

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

TERRANCE XAVIER PEREZ,
Petitioner

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CP-41-CR-1046-2015

INTENT TO DISMISS
PCRA PETITION

OPINION AND ORDER

On May 9, 2025, Counsel for Terrance Perez (Petitioner) filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988). After a review of the issue presented as this was Petitioner's second PCRA petition, this Court agrees with Post-Conviction Relief Act (PCRA) Counsel and finds that Petitioner has failed to satisfy the timeliness requirements required for the court to have jurisdiction to hear the second PCRA Petition, and that the Petition therefore should be dismissed.

Background

On November 1, 2016, Petitioner was found guilty of Murder of the First Degree and accompanying charges by a jury and found guilty separately by this court of Persons Not to Possess a Firearm. Petitioner was then sentenced on that same day to an aggregate sentence of twenty-five to fifty years consecutive to his sentence of Life without parole. Petitioner filed Post-Sentence Motions on November 8, 2016, which were subsequently denied. Petitioner filed an appeal to the Pennsylvania Superior Court on March 21, 2017. The Superior Court affirmed this Court's sentence on November 29, 2018, and review was denied by the Pennsylvania Supreme Court on April 17, 2019. *See Commonwealth v. Perez*, 486 MDA 2017 (Pa. Super. 2018), *appeal*

denied 854 MAL 2018 (Pa. 2019). Therefore, Petitioner's sentence became final on July 16, 2019.

On August 23, 2019, Petitioner filed a timely *pro se* first Motion for Post-Conviction Collateral Relief. Attorney Jeana Longo¹ was appointed to represent Petitioner on September 9, 2019. Petitioner, through counsel filed an Amended PCRA Petition on November 14, 2019. An initial conference was held on November 25, 2019. This Court granted Petitioner's request for an evidentiary hearing on January 2, 2020 and the hearing was held on July 6, 2020. At the evidentiary hearing, one of Petitioner's trial/appellate attorneys, Chief Public Defender Nicole Spring, Esq. (Spring), testified. Petitioner raised only one issue in his petition² and sought to have this Court find that his trial/appeals counsel was ineffective for failure to preserve his claim of improperly admitted evidence. After review of the entire record in the above captioned case this Court disagreed with Petitioner, and dismissed Petitioner's Amended PCRA Petition on July 24, 2020. Petitioner filed a timely Notice of Appeal on August 20, 2020. The Superior Court affirmed this Court's dismissal of his PCRA claim on March 8, 2021, and review was denied by the Pennsylvania Supreme Court on July 27, 2021. *See Commonwealth v. Perez*, 1060 MDA 2020 (Pa. Super. 2020), *appeal denied* 177 MAL 2021 (Pa. 2021).

Petitioner filed his second *pro se* Petition for Post Conviction Relief on August 29, 2024 alleging the unavailability at the time of trial of exculpatory evidence in the nature of a possible alibi witness that subsequently has become available to him and which would have changed the outcome of the trial if it had been introduced made him eligible for relief. Petitioner further alleged that because the witness only recently became aware of Petitioner's conviction for that offense, this information could not have been previously been discovered despite the exercise of

¹ At that time Ms. Longo was no longer employed by the Public Defender's Office

² Petitioner originally claimed two issues, but withdrew his second argument regarding failure to request a *Kloiber* instruction at the evidentiary hearing on July 6, 2020.

due diligence. On September 10, 2024 the court appointed Donald F. Martino, Esq. to review Petitioner's *pro se* petition to determine if an Amended Motion or *Turner/Finley* no merit letter was warranted. After review of the petition and consultation with Petitioner, Counsel filed an Amended PCRA petition on December 4, 2024. An evidentiary hearing was scheduled for April 2, 2025. However, once Counsel for Petitioner was able to interview the Petitioner and the witness, he discovered that the witness was ineligible to testify on Petitioner's behalf and the evidentiary hearing was not held.

On April 14, 2025 PCRA counsel instead provided Petitioner with a letter pursuant to *Turner/Finley* and requested that Petitioner provide any additional information that might assist him in finding an issue to litigate. On May 9, 2025 PCRA counsel filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief pursuant to *Turner/Finley*. Since there was no evidentiary hearing there was nothing of record to substantiate PCRA counsel's information that made the witness ineligible to testify. This court requested the Commonwealth file an answer to the Motion to Withdraw so that the information necessary to show that the witness was not able to testify was made part of the record. On October 7, 2025 the Commonwealth filed its answer with an attachment³ showing that the witness would have been incarcerated on the date of the homicide (May 11, 2015) and would have been unable to have been with Petitioner to act as his alibi witness.

Discussion

To prevail in a claim of ineffective assistance of counsel, a petitioner must overcome the presumption that counsel is effective by establishing all of the following three elements, as set

³ The attachment was referenced in the Commonwealth's answer as the "Pennsylvania Department of Corrections Moves Report for inmate R.M. from 2015-2025." It established that the alleged alibi witness, R.M., was serving a sentence at SCI Chester beginning April 15, 2015 and until R.M. was paroled to the community on January 4, 2016. Therefore, he could not have seen Petitioner in the City of Williamsport on May 11, 2015.

forth in *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973, 975–76 (1987): (1) the underlying legal claim has arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) the petitioner suffered prejudice because of counsel's ineffectiveness.

Commonwealth v. Dennis, 597 Pa. 159, 950 A.2d 945, 954 (2008).

For a PCRA Petition to be considered by the court it must be timely and 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). Based upon the dictates of the PCRA, when Petitioner has failed to satisfy the PCRA's time requirements; the court has no jurisdiction to entertain the petition. *Commonwealth v. Banks*, 726 A.2d 374 (Pa. 1999); *Commonwealth v. Peterkin*, 722 A.2d 638 (Pa. 1998). *Commonwealth v. Fahy*, 737 A.2d 214, 220 (Pa.1999).

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). Petitioner’s judgment became final on May 9, 2022. His second petition was not filed until 2025. Therefore, it is facially untimely.

The PCRA timeliness requirements are jurisdictional in nature. *Commonwealth v. Cox*, 636 Pa. 603, 146 A.3d 221, 227 (2016). Accordingly, “[i]f a petition is untimely, and none of the timeliness exceptions are met, courts do not have jurisdiction to address the substance of the underlying claims.” *Commonwealth v. Wharton*, 669 Pa. 625, 263 A.3d 561, 570 (2021) (citation omitted). “[I]t is the petitioner's burden to allege and prove that one of the timeliness exceptions applies.” *Commonwealth v. Robinson*, 635 Pa. 592, 139 A.3d 178, 186 (2016) (citation omitted). “The petitioner bears the burden to prove, by a preponderance of the evidence, that he or she is eligible for PCRA relief.” *Commonwealth v. Murchison*, 328 A.3d 5, 17 (Pa. 2024). “Whether a petitioner has carried his burden is a threshold inquiry that must be resolved prior to considering the merits of any claim.” *Robinson*, 139 A.3d at 186. (citation omitted). “In the PCRA context, statutory jurisdiction cannot be conferred by silence, agreement or neglect.” *Commonwealth v. Smith*, 244 A.3d 13, 17 (Pa. Super. 2020) (citing *Commonwealth v. Ballance*, 203 A.3d 1027, 1033 (Pa. Super. 2019), *appeal denied*, 216 A.3d 1044 (Pa. 2019)). It is axiomatic that a party fails to meet their burden if they do not present any evidence. Failure to present any evidence that a timeliness exception applies deprives the PCRA court of jurisdiction and is fatal to his petition. *Commonwealth v. Mickeals*, 335 A.3d 13, 21 (Pa. Super. 2025).

In his PCRA, Petitioner asserted that while he was incarcerated in the Restricted Housing Unit (RHU) at SCI Dallas, he ran into R.M. who, on or about August 19, 2024, told him that R.M. had seen him on the street in Williamsport and heard the shots that were fired that killed the victim in this case. Petitioner asked R.M. to write down his statement and then filed his second PCRA petition based on the information provided by R.M. The court scheduled a hearing to determine when Petitioner received this information, take R.M.’s testimony and determine whether there was a reasonable probability that R.M.’s “alibi” testimony would change the

outcome of the proceedings in this case. At the time of the scheduled hearing, however, PCRA counsel could not call R.M. as a witness and R.M. was no longer willing to testify and was no longer a viable witness. The Commonwealth showed that R.M. was no longer a viable witness because R.M. was incarcerated on the date of the murder and he could not have seen Petitioner on the night in question. See Exhibit A attached to Commonwealth's Answer filed on October 7, 2025. Without R.M.'s testimony, Petitioner could not prove that his petition was timely or that R.M.'s proposed alibi testimony would have changed the outcome of the proceedings in this case.

Conclusion

Based on the foregoing, this Court finds that Petitioner has failed to prove by a preponderance that he is eligible for PCRA relief. Therefore, the court has no jurisdiction to consider Petitioner's untimely second PCRA petition and/or his petition lacks merit. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. 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.

ORDER

AND NOW, this 5th day of December, 2025, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure 907(1), that it is the intention of this Court to dismiss his Second PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed on September 5, 2025 by Donald F. Martino, Esq. is hereby **GRANTED**. Mr. Martino no longer represents Petitioner. Petitioner may represent himself or he may hire counsel to represent him.
3. **Petitioner will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA(MW)
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NLB/