

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-2025-2005</b>
v.	:	
	:	
<b>JONATHAN R. MITCHELL,</b>	:	<b>PCRA</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

On May 6, 2016, Defendant filed a petition for relief under the Post-Conviction Relief Act (PCRA).<sup>1</sup> Counsel was not appointed as this is Defendant’s third PCRA petition. In the petition, Defendant contends that he is entitled to relief because he was sentenced to a mandatory minimum sentence. He cites Alleyne v. United States<sup>2</sup> and Montgomery v. Louisiana.<sup>3</sup>

**I. Background**

On April 27, 2007, following a jury trial, Defendant was convicted of criminal homicide, robbery, and possessing an instrument of crime. He was sentenced on May 1, 2007 to a mandatory term of incarceration for life and his post sentence motion was denied on October 4, 2007. On November 9, 2009, the Superior Court affirmed Defendant’s judgment of sentence and on April 27, 2010, the Pennsylvania Supreme Court denied his request for allowance of appeal.

On February 22, 2011, Defendant filed his first PCRA petition. That petition was dismissed by Order dated February 15, 2012. Defendant appealed that dismissal on

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

<sup>2</sup> 133 S.Ct. 2151 (2013).

<sup>3</sup> 136 S. Ct. 718 (2016).

November 14, 2012 and also that day filed a second PCRA petition. The second PCRA was dismissed for lack of jurisdiction (based on the appeal) on December 4, 2012, and the appeal was quashed as untimely on February 11, 2013.

## **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).

Here, Defendant was sentenced on May 1, 2007, the sentence was upheld by the Superior Court by Order dated November 9, 2009, and his petition for allowance of appeal to the Pennsylvania Supreme Court was denied on April 27, 2010. Thus, his judgment of sentence became final ninety (90) days later on July 27, 2010, the expiration

of the time for filing a petition for writ of certiorari to the United States Supreme Court. Sup. Ct. R. 13(1). Because the PCRA petition was not filed within one year of July 27, 2010, Defendant must plead and prove one of the exceptions in 42 Pa.C.S. § 9545(b)(1) for this Court to have jurisdiction.

In Commonwealth v. Washington, 2016 Pa. LEXIS 1536, the Pennsylvania Supreme Court recently held that “Alleyne does not apply retroactively to cases pending on collateral review”. In the instant case, since Defendant’s case was not pending on direct review, Alleyne cannot be applied retroactively and thus the sought-after exception to the time-bar does not apply.

### **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 October, 2016, it hereby ORDERED and DIRECTED as follows:

The Defendant is notified that this Court intends to dismiss the Defendant's PCRA petition because it is untimely. The Court will dismiss the Defendant's petition unless the Defendant files an objection to that dismissal within twenty (20) days of date of this Order.

BY THE COURT,

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Nancy L. Butts, President Judge

cc: District Attorney  
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