

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CR-2087-1998</b>
	:	
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>JOHN A. COOKE,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On August 11, 2015, the Defendant filed a petition for relief under the Post-Conviction Relief Act (PCRA).<sup>1</sup> On August 18, 2015, this Court appointed PCRA counsel. On October 7, 2015, PCRA counsel filed a petition to withdraw from representation and a “no merit letter” pursuant to Commonwealth v. Turner<sup>2</sup> and Commonwealth v. Finley.<sup>3</sup> A court conference was scheduled for November 17, 2015, but neither PCRA counsel nor the Commonwealth believed discussion beyond the “no merit letter” was needed. In the petition, the Defendant argues that he is entitled to relief because he “was sentenced under a mandatory minimum sentence provision which has recently been deemed to be unconstitutional . . . .” He cites Alleyne v. United States<sup>4</sup> and Commonwealth v. Hopkins.<sup>5</sup>

**I. Background**

The Defendant was sentenced on June 22, 1999. On April 19, 2006, the Supreme Court of Pennsylvania denied the Defendant’s petition for allowance to appeal his judgement of sentence. The Defendant did not file a petition for a writ of certiorari.

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<sup>1</sup> 42 Pa.C.S. § 9541 *et seq.*

<sup>2</sup> 544 A.2d 927 (Pa. 1988).

<sup>3</sup> 550 A.2d 213 (Pa. Super. 1988).

<sup>4</sup> 133 S.Ct. 2151 (2013).

<sup>5</sup> 117 A.3d 247 (Pa. 2015).

## II. Discussion

“[T]he timeliness of a PCRA petition is a jurisdictional requisite.” Commonwealth v. Brown, 111 A.3d 171, 175 (Pa. Super. 2015). Any petition under [the PCRA] . . . 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).

“[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. § 9545(b)(3). “Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of [the Supreme Court of the United States] within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.” U.S.Sup.Ct.R. 13.

On April 19, 2006, the Supreme Court of Pennsylvania denied the Defendant’s petition for allowance of appeal. The Defendant did not file a petition for a writ of certiorari. Therefore, his judgement of sentence became final on July 19, 2006. See U.S.Sup.Ct.R. 13 (providing that

a petition for a writ of certiorari is timely when it is filed within 90 days after entry of the order denying discretionary review). Because the PCRA petition was not filed within one year of July 19, 2006, the Defendant must plead and prove one of the exceptions in 42 Pa.C.S. § 9545(b)(1) for this Court to have jurisdiction.

The Defendant argues that he is entitled to relief as a result of Alleyne and Hopkins. “[A] judicial opinion does not qualify as a previously unknown ‘fact’ capable of triggering the timeliness exception set forth in section 9545(b)(1)(ii) of the PCRA.” Commonwealth v. Cintora, 69 A.3d 759, 763 (Pa. Super. 2013).

In Hopkins, the Commonwealth conceded that the mandatory sentencing provision of 18 Pa.C.S. § 6317 was unconstitutional pursuant to Alleyne, but contended that the “proof of sentencing” provision was severable. The Pennsylvania Supreme Court rejected that argument, and held that the provision could not be severed without the court usurping the role of the legislature and recrafting the relevant portions of Section 6317. In Hopkins, the court determined Alleyne’s effect on 18 Pa.C.S. § 6317; the court did not recognize a constitutional right. Therefore, Hopkins does not get the Defendant into the exception in 42 Pa.C.S. § 9545(b)(1)(iii).

Likewise, Alleyne does not get the Defendant past the PCRA time-bar. In Commonwealth v. Miller,<sup>6</sup> a petitioner filed a PCRA petition more than one year after the date that his judgment of sentence became final. 102 A.3d at 993. The PCRA court dismissed the petition, and the petitioner appealed the dismissal. Id. at 991-92. On appeal, the petitioner argued “that the time-bar exception at Section 9545(b)(1)(iii) applie[d] in [his] case.” Id. at 993. “Specifically, [the petitioner] aver[red] that the United States Supreme Court’s decision in

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<sup>6</sup> 102 A.3d 988 (Pa. Super. 2014).

Alleyne announced a new constitutional right that applies retroactively.” Id. The Superior Court of Pennsylvania held that the PCRA Court correctly dismissed the petition. Id. at 996. The Court wrote, “[N]either our Supreme Court, nor the United States Supreme Court has held that Alleyne is to be applied retroactively to cases in which the judgment of sentence had become final. This is fatal to [the petitioner’s] argument regarding the PCRA time-bar.” Id. at 995.

Although the Miller court was “aware that an issue pertaining to Alleyne goes to the legality of the sentence,” it concluded that “the PCRA court lacked jurisdiction to consider the merits of . . . [the] petition, as it was untimely filed and no exception was proven.” Id. at 995-96. “Though not technically waivable, a legality [of sentence] claim may nevertheless be lost should it be raised . . . in an untimely PCRA petition for which no time-bar exception applies, thus depriving the court of jurisdiction over the claim.” Id. at 995. (quoting Commonwealth v. Seskey, 86 A.3d 237, 241 (Pa. Super. 2014)). “The PCRA’s time restrictions are jurisdictional in nature. Thus, [i]f a PCRA petition is untimely, neither [the Superior Court] nor the trial court has jurisdiction over the petition.” Seskey, 83 A.3d at 241 (quoting Commonwealth v. Albrecht, 994 A.2d 1091, 1093 (Pa. 2010)).

### **III. Conclusion**

After conducting an independent review, this Court finds that the Defendant's petition is untimely. In addition, he has not proven an exception to the PCRA time-bar. Therefore, this Court does not have jurisdiction over the petition.

### **ORDER**

**AND NOW**, this \_\_\_\_\_ day of February, 2016, it hereby ORDERED and DIRECTED as follows:

1. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1) and for the reasons discussed in the foregoing opinion, the Defendant is hereby notified that this Court intends to dismiss his PCRA petition, which was filed on August 11, 2015. The Defendant may respond to the proposed dismissal within 20 days of the date of the notice.
2. The petition to withdraw from representation, which was filed on October 7, 2015, is hereby GRANTED, and Attorney may withdraw from the above-captioned case.

By the Court,

Nancy L. Butts, President Judge