appellant, "however, [did]

not claim any such incapacity due to his PTSD or otherwise, 'and so does not fall within the narrow ***Cruz*** holding.'" ***Id.*** (quoting from ***Commonwealth v. Monaco***, 996 A.2d 1076, 1082-83 (Pa. Super. 2010)). We explained in ***Monaco*** that the petitioner did not allege his PTSD impaired his mental ability to raise or communicate his claim and therefore held that the "PTSD diagnosis [did] not fall within the narrow ***Cruz*** holding." ***Id.*** at 1082-83.

We agree with the PCRA court that Appellant proffered no support that he was incompetent at any point in time. ***See Commonwealth v. Ali***, 86 A.3d 173, 178 (Pa. 2014) ("to qualify for the newly-discovered evidence exception, therefore, Appellant bears the burden of proving by a preponderance of the evidence that he was mentally incompetent during the period in which to raise and preserve claims in his first PCRA petition"); ***see also Shaw***, 217 A.3d at 271 ("Pennsylvania courts have continued to construe narrowly the limited holding in ***Cruz***"). Appellant only argued that because of his PTSD he disregarded the signs that he had PTSD. Even if Appellant was not aware that he suffered from PTSD, that did not establish he could not have raised a post-conviction claim in a timely PCRA petition with respect to the statute of limitations or legality of his sentence. Before the PCRA court he contended only that he was unaware of any legal claims and that he struggled with undiagnosed PTSD. Combined, these allegations do not warrant application of the time-bar exception set out in ***Cruz***. ***See Shaw***, 217 A.3d at 271; ***Monaco***, 996 A.2d at 1082-83. Appellant simply did not contend that the PTSD rendered him incompetent to enter a plea agreement or unable to

assist in his defense, much less to present collateral challenges in a timely PCRA petition.

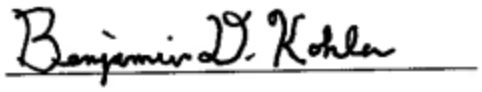
The newly-discovered fact exception to the time-bar is "claim specific." ***See Commonwealth v. Porter***, 35 A.3d 4, 13 (Pa. 2012). It may be properly invoked for one claim but not for another. In his *pro se* PCRA petition, Appellant asserted a claim that trial counsel was ineffective for failing to "uncover and present" evidence of his mental health or impairment as a defense to the charges or in mitigation of sentence. *Pro Se* PCRA Petition, 1/5/26, 3. This allegation asserted a substantive claim based on the newly-discovered fact of his December 2024 diagnosis of PTSD and a claim-specific basis for the newly-discovered exception distinct from his argument, based on ***Cruz***, that his PTSD rendered him completely unable to timely file a PCRA petition. Addressing this ineffectiveness claim, the PCRA court explained it found the allegation that counsel was ineffective for failing to "uncover" evidence of his PTSD "specious, because [Appellant] himself had to be then unaware of his mental illness to now qualify for exemption for timeliness; thus counsel could not have known of it." PCRA Court Memorandum and Order, 3/16/25, 6. We agree that the way Appellant raised this ineffectiveness claim in his *pro se* petition contradicted his reliance on ***Cruz*** as the basis for a time-bar exception. Moreover, Appellant waived from further review this claim-specific assertion of the newly-discovered fact exception by limiting his argument on appeal to ***Cruz***. ***See Commonwealth v. D'Amato***, 856 A.2d 806, 814 (Pa. 2004) (undeveloped arguments that are the functional

equivalent of no argument at all are waived); ***Commonwealth v. Taylor***, 277 A.3d 577, 590-91 (Pa. Super. 2022) ("[w]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review that claim is waived").

Accordingly, we affirm the PCRA court's order dismissing Appellant's PCRA petition without a hearing.

Order affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/13/2026