IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**: No. CP-41-CR-0001969-2012**
	:
vs.	**: CRIMINAL DIVISION**
	:
	: Notice of Intent to Dismiss
RAYMARR DAQUAN ALFORD,	**: 2nd PCRA petition**
Defendant	**:**

OPINION AND ORDER

Before the court is the Second Post Conviction Relief Act (PCRA) petition filed by Raymarr Daquan Alford (hereinafter "Alford").

> On July 9,2012, just five days shy of this 18th birthday, [Alford] shot and killed Kevan Connelly at Flanagan Park in Williamsport, Pennsylvania. [Alford] was charged with murder and related crims, and on April 30, 2014, a jury convicted him of first-degree murder, criminal conspiracy, possessing an instrument of crime, recklessly endangering another person (REAP), and firearms not to be carried without a license. On November 10, 2014, the trial court sentenced [Alford], pursuant to 18 Pa. C.S.A. §1102.1(a)(1)(Sentence of persons under the age of 18 for murder), to 50 years to life imprisonment. On his remaining convictions, the trial court sentenced [Alford] to consecutive terms of 9½ to 40 years for criminal conspiracy, 1 to 2 years for REAP, and 2 to 7 years for firearms not to be carried without a license. Appellant's aggregate sentence was 62½ years to life imprisonment.
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> On December 16, 2015, [the Pennsylvania Superior] Court affirmed [Alford's] judgement of sentence. ***See Commonwealth v. Alford*****,** 475 MDA 3015 (Pa. Super. Dec. 16, 2015)(unpublished memorandum). On August 3, 2016, the Supreme Court of Pennsylvania denied [Alford's] petition for allowance of appeal.
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> On June 13, 2017, [Alford] filed a timely *pro se* PCRA petition. On August 30, 2017, the PCRA court appointed counsel to represent [Alford] during PCRA proceedings. In his petition, [Alford] asserted that his trial counsel was ineffective for failing to file a decertification petition to transfer his case for disposition in juvenile court, and his sentence was illegal because his 50-year to life sentence for first-degree murder was an unconstitutional *de facto* life sentence.
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> On August 27, 2018, the PCRA court issued notice of its intent to dismiss [Alford's] PCRA petition pursuant to Pennsylvania Rule of Criminal Procedure 907. On September 20, 2018, the PCRA court formally

dismissed [Alford's] PCRA petition.

Commonwealth v. Alford, 1626 MDA 2018 (Pa. Super. Apr. 9, 2019)(unpublished memorandum). The Pennsylvania Superior Court affirmed the PCRA court's dismissal of Alford's first PCRA petition. *Id*. On October 20, 2021, while Alford's petition for allowance of appeal was pending, the Pennsylvania Supreme Court decided the case of *Commonwealth v. Bradley*, 261 A.3d 381 (Pa. 2021). On April 19, 2022, the Pennsylvania Supreme Court denied Alford's petition for allowance of appeal.

On June 9, 2022, Alford filed a second PCRA petition in which Alford raised the following claims:

a) PCRA counsel rendered ineffective assistance by failing to raise in the initial collateral review petition that trial counsel's erroneous advice interfered with Alford's absolute right to testify; and
b) PCRA counsel rendered ineffective assistance by failing to raise in the initial collateral review petition that trial counsel's (sic) failed to file a motion to recuse the judge.

(Second) PCRA petition (filed on June 9, 2022), ¶21. Alford asserted that in *Bradley*, the Pennsylvania Supreme Court recognized 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. *Bradley*, 261 A.3d at 410." (Second) PCRA petition, ¶12. Alford claimed that "[c]onsistent with *Bradley*, this is Alford's first opportunity to do so since his collateral appeals were counseled." (Second) PCRA petition, ¶14.

After an independent review of the record, the court finds that it lacks jurisdiction to hold an evidentiary hearing or grant any relief to Alford.

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 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).

A judgment becomes final at the conclusion of direct review or at the expiration of time for seeking the review. 42 Pa. C.S.A.§9545(b)(3). The court sentenced Alford on November 10, 2014. Alford appealed. The Superior Court affirmed Alford's judgment of sentence on December 16, 2015, and the Pennsylvania Supreme Court denied Alford's petition for allowance of appeal on August 3, 2016. Alford had 90 days to file a petition for writ of certiorari from the United States Supreme Court. U.S. Sup.Ct. R. 13.1. Accordingly, Alford's judgment became final on November 1, 2016. Alford's second PCRA petition was filed on June 9, 2022. Therefore, Alford's petition is facially untimely.

Alford does not even mention the statutory exceptions to the one-year filing requirement, let alone plead facts to support any of those exceptions. Rather, Alford seems to assert that *Bradley* permits him to file a second PCRA petition without satisfying any of

the statutory exceptions or that *Bradley* renders his second petition timely. The court cannot agree.

Alford's petition cannot satisfy the first statutory exception because the term "government official" does not include defense counsel, whether appointed or retained. 42 Pa.C.S.A. §9545(b)(4).

Alford's petition does not satisfy the second statutory exception because neither the *Bradley* decision nor the discovery of PCRA counsel's ineffectiveness constitute a "new fact" that was unknown to the petitioner. *Commonwealth v. Watts*, 611 Pa. 80, 23 A.3d 980 (2011)(a judicial decision does not amount to a new "fact" under section 9545(b)(1)(ii) of the PCRA); *Bradley*, 261 A.3d at 404 n.18 (declining to adopt an approach that would deem a petitioner's "discovery" of initial PCRA counsel's ineffective assistance to constitute a "new fact" that was unknown to petitioner to overcome the PCRA's time bar provision in a successive PCRA petition). In fact, in his concurring opinion, Justice Dougherty expressly states "our decision today does not create an exception to the PCRA's jurisdictional time-bar, such that a petitioner represented by the same counsel in the PCRA court and on PCRA appeal could file an untimely successive PCRA petition challenging initial PCRA counsel's ineffectiveness because it was his 'first opportunity to do so' and he notes the statements in the majority opinion that support this conclusion. 261 A.3d at 406-407.

Alford's petition also does not satisfy the third exception. The newly-recognized constitutional right exception has two requirements: (1) the right asserted by the petitioner must be a constitutional right recognized by the United States Supreme Court or the Pennsylvania Supreme Court after the one-year time period for filing a timely PCRA petition; and (2) the right was held by "that court" to apply retroactively. *Commonwealth v.*

Taylor, 283 A.3d 178, 187 (Pa. 2022). The *Bradley* Court did not recognize a new constitutional right; it recognized a procedure or mechanism on appeal for a petitioner to vindicate his or her rule-based right to effective PCRA counsel.[1] *See Bradley,* 261 A.3d at 391 (a petitioner has a rule-based right to effective assistance of counsel for a first PCRA petition but the question of how to raise a claim of PCRA counsel's ineffectiveness has proven to be vexing). The Court also did not expressly hold that *Bradley* would apply retroactively.

The time limits of the PCRA are jurisdictional in nature. *Commonwealth v. Howard*, 567 Pa. 481, 485, 788 A.2d 351, 353 (2002); *Commonwealth v. Palmer*, 814 A.2d 700, 704-05 (Pa.Super. 2002). When a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within one year of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner's PCRA claims. 42 Pa. C.S.A. §9545(b); see also *Commonwealth v Gamboa-Taylor*, 562 Pa. 70, 77, 753 A.2d 780, 783 (2000).

Based on the foregoing, the court finds that it lacks jurisdiction to hold an

[1] There is no constitutional right to counsel during collateral review; there is only a rule-based right to counsel pursuant to Rule 904 of the Pennsylvania Rules of Criminal Procedure. *Commonwealth v. Peterson*, 648 Pa. 313, 324 n.3, 192 A.3d 1123, 1130 n.3 (2018); *Commonwealth v. Jones*, 572 Pa. 343, 364, 815 A.3d 598, 611 (2002).

evidentiary hearing or to grant Alford relief because his petition is untimely.

Even if the petition were timely filed, the court questions whether Alford's claims have arguable merit and/or whether he has sufficiently pleaded them.

Alford first contends that PCRA counsel rendered ineffective assistance of counsel by failing to raise in the initial collateral review petition that trial counsel interfered with Alford's absolute right to testify. More specifically, he claims that trial counsel erroneously advised him that if he testified he would be impeached with a prior conviction for possession with intent to deliver a controlled substance (PWID), which does not constitute a *crimen falsi* offense.

Alford was a minor at the time he committed this murder. Therefore, he cannot have "prior convictions" for PWID; he could only have prior adjudications of delinquency. Although Alford does have an adjudication of delinquency for PWID, Alford did not assert this claim of ineffective assistance of trial counsel in his pro se first PCRA petition. He also does not state in his second PCRA petition when, if at all, he advised PCRA counsel of trial counsel's advice or any facts related to this claim.

At trial, the court conducted a colloquy with Alford during which he waived his right to testify in his own defense. N.T., 04/28/2014, at 204-207. Alford specifically indicated that it was his decision not to testify, and no one—including counsel—was forcing or threatening him not to testify or said or did anything that influenced his decision not to testify. The court asked Alford if he had any questions about his decision not testify. Alford simply answered, "No, Your Honor." He did not ask the court if he could be impeached with any of his prior adjudications of delinquency or state that trial counsel said he could be impeached with his prior convictions and that's why he decided not to testify. At this point,

there is nothing in the record or in Alford's petitions to show that PCRA counsel had any reason to question the validity of Alford's waiver of his right to testify.

Alford also asserts that PCRA counsel rendered ineffective assistance by failing to raise in the initial collateral review petition that trial counsel failed to file a motion to recuse the judge because the same presiding judge was the judge who presided over his juvenile adjudication proceedings. This claim lacks arguable merit and Alford did not suffer prejudice.

Alford relies on *In re Murchison*, 349 U.S. 133, 136-135 (1955) to support his claim that the judge who presided over his juvenile adjudication proceedings could not preside over his trial in this case. Alford's reliance on *Murchison* is misplaced. In *Murchison*, the judge acted as both the accuser (or prosecutor) and the judge (or adjudicator) in contempt proceedings. It was the dual role as prosecutor and adjudicator in a single proceeding which was improper. *Murchison* does not stand for the proposition that a judge who presides over one matter involving an individual must be recused from presiding as a judge over any other matter involving that individual. Therefore, this claim lacks arguable merit.

Moreover, Alford's claims are not factually accurate. The undersigned did not preside over Alford's juvenile adjudication proceedings. The Honorable Richard Gray was the judge who presided over Alford's juvenile adjudication and disposition proceedings.[2] Therefore, even if trial counsel would have filed a motion to recuse, the court would have denied it. Thus, Alford did not suffer prejudice from any alleged failure of trial counsel to file a motion to recuse the judge.

O R D E R

AND NOW, this 15th day of December 2022, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that no purpose would be served by conducting an evidentiary hearing as the court lacks jurisdiction because Alford's second PCRA petition is untimely. The court notifies the parties of its intent to dismiss the petition for the reasons set forth in this Opinion. Alford may respond to this proposed dismissal within twenty (20) days. If no response is received within that time, the court will enter an order dismissing the petition.

By The Court,

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Nancy L. Butts, President Judge

[2] See CP-41-JV-0000230-2009; CP-41-JV-0000087-2010; and CP-41-JV-0000013-2011.