

IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NO. 639 MDA 2011

COMMONWEALTH OF PENNSYLVANIA,
Appellee

vs.

SHARON WIGGINS,
Appellant

BRIEF OF APPELLEE

Appeal of Sharon Wiggins from the order of the Honorable John F. Cherry, Judge, Court of Common Pleas, Dauphin County, dated March 10, 2011, and docketed to No. CP-22-CR-0000044-1968.

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TABLE OF CONTENTS

	<u>Page</u>
I. COUNTER-STATEMENT OF QUESTION INVOLVED	1
II. COUNTER-STATEMENT OF THE CASE	2
III. SUMMARY OF ARGUMENT	3
IV. ARGUMENT	4
V. CONCLUSION	7

TABLE OF CITATIONS

Cases

Commonwealth v. Alcorn, 703 A.2d 1054, 1057 (Pa. Super. 1997)	6
Commonwealth v. Gamboa-Taylor, 753 A.2d 780, 783 (Pa. 2000).....	4
Commonwealth v. Jones, 942 A.2d 903, 906 (Pa. Super. 2008).....	4
Commonwealth v. Ortiz, 17 A.3d 417, 421-22 (Pa. Super. 2011).....	6
Commonwealth v. Padden, 783 A.2d 299, 306-97 (Pa. Super. 2001).....	4
Commonwealth v. Taylor, 933 A.2d 1035, 1040 (Pa. Super. 2007).....	4
Graham v. Florida, 130 S. Ct. 2011 (2010)	3, 6

Statutes

42 Pa.C.S.A. §9543(b)(1), (2).....	5
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42 Pa.C.S.A. §9543(b)(3).....	5
42 Pa.C.S.A. §9545(b)(1).....	5
42 Pa.C.S.A. §9545(b)(1)(i-iii), (b)(2).....	5-6

I.

COUNTER-STATEMENT OF QUESTION INVOLVED

- A. WHETHER APPELLANT WIGGINS MAY OBTAIN POST-CONVICTION RELIEF (PCRA) PURSUANT TO ***GRAHAM V. FLORIDA*** WHERE ***GRAHAM*** DOES NOT APPLY HERE?

(Suggested answer in the negative.)

II.

COUNTER-STATEMENT OF THE CASE

The trial court provided a procedural history and factual reference. The Commonwealth incorporates that procedural history and factual background by reference. (Trial Court Opinion dated January 6, 2011, at 1-2 (hereinafter Trial Court Opinion)).

Additionally, Appellant Wiggins filed her brief on June 15, 2011. This brief for Appellee is submitted in response to Wiggins' brief.

III.

SUMMARY OF ARGUMENT

Wiggins filed an untimely second PCRA petition as her judgment of Sentence became final years ago and her instant request for PCRA relief does not meet any of the narrow exceptions to the PCRA time bar. Wiggins cannot obtain relief based on **Graham v. Florida**, 130 S. Ct. 2011 (2010). In **Graham**, the Supreme Court of the United States held that the Eighth Amendment to the federal Constitution “prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” *Id.* at 2034. Accordingly, Wiggins cannot obtain relief as he was convicted of a homicide offense, first-degree murder, committed when he was a juvenile. Since Wiggins has not pleaded and proved that **Graham** provides her with relief, her serial PCRA petition is untimely and this Court should deny her relief.

Ultimately, Wiggins did not meet her high burden of establishing the trial court erred in dismissing her PCRA petition.

IV.

ARGUMENT

A. WIGGINS MAY NOT OBTAIN PCRA RELIEF
PURSUANT TO **GRAHAM** WHERE THAT CASE
DOES NOT APPLY HERE.

Wiggins is essentially arguing that her life sentence for first-degree murder was unconstitutional pursuant to **Graham**.

This Court's review of an order denying PCRA relief is limited to whether the record supports the PCRA court's conclusion, and whether that decision is free of legal error. **Commonwealth v. Taylor**, 933 A.2d 1035, 1040 (Pa. Super. 2007). The PCRA court's findings will not be disturbed unless the certified record provides no support for the findings. *Id.* There is no right to a PCRA hearing; a hearing is unnecessary where the PCRA court can determine from the record that there are no genuine issues of material fact. Pa.R.Crim.P. 907(1); **Commonwealth v. Jones**, 942 A.2d 903, 906 (Pa. Super. 2008).

The time limitations period under the PCRA are jurisdictional in nature. **Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 783 (Pa. 2000). Specifically, it is well settled that a PCRA court lacks jurisdiction to grant PCRA relief when a PCRA petition is filed in an untimely manner. **Commonwealth v. Padden**, 783 A.2d 299, 306-07 (Pa. Super. 2001) (citations omitted). A petition filed under the PCRA must be filed within one year of the date on which the underlying judgment becomes final. 42

Pa.C.S.A. § 9545(b)(1). As such, a petitioner bears the burden of demonstrating (1) that she filed her petition within one year of the date on which her judgment of sentence became final, or (2) that one of the exception to the limitations period applies and she filed her petition within 60 days on which it could have been presented. 42 Pa.C.S.A. §9543(b)(1), (2). For purposes of determining when a petitioner's judgment becomes final under §9543(b)(1), the PCRA states that "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 review." 42 Pa.C.S.A. §9543(b)(3).

There are three limited circumstances under which courts will not hold PCRA petitioners to the strict one-year statute of limitations. A PCRA petition may be filed within 60 days from the date the claim could have been presented when the petitioner 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 the 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.A. §9545(b)(1)(i-iii), (b)(2); **Commonwealth v. Alcorn**, 703 A.2d 1054, 1057 (Pa. Super. 1997).

This Court recently concluded that a PCRA petitioner cannot obtain PCRA relief if she was convicted of a homicide offense, first-degree murder, committed when she was a juvenile. **Commonwealth v. Ortiz**, 17 A.3d 417, 421-22 (Pa. Super. 2011).

Here, Wiggins filed an untimely PCRA petition as her judgment of sentence became final years ago and her instant request for PCRA relief does not meet any of the narrow exceptions to the PCRA time bar. Wiggins cannot obtain relief based on **Graham**. In **Graham**, the Supreme Court of the United States held that the Eighth Amendment to the federal Constitution “prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” **Graham**, 130 S. Ct. at 2034. Accordingly, Wiggins cannot obtain relief as she was convicted of a homicide offense, first-degree murder, committed when she was a juvenile. **Ortiz**, 17 A.3d at 421-22. Since Wiggins has not pleaded and proved that **Graham** provides her with relief, her petition is untimely and this Court should deny her prayer for relief. **Id.** at 422.

Ultimately, Wiggins did not meet her high burden of establishing the trial court erred in dismissing her PCRA petition.¹

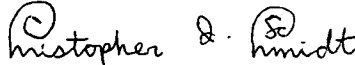
¹ It is unclear how Wiggins’ menagerie of nine advocates became involved in this case. The cover page of Wiggins’ brief lists nine advocates, as does the signature page of the brief. According to the Secure Docket Sheet of this court, only Ms. Levick, Mr. Bridge, and Ms. Jacobson are counsel for Wiggins. Although Ms. Feerman, Ms. Keller, Ms. Greenlee, and Mr. Foley are licensed Pennsylvania attorneys, there is no indication on the Docket Sheet or through undersigned counsel’s conversation with the Prothonotary that those attorneys have

V.

CONCLUSION

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court affirm the order of the Dauphin County Court of Common Pleas.

Respectfully submitted,


Christopher J. Schmidt
Deputy District Attorney

entered their appearance for Wiggins. Further, it does not appear that either Ms. Leighton or Ms. Vega are licensed Pennsylvania attorneys or have sought *pro hac vice* admission.