

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
SHARON MARGARETT WIGGINS,	:	
	:	
Appellant	:	No. 639 MDA 2011

Appeal from the PCRA Order entered March 10, 2011,  
Court of Common Pleas, Dauphin County,  
Criminal Division at No. CP-22-MD-2600044-1968

BEFORE: PANELLA, DONOHUE and ALLEN, JJ.

MEMORANDUM BY DONOHUE, J.: FILED: January 11, 2012

Sharon Wiggins (“Wiggins”) appeals from the order entered on March 10, 2011 denying her petition filed pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546, as untimely.<sup>1</sup> We affirm.

The facts of the case have been set forth in our Supreme Court’s decision of Wiggins’ co-felon, Foster Lee Tarver (“Tarver”), and are not in dispute:

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<sup>1</sup> The PCRA requires that a PCRA petition, including a second or subsequent petition, shall be filed within one year of the date the underlying judgment becomes final. 42 Pa.C.S.A. § 9545(b)(1). A judgment is deemed 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 the review.” 42 Pa.C.S.A. § 9545(b)(3).

On the morning of December 2, 1968, Tarver, acting in concert with Samuel Barlow, Jr., and [...] Wiggins, executed an armed robbery of the Market Street Branch of the Dauphin Deposit Trust Company in Harrisburg. During the robbery, a customer in the bank was shot both by Tarver and Wiggins. Six bullets entered his body causing instant death. Following the robbery, the felons fled from the scene in a Chevrolet Sedan which they stole on the same morning from a parking lot in Harrisburg. About two blocks from the bank, the three abandoned the Chevrolet Sedan and entered a Buick Sedan which they had previously stolen in Pittsburgh and parked in this pre-arranged location in Harrisburg to aid in their flight from arrest. While fleeing in the Buick, the felons were apprehended by the police<sup>[FN]1</sup> and the money stolen from the bank totaling [s]eventy [t]housand (\$70,000) [d]ollars was recovered. The major portion of the money was found in the Buick Sedan and about [f]orty-[f]ive [h]undred (\$4500) [d]ollars was found in and around the abandoned Chevrolet Sedan.

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[FN]1 The police were alerted to the robbery by the ringing of a burglary alarm. Two police officers arrived at the bank as the felons were coming out the front door. The felons ignoring a warning to halt, entered the Chevrolet Sedan and raced away at a great rate of speed with Barlow at the wheel. The police followed in pursuit and succeeded in capturing the felons after the Buick suffered a collision with another vehicle.

***Commonwealth v. Tarver***, 446 Pa. 233, 234-36, 284 A.2d 759, 760 (1971), *overruled by Commonwealth v. Graves*, 461 Pa. 118, 127, 334 A.2d 661, 665 (1975); *see Commonwealth v. Wiggins*, 446 Pa. 511, 284 A.2d 721 (1971).

On June 5, 1969, Wiggins was found guilty of first-degree murder and sentenced to death. Her sentence was reduced to life in prison by the Pennsylvania Supreme Court. She was tried for charges related to the armed robbery on April 2, 1971, and sentenced to 25 years of imprisonment to run consecutive to her life sentence. Wiggins' judgments of sentence for the murder and non-murder charges were both affirmed on appeal. **See Wiggins**, 446 Pa. at 511, 284 A.2d at 721; **Commonwealth v. Wiggins**, 291 A.2d 876 (Pa. Super. 1972).

Wiggins filed a PCRA petition in 1985, resulting in her sentence on the non-homicide crimes being reduced to a 20-year sentence to run concurrent to her sentence of life imprisonment, and a five-year consecutive sentence. On July 16, 2010, Wiggins filed the instant PCRA petition, asserting that the rationale utilized by the United States Supreme Court in **Graham v. Florida**, \_\_\_ U.S. \_\_\_, 130 S.Ct. 2011 (2010) (holding that a sentence of life in prison without parole is unconstitutional as applied to a juvenile convicted of a non-homicide offense),<sup>2</sup> created a new constitutional right rendering her sentence of life without parole for the homicide she committed as a juvenile

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<sup>2</sup> In **Graham**, the Supreme Court held that a sentence of life in prison without the possibility of parole is cruel and unusual punishment in violation of the Eighth Amendment as applied to a juvenile convicted of a non-homicide offense. **Graham**, 130 S.Ct. at 2034. The rationale behind this holding was the Court's finding of a national consensus against the sentencing practice, the severity of the sentence, a juvenile's reduced culpability as compared to adults, and the absence of penological goals served by the punishment. **See id.** at 2022-26.

unconstitutional.<sup>3</sup> On January 6, 2011, the PCRA court filed notice of its intention to dismiss Wiggins' petition on the basis that **Graham** did not address whether a life sentence without the possibility of parole was unconstitutional for a juvenile convicted of a homicide offense, and thus Wiggins was not entitled to relief on that basis. In response, Wiggins argued that the **reasoning** employed by the **Graham** Court was equally applicable to juveniles sentenced to life imprisonment for homicide offenses as to those

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<sup>3</sup> There are three statutory exceptions to the timeliness provisions that allow for very limited circumstances under which the late filing of a PCRA petition will be excused:

(i) the failure to raise a 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.

(2) Any petition invoking an exception provided [above] shall be filed within 60 days of the date the claim could have been presented.

42 Pa.C.S.A. § 9545(b)(1), (2). Wiggins asserts that she satisfies the exception under subsection (b)(1)(iii). There is no dispute that she filed her PCRA petition within 60 days of the date the **Graham** decision was filed in compliance with subsection (b)(2).

convicted of non-homicide offenses. The PCRA court disagreed and dismissed Wiggins' petition on March 10, 2011.

Wiggins filed a timely notice of appeal, and presents the following issue for our review: "Is it constitutional to sentence a juvenile to life imprisonment without the possibility of parole?" Wiggins' Brief at 3.

"Our standard of review regarding a PCRA court's order is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." ***Commonwealth v. Garcia***, 23 A.3d 1059, 1061 (Pa. Super. 2011) (citation omitted).

In ***Commonwealth v. Chambers***, \_\_\_ A.3d \_\_\_, 2011 WL 6607672, (Pa. Super. 2011), this Court recently decided the precise issue raised by Wiggins. In ***Chambers***, the appellant was sentenced to life in prison without the possibility of parole for second-degree murder that he committed as a juvenile. He filed an untimely PCRA petition asserting that the reasoning employed by the United States Supreme Court in deciding ***Graham*** should be extended to apply to a juvenile sentenced to life in prison for a second-degree murder conviction, and that this satisfied the exception contained in section 9545(b)(1)(iii) of the PCRA. The PCRA court disagreed and dismissed the petition as untimely.

On appeal, this Court affirmed, explaining:

Section 9545(b)(1)(iii) states, in relevant part: '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 [...] **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 [...].' 42 Pa.C.S.A. §9545(b)(1)(iii) (emphasis added). Thus, in order to fit under this exception to the PCRA's time bar, a PCRA petitioner must assert relief based on a constitutional right that has been affirmatively recognized by either the United States Supreme Court or the Supreme Court of Pennsylvania. [**Commonwealth v. Abdul-Salaam**, 571 Pa. [219,] 226, 812 A.2d [497,] 501 (holding that for relief pursuant to § 9545(b)(1)(iii), the right asserted by the petitioner must be a constitutional right acknowledged by the Supreme Court of the United States the Pennsylvania Supreme Court); see also **Commonwealth v. Copenhefer**, 596 Pa. 104, 110, 941 A.2d 646, 649 (2007). Chambers makes no such assertion; rather, as explained above, he argues that this Court should apply the time bar exception of the PCRA by extending the rationale employed by the United States Supreme Court in **Graham** to juvenile defendants convicted of a homicide offense. Thus, Chambers is not basing his argument on any newly recognized constitutional right as contemplated by the PCRA. He has failed to meet this requirement of the time bar exception in § 9545(b)(1)(iii) and the outcome is controlled by **Ortiz**.<sup>[4]</sup>

*Id.* at \*8.

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<sup>4</sup> In **Commonwealth v. Ortiz**, 17 A.3d 417 (Pa. Super. 2011), a panel of this Court determined that the holding of **Graham** does not create a new constitutional right for juveniles convicted of a homicide offense for purposes of establishing an exception to the PCRA's timelines requirements under section 9545(b)(1)(iii).

Just as the appellant in **Chambers**, Wiggins does not assert that either the United States Supreme Court or the Pennsylvania Supreme Court has explicitly recognized that a sentence of life imprisonment is unconstitutional for a juvenile convicted of a homicide offense. Rather, she too asserts that the rationale employed by the **Graham** Court in finding a life sentence without parole unconstitutional for juveniles convicted of a non-homicide offense applies equally to juveniles convicted of homicide – an issue the Supreme Court has yet to address.<sup>5</sup> Thus, as in **Chambers**, Wiggins is not basing her argument on a newly recognized constitutional right and she fails to satisfy the exception contained in section 9545(b)(1)(iii) to the PCRA's timeliness requirement.

"The PCRA's time restrictions are jurisdictional in nature. Thus, if a PCRA petition is untimely, neither this Court nor the trial court has jurisdiction over the petition. Without jurisdiction, we simply do not have the legal authority to address the substantive claims." **Commonwealth v. Chester**, 586 Pa. 468, 471, 895 A.2d 520, 522 (2006). Because Wiggins

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<sup>5</sup> On November 7, 2011, the United States Supreme Court granted *certiorari* to two cases involving the constitutionality of the sentence of life without parole for a juvenile convicted of capital murder. **See Miller v. Alabama**, \_\_\_ U.S. \_\_\_, 2011 WL 5322568 (2011); **Jackson v. Hobbs**, \_\_\_ U.S. \_\_\_, 2011 WL 5322575 (2011). The Pennsylvania Supreme Court also accepted a juvenile first-degree murder case for review to determine the constitutionality of the mandatory life imprisonment. **See Commonwealth v. Batts**, 603 Pa. 65, 981 A.2d 1283 (2009). At the time of this writing, neither Court had issued a decision.

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failed to satisfy an exception to the PCRA's timeliness requirements, we affirm the order of the PCRA court dismissing her second PCRA petition as untimely.

Order affirmed.

Judgment Entered.

  
Deputy Prothonotary

Date: January 11, 2012