

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
BALDYR RENE ANTON	:	
	:	
	:	No. 896 EDA 2025

Appeal from the PCRA Order Entered March 20, 2025
 In the Court of Common Pleas of Lehigh County Criminal Division at
 No(s): CP-39-0002004-2021

BEFORE: KUNSELMAN, J., McLAUGHLIN, J., and BENDER, P.J.E.

MEMORANDUM BY McLAUGHLIN, J.: **FILED MARCH 10, 2026**

Baldyr Rene Anton appeals *pro se* from the order dismissing his Post Conviction Relief Act ("PCRA") petition as untimely. **See** 42 Pa.C.S.A. §§ 9541-9546. Anton argues his trial counsel, post-sentence counsel, and PCRA counsel were ineffective. We affirm.

A jury convicted Anton of child pornography, dissemination of child pornography, and criminal use of a communication facility.¹ The court imposed an aggregate sentence of five to 14 years' incarceration on March 24, 2023.

Twenty-eight days after sentencing, on April 21, 2023, through new counsel, Anton filed untimely post-sentence motions. The court entered an

¹ 18 Pa.C.S.A. §§ 6312(d), 6312(c), and 7512(a), respectively.

order purporting to deny these motions on the merits in June 2023.² Anton did not file a direct appeal.

In December 2024, Anton filed a *pro se* "Petition on Actual Innocence Claim." The court treated the petition as a first PCRA petition and appointed PCRA counsel. Counsel filed a petition to withdraw and a **Turner/Finley** "no merit" letter concluding that Anton's petition was untimely.

The court filed notice of its intention to dismiss the petition without a hearing. **See** Pa.R.Crim.P. 907(1). In response, Anton filed four *pro se* documents, none of which addressed the timeliness of his petition. The court dismissed the petition as untimely, on March 20, 2025, and granted PCRA counsel's petition to withdraw.

Twelve days later, on April 1, 2025,³ Anton simultaneously filed a *pro se* motion for reconsideration and a *pro se* notice of appeal. His reconsideration motion alleged that after the PCRA court had dismissed his petition, he had learned from a legal aide at the prison that counsel retained for post-sentence motions and a direct appeal had failed to file a requested

² Post-sentence motions must ordinarily be filed within 10 days of sentencing. **See** Pa.R.Crim.P. 720(A)(1). While Anton labeled his filing, "Post-Sentence Motions Nunc Pro Tunc," the court did not expressly grant Anton *nunc pro tunc* relief within the appeal period. Anton's post-sentence motions therefore did not toll the appeal period, which expired 30 days after Anton's sentencing. **See Commonwealth v. Capaldi**, 112 A.3d 1242, 1244 (Pa.Super. 2015).

³ Although the documents were docketed on April 4, 2025, the envelopes in which they were mailed were postmarked April 1, 2025. **See Commonwealth v. Jones**, 700 A.2d 423, 426 (Pa. 1997) (explaining that under prisoner mailbox rule, Pennsylvania courts accept "any reasonably verifiable evidence of the date that the prisoner deposits the appeal with the prison authorities").

direct appeal. Motion for Reconsideration of PCRA Denial, filed 4/1/25, at 2-3. Anton asserted that the PCRA petition should therefore have included a request to reinstate his direct appeal rights *nunc pro tunc* and asked the PCRA court to allow him to amend the petition to assert such a claim. ***Id.*** at 3-4. The PCRA court denied reconsideration because it believed it lacked jurisdiction to entertain the motion due to the filing of the appeal. ***But see*** Pa.R.A.P. 1701(b)(3).⁴

Anton now raises the following issues on appeal:

1. Was [Anton's] PCRA Counsel ineffective for failing to raise Appellate Counsel's ineffectiveness for failing to file a direct appeal after [Anton's] post-sentence motions were denied?
2. Was PCRA Counsel ineffective for filing a ***Turner/Finley*** letter instead of raising the following meritorious issues in an amended PCRA petition:
 - a. Trial counsel was ineffective for failing to file a Motion for the appointment of an expert to prove the videos played at trial had been altered and edited in the prosecution's favor, removing [Anton's] statements of innocence, and altered the video of [Anton's] daughter to make it look more incriminating.
 - b. Trial counsel was ineffective for failing to move to suppress the police interrogation videos of [Anton] where there was, *inter alia*, no date and time stamp on the video, obvious alteration and edits, no interpreter present during interrogation, etc.

⁴ Rule 1701(b)(3) "provides that, after an appeal or appellate jurisdiction petition for review is filed, the trial court or other government unit retains jurisdiction for the remainder of the applicable appeal period to reconsider its order, except that a court may not reconsider a judgment entered pursuant to Pa.R.C.P. 227.4(1)(b)." G. Ronald Darlington, *et al.*, 20A West's Pa. Prac., App. Prac. § 1701:21 (Dec. 2025 update) (footnotes omitted).

c. Trial counsel was ineffective for failing to move to suppress the police body cam videos because there was no evidence, such as recording of the outside of the apartment, to prove they were at and recording the correct address.

d. Trial counsel was ineffective for failing to show the jury that the evidence was from a different type of cell phone and a different cell phone company than [Anton] utilized, and that [Anton] had a potential alibi where he was 45 minutes away from where authorities stated the events happened.

e. Trial counsel was ineffective for allowing [Anton's] Confrontation Clause rights to be violated.

Anton's Br. at 2-3 (some italics removed).

"Our standard of review is well settled. When reviewing the denial of a PCRA petition, we must determine whether the PCRA court's order is supported by the record and free of legal error." ***Commonwealth v. Anderson***, 234 A.3d 735, 737 (Pa.Super. 2020) (internal quotation marks and citation omitted).

In his first issue, Anton argues his PCRA counsel was ineffective for failing to file an amended petition asserting that Anton's post-sentence counsel was ineffective for failing to file a direct appeal when he assured Anton he would do so. Anton asserts that he told PCRA counsel that he affirmatively asked post-sentence counsel to file a direct appeal, and that he did not learn until speaking with a legal aid that no appeal had been filed.

In ***Commonwealth v. Bradley***, 261 A.3d 381, 401 (Pa. 2021), the Pennsylvania Supreme Court held that "a PCRA petitioner may, after a PCRA court denies relief, and after obtaining new counsel or acting *pro se*, raise

claims of PCRA counsel's ineffectiveness at the first opportunity to do so, even if on appeal."

Anton's assertion in his appellate brief that PCRA counsel was ineffective does not warrant relief. Anton did not raise his claim that PCRA counsel was ineffective at the first opportunity. After counsel withdrew, Anton filed a motion for reconsideration but did not include this issue in that motion. That motion only alleged that because his previous counsel had failed to take a requested appeal, his PCRA petition ought to have asked for a *nunc pro tunc* appeal. He did not claim that PCRA counsel was ineffective for failing to include the claim for *nunc pro tunc* relief. Nor did he allege facts that, if true, would give rise to a finding of ineffectiveness. He did not allege, for example, that PCRA counsel was aware that the previous lawyer had failed to file an asked-for appeal. This claim fails.

In his second issue, Anton argues PCRA counsel was ineffective for failing to present multiple claims of trial counsel's ineffectiveness. We do not reach these issues because the PCRA court determined Anton's petition was untimely. That decision is supported by the record and free from legal error. Anton did not file his PCRA petition until over a year after his judgment of sentence became final and he has not established that any of the three time-bar exceptions applies.

The timeliness of a PCRA petition is a jurisdictional prerequisite. 42 Pa.C.S.A. § 9545(a); **Anderson**, 234 A.3d at 737. If the petition is untimely,

neither this Court nor the trial court has “the legal authority to address the substantive claims.” **Anderson**, 234 A.3d at 737 (citation omitted).

The PCRA mandates that a PCRA petition must be filed within one year of the date the petitioner’s judgment of sentence has become final, unless the petitioner pleads and proves one of three enumerated exceptions applies. 42 Pa.C.S.A. § 9545(b)(1). The judgment of sentence 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). The exceptions are:

- (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.

Id. at § 9545(b)(1)(i)-(iii). When an exception applies, the petitioner must file the petition a year of the date when the claim could have first been presented. **Id.** at (b)(2).

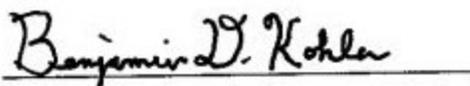
Anton did not file timely post-sentence motions and the court did not expressly grant *nunc pro tunc* relief before the appeal period expired. His judgment of sentence therefore became final in April 2023, 30 days after his

March 2023 sentencing. The one-year deadline thus expired in April 2024. He did not file his petition until December 2024, over a year later.

While he claims he did not discover until after the one-year period that prior counsel had failed to file an appeal, which could arguably qualify as a newly discovered fact,⁵ Anton has not explained why he could not have learned the status of his direct appeal sooner. Even on appeal he offers no explanation. All his arguments relate to the trial proceedings. None explain why Anton could not have discovered this information previously. He has not shown due diligence and therefore has failed to put forth a sufficient basis upon which to invoke the “unknown facts” exception. **See Commonwealth v. Carr**, 768 A.2d 1164, 1168 (Pa.Super. 2001) (holding petition untimely where petitioner “had a full year to learn if a direct appeal had been filed on his behalf”); **accord Commonwealth v. Wilson**, 824 A.2d 331, 335-36 (Pa.Super. 2003) (*en banc*).

Order affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 3/10/2026

⁵ **See** 42 Pa.C.S.A. § 9545(b)(1)(ii).