

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

NO. 1881-02

v.

STEVEN JONES, JR.

COPY

OPINION

Mallon, J.

Filed: 6/17/15

I. FACTUAL AND PROCEDURAL HISTORY

Steven Jones, Jr. (hereinafter referred to as "Appellant") appeals from an Order dismissing his "Petition for Habeas Corpus Relief Under Article I, Section 14 of the Pennsylvania Constitution and for Post-Conviction Relief Under the Post Conviction Relief Act." The record in the instant case establishes that, on January 10, 2003, following a jury trial presided over by the Honorable Robert C. Wright, Appellant was convicted of second degree murder and robbery. The facts at trial established that the Appellant, along with three others males, flagged down a Jack and Jill ice cream truck in the city of Chester, Pennsylvania on April 20, 2002. *See* 1925(a) Opinion by the Honorable Robert C. Wright. After the truck stopped, the Appellant asked one of the other males for the gun he was carrying, and the Appellant raised the gun and pointed it at the ice cream truck driver, and demand all of his money. *Id.* The driver complied, and gave the males some cash. *Id.* When the driver turned around after handing over cash to the males, the Appellant shot him in the back. *Id.* The driver died several days later as a result of injuries sustained from the gunshot wound. *Id.* One of the males that approached the ice cream truck along with the Appellant testified at trial and recounted these facts to the jury.

Following his conviction, Judge Wright sentenced Appellant to a mandatory sentence of life imprisonment for second degree murder on March 14, 2003.¹ Appellant filed a direct appeal with the Superior Court challenging the verdict and questioning the sufficiency of the evidence, and the Superior Court affirmed the judgment of sentence in a Memorandum Opinion on June 22, 2004. *See Commonwealth v. Jones*, 1081 EDA 2003. Appellant did not petition for allowance of appeal with the Supreme Court of Pennsylvania.

On December 14, 2007, Appellant filed his first *pro se* petition under the Post Conviction Relief Act (hereinafter referred to as "PCRA") with the sentencing court.² Counsel was appointed to represent Appellant and counsel subsequently filed a "no merit" letter on September 4, 2008 stating that the issues Appellant wished to raise were without merit and requested leave to withdraw. The court granted counsel's request and ultimately denied the PCRA petition. Following an appeal, the Superior Court affirmed this court's order denying the PCRA petition on April 12, 2010. *See Commonwealth v. Jones*, 1157 EDA 2009.

Thereafter, on June 29, 2010, Appellant filed a second *pro se* PCRA petition in which he claimed that his sentence was illegal based upon the Supreme Court's decision in *Graham v. Florida*. Because this court was without jurisdiction over said petition, it entered an order dismissing Appellant's untimely second PCRA petition on August 3, 2010.³ On August 26, 2010, Appellant appealed the trial court's denial and the Superior Court affirmed the trial court's order on August 14, 2014. *See Commonwealth v. Jones*, 2437 EDA 2010.

¹ The robbery conviction merged for sentencing purposes.

² Following the appointment of PCRA counsel, Judge Wright became ill and retired from the bench. Appellant's case was then transferred to the undersigned.

³ Because this was Appellant's second (albeit untimely) PCRA petition, he was not entitled to, nor was he appointed, counsel.

On October 14, 2014, through counsel, Appellant filed a third petition pursuant to the PCRA. Following its notice of intent to dismiss, this court denied the petition on February 18, 2015. It is from this dismissal that Appellant now appeals. Appellant raises the following issues in his Statement of Matters Complained of on Appeal:

This Court erred in failing to vacate Mr. Jones's unconstitutional life without parole sentence and order that he be resentenced based on his lesser-included offenses. Mr. Jones is serving a mandatory life imprisonment sentence for a second degree murder conviction committed when he was a juvenile. This sentence is unconstitutional pursuant to the U.S. Supreme Court's decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), which holds that mandatory life without parole sentences for juveniles violate the Eighth Amendment of the U.S. Constitution. Moreover, because Mr. Jones was convicted of second-degree murder and there was no finding that he killed or intended to kill, his sentence violates *Graham v. Florida*, 560 U.S. 48, 69 (2010) (holding that life without parole is unconstitutional for juvenile nonhomicide offenders because the severe and irrevocable punishment of life without parole was not appropriate for a juvenile offender who did not "kill or intend to kill.").

This Court erred in filing to apply the *Miller* and *Graham* decisions retroactively to Mr. Jones pursuant to the Pennsylvania Constitution. Though the U.S. Constitution prohibits Mr. Jones' mandatory juvenile life without parole sentence – and the Pennsylvania legislature has eliminated this discretionary sentence for second degree murder – Mr. Jones continues to serve his unconstitutional sentence merely because of the arbitrary date his sentence became final. Such a result is untenable under the Pennsylvania Constitution. *See, e.g., Commonwealth v. Cunningham*, 81 A.3d at 14 (Castille, C.J., concurring) ("However, a new federal rule, if sufficiently disruptive of state law—such as by requiring the state to treat identically situated defendants differently—may pose an issue of Pennsylvania constitutional law independent of the federal rule.").

Based on the text of the Pennsylvania Constitution, the provisions history, related case law from other states, and policy consideration unique to Pennsylvania, *see Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991), the Pennsylvania Constitution provides greater protection than the U.S. Constitution in regards to the question of *Miller's* retroactivity. For example, the text of the Pennsylvania Constitution is broader than the U.S. Constitution; whereas the Eighth Amendment of the U.S. Constitution bars punishments that are both "cruel" and "unusual," the Pennsylvania Constitution bars punishments that are merely "cruel." Pa. Const. art. I, 13. The history of juvenile life without parole sentences in Pennsylvania also supports a holding that the sentence is unconstitutional under the Pennsylvania Constitution. When Pennsylvania's legislature re-examined juvenile sentencing laws post-*Miller*, the legislature *eliminated life without parole as a sentencing option* for juveniles who, like Mr. Jones, were convicted of second degree murder. *See* 18 Pa.

Cons. Stat. Ann 1102.1(c). This new legislation reflects the holding of the U.S. Supreme Court in *Graham* that life without parole is always unconstitutional for children who do not kill or intend to kill. 560 U.S. at 69.

Pennsylvania history reveals a longstanding commitment to providing special protections for minors against the full weight of criminal punishment. *See, e.g., Commonwealth v. Williams*, 475 A.2d 1283, 1287-88 (Pa. 1984) (holding that the court determining the voluntariness of a youth's confession must consider the youth's age, experience, comprehension, and the presence or absence of an interested adult.) Policy considerations support broadly interpreting the Pennsylvania's prohibition against cruel punishments. Forcing Mr. Jones to serve an unconstitutional sentence that is no longer available for juveniles convicted of second degree murder in Pennsylvania contravenes logic, reason and the Pennsylvania Constitution. Finally the majority of other states considering this issue have held that *Miller* applies retroactively.

This Court further erred in rejecting Mr. Jones' claim that the writ of *habeas corpus* provides a basis for relief. The writ of *habeas corpus* "continues to exist only in cases in which there is no remedy under the PCRA." *Commonwealth v. Peterkin*, 722 A.2d 638, 640 (Pa. 1998). To the extent that the Pennsylvania Supreme Court has held that no remedy exists under the PCRA to remedy Mr. Jones' unconstitutional sentence unless or until the U.S. Supreme Court holds that *Miller* applies retroactively, a state *habeas* petition provides the only mechanism of relief available to Mr. Jones.

Finally, this Court erred by denying Mr. Jones' petition for post-conviction relief without granting a hearing to allow an opportunity to demonstrate why his sentence is unconstitutional pursuant to *Miller* and *Graham* and why he is entitled to be resentenced.⁴

II. STANDARD OF REVIEW

In reviewing the propriety of a PCRA court's dismissal of a PCRA petition, the reviewing court is limited to a determination as to whether the record supports the PCRA court's findings and whether the order in question is free of legal error. *Commonwealth v. Ragan*, 592 Pa. 217, 220, 923 A.2d 1169, 1170 (2007). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. *Commonwealth v. Spencer*, 892 A.2d 840, 841 (Pa. Super. 2006). When a PCRA court makes a determination that there were no

⁴ The court has omitted footnotes contained within Appellant's Concise Statement in order to make said statement more concise.

genuine issues of material fact and denies relief without an evidentiary hearing, a reviewing court must examine each of the issues raised in the PCRA petition in light of the record in order to determine whether the PCRA court erred in reaching this result. *See Commonwealth v. Jordan*, 772 A.2d 1011, 1014 (Pa. Super. 2001).

III. DISCUSSION

The Post Conviction Relief Act requires that any petition, including a second or subsequent petition, must be filed within one year of the date upon which the judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1). 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 the time for seeking the review.” 42 Pa.C.S.A. §9545(b)(3).

The timeliness requirements for filing a PCRA petition are jurisdictional in nature. *Commonwealth v. Breakiron*, 566 Pa. 323, 328, 781 A.2d 94, 97 (2001). It is a well settled principal of law that a trial court does not have jurisdiction to entertain a PCRA petition if the petition is not filed within the time period set forth in Section 9545(b). *Commonwealth v. Hutchins*, 760 A.2d 50, 53 (Pa. Super. 2000). It is also well settled that there is no generalized equitable exception to the jurisdictional one-year time bar pertaining to post-conviction petitions. *See Commonwealth v. Robinson*, 575 Pa. 500, 508, 837 A.2d 1157, 1161 (2003). Section 9545(b) states:

(b) Time for filing petition.-

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days from the date the claim could have been presented.

(3) For purposes of this subchapter, 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 the review.

(4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.

42 Pa.C.S.A. § 9545(b).

In the case *sub judice*, in order for his PCRA petition to be considered timely, Appellant was required to file his petition within one year from the date that his judgment of sentence became final. According to the plain language of 42 Pa.C.S.A. § 9545(b)(3), a judgment of sentence becomes final at the conclusion of direct review or the expiration of the time for seeking the review. As discussed above, Appellant's judgment of sentence was affirmed by the Superior Court on June 22, 2004. Appellant therefore had 30 days from that date to seek further review by the Pennsylvania Supreme Court.⁵ Because Appellant did not file a petition seeking allowance of appeal, Appellant had until July 22, 2005 to file a timely PCRA petition. *See Commonwealth v. Hernandez*, 755 A.2d 1, 10 (Pa. Super. 2000) (Following denial of Appellant's direct appeal by the Superior Court, judgment of sentence became final when the thirty (30) day

⁵ *See* Pa.R.A.P. 1113(a) ("... a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days of the entry of the order of the Superior Court sought to be reviewed ...").

period for filing a petition for allowance of appeal to our Supreme Court expired). Appellant's current PCRA petition was not filed until October 14, 2014. This petition is patently untimely.⁶

Appellant maintains that his conviction is illegal and argues that this court erred in applying *Miller*⁷ and *Graham*⁸ retroactively. Unfortunately for Appellant, because these decisions have been held not to apply retroactively in Pennsylvania, this court was compelled to deny his petition without a hearing because it was without jurisdiction to entertain its merits. *See e.g., Commonwealth v. Seskey*, 86 A.3d 237 (Pa. Super. 2014); *Commonwealth v. Cunningham*, 81 A.3d 1 (Pa. 2013), *cert denied*, 134 S.Ct. 2724 (2014).

Furthermore, the court submits that it did not err by failing to grant Appellant's claim for *habeas corpus* relief. The PCRA provides the sole means for obtaining collateral review, and encompasses all other common law and statutory remedies for the same purpose, including *habeas corpus*. 42 Pa. C.S.A. § 9542. The court submits that Appellant's petition was properly considered under the PCRA.

As stated by Judge Strassburger in his concurring opinion in *Seskey*,

“[A] defendant cannot escape the PCRA time-bar by titling his petition or motion as a writ of *habeas corpus*.” *Commonwealth v. Taylor*, 65 A.3d 462, 466 (Pa. Super. 2013). “Issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a *habeas corpus* petition.” *Id.* Because Appellant's claims may be addressed under the PCRA, *see* 42 Pa.C.S. § 9543(a)(2)(i) (providing that PCRA relief is available for convictions resulting from constitutional violations), the PCRA court properly dismissed Appellant's *habeas corpus* petition as an untimely PCRA petition.

Seskey, 86 A.2d at 244 (Strassburger, J., concurring opinion).

⁶ This court recognizes the exceptions to the one year time bar of the PCRA found in Section 9545(b) pertaining to governmental interference, after-discovered evidence, and retroactive application of certain constitutional rulings. *See* 42 Pa.C.S.A. § 9545 (b)(1)(i)-(iii). Appellant did not set forth any exception to the one-year limit in his PCRA.

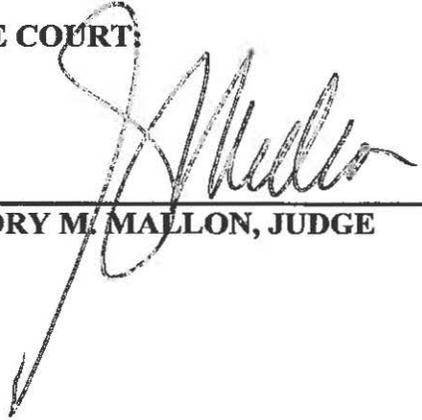
⁷ *Miller v. Alabama*, 132 S.Ct. 2455 (2012)

⁸ *Graham v. Florida*, 130 S. Ct. 2011 (2010)

IV. CONCLUSION

For the reasons outlined above, it is respectfully submitted that, the correct standards were applied and the court's dismissal of Appellant's PCRA petition should be affirmed.

BY THE COURT:



GREGORY M. MALLON, JUDGE