

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

<b>COMMONWEALTH</b>	: <b>No. CP-41-CR-0000196-2011</b>
	: <b>CP-41-CR-0000630-2011</b>
<b>vs.</b>	:
	:
<b>BILAL SABUR,</b>	: <b>Notice of Intent to Dismiss 2<sup>nd</sup> PCRA</b>
<b>Defendant</b>	: <b>Petition Without Holding An Evidentiary</b>
	: <b>Hearing</b>

**OPINION AND ORDER**

Before the court is the second Post Conviction Relief Act (PCRA) petition filed by Bilal Sabur (hereinafter “Petitioner) on or about September 9, 2022.

By way of background, Petitioner was charged with aggravated assault and related offenses, including person not to possess a firearm. The person not to possess firearm charge was severed for trial. On January 23, 2012, a jury convicted Petitioner of aggravated assault and related offenses and, following a waiver of his right to a jury trial on the severed offense, the court convicted Petitioner of being a person not to possess a firearm. On May 7, 2012, the court sentenced Petitioner to an aggregate term of 18 to 38 years’ incarceration in a state correctional institution, which was reduced to 18 to 36 years on October 12, 2012, following the court granting in part Petitioner’s post sentence motions.

Petitioner timely appealed. On June 3, 2014, the Pennsylvania Superior Court affirmed Petitioner’s judgment of sentence. On December 26, 2014, the Pennsylvania Supreme Court denied Petitioner’s petition for allowance of appeal. Petitioner had 90 days within which to file a petition for writ of certiorari with the United States Supreme Court, but no such petition was filed. Therefore, Petitioner’s judgment of sentence became final on Thursday, March 26, 2015.

Petitioner filed his first PCRA petition on or about April 7, 2015, which following the appointment of counsel and several extensions, amendments and continuances, as well as an evidentiary hearing on some claims, the trial court denied on June 30, 2017. Petitioner appealed and the Pennsylvania Superior Court affirmed the trial court's denial of his first PCRA petition on April 5, 2019.

Petitioner filed his second PCRA petition on September 9, 2022. The court finds that this petition is untimely.

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). Here, Petitioner's judgment of sentence became final on March 26, 2015, at the expiration of the period for

seeking review from the United State Supreme Court. Although Petitioner attempts to assert all three statutory exceptions to the one-year filing requirement, none of his allegations is sufficient to show that his petition is timely.

Petitioner first alleges that his failure to raise his claims 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. More specifically, he claims that a “government official at SCI Dallas failed to set up a telephone conference call between me and PCRA counsel, where PCRA counsel had to file amended PCRA under duress, to meet deadline, and trial judge appointment of continuance.” Petitioner does not allege when the interference occurred or when he discovered it, but it had to have occurred prior to June 30, 2017 when the trial court issued its decision denying his first PCRA petition. The Pennsylvania Superior Court affirmed the denial on April 5, 2019. Petitioner’s current petition was not filed until September 9, 2022, more than five years after the trial court denied his first petition and more than three years after the Superior Court affirmed the trial court’s denial.

Petitioner next asserts that the facts upon which his claims are predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence. However, what he asserts as “new facts” is the new rule in *Commonwealth v. Bradley*<sup>1</sup> that “PCRA counsel (IAC) could be raised for the first time on appeal.” Subsequent decisional law is not a new “fact” under 42 Pa. C.S.A. §9545(b)(1)(ii). *Commonwealth v. Watts*, 23 A.3d 980, 987 (Pa. 2011).

Petitioner also alleges that 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 the PCRA and has been held by that court to apply retroactively. Again, Petitioner relies on *Bradley*. Petitioner's reliance on *Bradley* is misplaced. The Pennsylvania Supreme Court did not state in *Bradley* that the decision would apply retroactively. Furthermore, *Bradley* involved a timely first PCRA petition. The Pennsylvania Superior Court has declined to extend *Bradley* to case involving untimely or serial petitions. See *Commonwealth v. Morton*, NO. 614 WDA 2022 (Pa. Super. filed Jan. 6, 2023)(unpublished memorandum); *Commonwealth v. Dixon*, No. 1145 EDA 2022 (Pa. Super. filed Dec. 28, 2022 (unpublished memorandum); *Commonwealth v. Mead*, No. 646 MDA 2021 (Pa. Super. filed Apr. 1, 2022)(unpublished memorandum), *appeal denied*, 2022 WL 4139124 (Pa. Sept. 13, 2022).

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).

For the foregoing reasons, the court finds that Petitioner's second PCRA petition is untimely; therefore, it lacks jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief.

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<sup>1</sup> See *Commonwealth v. Bradley*, 261 A.3d 381 (Pa. 2021).

**ORDER**

AND NOW, this 25<sup>th</sup> day of January 2023, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that the petition is untimely and that it lacks jurisdiction to conduct an evidentiary hearing. The court notifies the parties of its intent to dismiss the 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,

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Nancy L. Butts, President Judge