

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 v. : CR-2027-1997  
 :  
 HILTON MINCY, :  
 Petitioner : CRIMINAL DIVISION  
 :

**ORDER**

The matter before the Court is a Post-Conviction Collateral Relief motion submitted by Petitioner. On September 27, 2021, this Court received this petition, which shall be treated as Petitioner's Sixth Post-Conviction Relief Act (PCRA) Petition.

**Procedural History**

The Pennsylvania Superior Court summarized the extensive procedural history in Petitioner's PCRA filings.

On May 14, 1998, a jury convicted Appellant of attempted murder and related charges. The trial court sentenced him to an aggregate term of seventeen to forty years of imprisonment. In an unpublished memorandum filed on February 27, 2001, this Court affirmed Appellant's judgment of sentence. Commonwealth v. Mincey, [sic] 776 A.2d 1007 (Pa. Super. 2001). Appellant did not file a petition for allowance of appeal with our Supreme Court.

Appellant filed a timely *pro se* PCRA petition on October 22, 2001. Counsel was appointed and filed an amended petition. On December 12, 2002, the PCRA court entered an order dismissing Appellant's petition. In an unpublished memorandum filed on January 9, 2004, this Court affirmed the PCRA court's dismissal, and on September 16, 2004, our Supreme Court denied Appellant's petition for allowance of appeal. Commonwealth v. Mincey, 847 A.2d 759 (Pa. Super. 2004), *appeal denied*, 859 A.2d 768 (Pa. 2004).

On February 21, 2007, Appellant filed a second, counseled PCRA petition, in which he asserted that after-discovered evidence rendered his petition timely. By order dated February 22, 2007, the PCRA court stayed consideration of the petition until a federal appellate ruling was made regarding Appellant's pending motion for writ of habeas corpus. On June 20, 2007, PCRA counsel filed a supplemental PCRA petition that the PCRA court again stayed pending a ruling from the United States Supreme Court on Appellant's petition for *certiorari*.

On April 18, 2008, the PCRA court issued its notice of intent to dismiss Appellant's PCRA petition, pursuant to Pa.R.Crim.P. 907, because it was untimely and the issues raised therein were either previously litigated, waived,

or lacked merit. PCRA counsel filed a response to this notice on May 6, 2008. By order dated July 1, 2008, the PCRA court dismissed Appellant's petition. Appellant timely appealed to this Court<sup>1</sup>. In an unpublished memorandum filed on June 9, 2009, this Court affirmed the PCRA court's order denying post-conviction relief. Commonwealth v. Mincy, 981 A.2d 317 (Pa. Super. 2009).

On July 27, 2009, Appellant filed a *pro se* petition for habeas corpus in which he raised myriad claims regarding his trial, sentence, and continued incarceration. On August 19, 2009, Appellant filed an amended petition for writ of habeas corpus. By order dated August 24, 2009, the PCRA court denied Appellant's petition without prejudice to Appellant's ability to re-file a petition under the PCRA. In addition, the PCRA court noted that, because his counsel had filed a petition for allowance of appeal with regard to the dismissal of Appellant's second PCRA petition, Appellant's petition was premature. On September 9, 2009, the PCRA court denied Appellant's motion for reconsideration. Appellant filed an appeal from this order which was quashed by order of this Court dated December 16, 2009, as not being from a final order.

On December 28, 2009, Appellant filed another petition for writ of habeas corpus in which he claimed he was being "illegally detained." By opinion and order dated September 22, 2010, the PCRA court issued its Rule 907 notice of intent to dismiss Appellant's petition. Treating the habeas corpus petition as a PCRA petition, the PCRA court found it to be untimely. Appellant filed his response on October 18, 2010. By order dated October 25, 2010, the PCRA court dismissed Appellant's petition.

Commonwealth v. Mincy, No. 1933 MDA 2010 (Pa. Super. July 27, 2011).

The Superior Court upheld the dismissal of Petitioner's Fourth PCRA petition. On May 22, 2012, Petitioner filed his Fifth PCRA petition alleging ineffective trial counsel. The PCRA court dismissed that petition as untimely on December 17, 2012 and the Superior Court affirmed the dismissal holding that Petitioner failed to properly assert the either of the PCRA timeliness exceptions. Petitioner filed his current Sixth PCRA petition with this Court on September 27, 2021.

## **Discussion**

After an independent review of the entire record, this Court finds that Petitioner has failed to timely file his Sixth PCRA Petition, and therefore his petition should be dismissed as

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<sup>1</sup> "On October 14, 2008, Appellant filed a *pro se* third PCRA petition. By order of court dated October 29, 2008, the PCRA court dismissed this petition without prejudice because Appellant's appeal from the dismissal of his second PCRA petition was still pending." Commonwealth v. Mincy, No. 1933 MDA 2010 (Pa. Super. July 27, 2011).

this Court does not have jurisdiction to preside over the merits of his claims. For a PCRA Petition to be considered timely it must satisfy the following requirements:

***(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) (emphasis added).

A PCRA petition raising one of these exceptions must raise it “within one year of the date the claim could have been presented.” 42 Pa. C.S. § 9545(b)(2). A petitioner must “affirmatively plead and prove” the exception, upon which he or she relies.

*Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. 2007).

Following his conviction after a jury trial, Petitioner’s sentence was affirmed by the Superior Court on February 27, 2001. Petitioner failed to appeal his sentence to the Pennsylvania Supreme Court, therefore his judgment of sentence became final on March 27, 2001. 42 Pa. C.S. § 9545(b)(3). Petitioner neglected to file the instant PCRA petition until September 27, 2021. Therefore, Petitioner’s Sixth PCRA petition is patently untimely. However, Petitioner attempts to forego the time-bar by asserting the second exception to the PCRA timeliness requirements. 42 Pa.C.S. § 9545(b)(1)(ii). Petitioner claims that the victim in this case was released from prison on the condition that they testify falsely against Petitioner in order to assist the Commonwealth in obtaining a conviction on a more serious charge. Petitioner argues that the victim’s testimony differed greatly at trial than what the victim testified to at the preliminary hearing. Petitioner believes it falls under the second exception to the timeliness requirement because he was not sure

how the victim was able to get released from incarceration in order to testify at trial, but he “knew” that something underhanded occurred. Petitioner’s argument fails on this particular exception because, if the victim’s trial testimony actually varied from the testimony given at the preliminary hearing, Petitioner would have been aware of this on the day of trial in May of 1998, not twenty-three (23) years after the fact. Therefore, Petitioner’s PCRA petition does not fall under the newly discovered facts exception.

Petitioner also cites to Commonwealth v. Small, 238 A.3d 1267 (Pa. 2020) as justification for his untimely filing under the third exception to the timeliness requirement. 42 Pa.C.S. § 9545(b)(1)(iii). However, upon review of this case, the Court finds that Petitioner’s cite to this case under this particular exception is misguided. The Small case examines the viability of the public record presumption that precludes a petitioner from establishing the existence of new facts to support PCRA relief. Small, 238 A.3d at 1271. This case does not create a constitutional right, but instead examines a particular issue within an already recognized exception to the timeliness requirement for a PCRA petition. It appears that this case would be better suited as support for Petitioner’s argument for the newly discovered facts exception as previously discussed. However, this Court has already determined that Petitioner’s argument on that issue is without merit. As a result, Petitioner has cited to a case that does not create new constitutional rights not already recognized and Petitioner’s argument on this issue must also fail.

Since Petitioner's PCRA Petition is untimely, pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny Petitioner's PCRA Petition. Petitioner may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an Order dismissing the Petition.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
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NLB/jmh