

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000196-2011  
 : CP-41-CR-0000630-2011  
vs. :  
 :  
 :  
 :  
BILAL SABUR, :  
Appellant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's order entered on March 13, 2024 denying the Second Post Conviction Relief Act (PCRA) petition filed by Bilal Sabur. The court would primarily rely on its Opinion and Order entered on January 25, 2023, which gave Sabur notice of the court's intent to dismiss his PCRA as untimely without holding an evidentiary hearing. That decision is attached to this Opinion as Exhibit A. The court would supplement its January 25, 2023 decision by briefly addressing each of Sabur's matters complained of on appeal.

1. Whether the lower court abused its discretion by not allowing petitioner to amend his pro se PCRA application. See: Rule 907?

Sabur's Second PCRA petition was patently untimely and he did not allege sufficient facts to establish one of the statutory exceptions. Therefore, the court did not have jurisdiction to hold an evidentiary hearing or grant Sabur any relief. See Opinion and Order entered January 25, 2023 (Exhibit A). When Sabur requested an extension of time to respond to the court's proposed dismissal of his PCRA, the court specifically told Sabur that

any response should allege facts to establish one of the statutory exceptions. *See* Order entered February 1, 2023 (attached as Exhibit B). Rather than alleging facts to establish that his filings were timely, Sabur filed “amended” petitions that attempted to assert new or additional claims without first obtaining leave of court and without asserting facts to establish a timeliness exception. Eventually, Sabur filed a petition seeking leave to amend his PCRA petition, but he still did not allege facts to show that his filings were timely. The court denied Sabur’s request for leave to amend because he did not plead sufficient facts to show that his filings were timely, and his claims were waived by failing to assert them in his first PCRA petition, which was timely filed years earlier. *See* Order entered March 13, 2024 (attached as Exhibit C).

2. Whether the lower court abused its discretion by not considering petitioner [sic] claims raised in his amended PCRA “applicable” to the *Lawson* standard’s [sic]?

The court did not consider the *Lawson* standards related to a “miscarriage of justice” because Sabur did not establish that his filings were timely. *See Commonwealth v. Fahy*, 737 A.3d 214, 223 (Pa. 1999)(while the court would consider a timely petition under the *Lawson* standard, the court had no jurisdiction to address an untimely petition; Appellant’s claims cannot be considered); *Commonwealth v. Burton*, 936 A.2d 521, 527 (Pa. Super. 2007)(the courts of Pennsylvania will only entertain a “miscarriage of justice” claims when the timeliness requirement is met); *Commonwealth v. Sattazahn*, 869 A.2d 529, 536 (Pa. Super. 2005)(neither *Lawson* nor *Morales* discusses, let alone holds, that an untimely PCRA petition can be decided on the merits if the appellant pleads and proves a fundamental miscarriage of justice). These cases show that Sabur was required to establish that his filings were timely

before the court could address the merits of his petition to determine if any waiver could be excused by satisfying the “miscarriage of justice” standard for a second or subsequent PCRA petition.

3. Did the PCRA court abuse its discretion and/or commit an error of law in finding that the following grounds for relief annunciated in petitioner’s [sic] contain no genuine issue of material fact?

The court did not find that there were no genuine issues of material fact. The court did not address the merits of Sabur’s claim. The court found that Sabur’s filings were untimely; therefore, the court lacked jurisdiction to hold an evidentiary hearing or to grant any relief to Sabur.

4. 42 Pa.C.S.A. 9545(b)(i) Petitioner raised the failure to raise the claim previously was the result of interference by government officials in initial pro se PCRA where officials at SCI Dallas interfered with the communication between lawyer and client

The court addressed this issue on page three of its Opinion and Order entered on January 25, 2023. Counsel was appointed to represent Sabur on his first PCRA petition. Counsel was not appointed to represent Sabur on his present filings because his filings were untimely, which meant that the court lacked jurisdiction to hold an evidentiary hearing. *See* Pa. R. Crim. P. 904(D)(appoint of counsel for a second or subsequent PCRA petition is only required when the petitioner is indigent and an evidentiary hearing is required). Sabur filed a pro se motion on December 29, 2016 in which he asserted governmental interference. *See* Exhibit D. The trial court did not take any action on that motion because Sabur was represented by counsel. The trial court also noted that it would not be inclined to grant the

motion because numerous opportunities had previously been given to amend the first PCRA petition and the evidentiary hearing had already been continued from December 2016 to February 2017. *See* Order entered January 5, 2017 (attached as Exhibit E). The Pennsylvania Superior Court affirmed the denial of Sabur's first PCRA petition on April 5, 2019, and the record was remitted on October 9, 2019. *See* 1138 MDA 2017 and 1139 MDA 2017. Sabur, who elected to represent himself with standby counsel, did not allege in that appeal that the trial court erred in denying his motion filed on December 29, 2016. Furthermore, assuming for the sake of argument that Sabur could not have asserted this issue while the appeal of his first PCRA was pending, he was aware of the facts regarding government interference in 2016 but he did not file his second PCRA in 2020. Rather, he waited until 2022. Any petition invoking one of the exceptions must be filed within one year of the date the claim could have been presented. 42 Pa. C.S. A. §9545(b)(2). Therefore, even if there had been governmental interference, Sabur did not timely file his Second PCRA petition to assert it.

5. Commonwealth v. Bradley new rule was misinterpreted (sic) by the court in which allow petitioners to raise PCRA counsel for the first time on appeal "petitioner" here contends that while on appeal in the Superior Court prior then failed to give judicial notice "meaning" No liberal construction, which caused the proceeding arbitration (sic) and capricious.

The court is unsure of what Sabur is attempting to claim in this issue other than that the court misinterpreted *Bradley*. This court is bound (required) to follow precedential opinions of the Pennsylvania Superior Court. In *Commonwealth v. Stahl*, 292 A.3d 1130, 1135-36 (Pa. Super. 2023), the Pennsylvania Superior Court interpreted *Bradley* in the

manner that the court did. *Bradley* does not create a right to file an untimely PCRA petition.  
*See* Order entered February 21, 2023 (Exhibit B).

For the foregoing reasons, the court does not believe that it erred in dismissing as untimely Sabur's Second PCRA petition.

DATE: 6/6/24

By The Court,

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Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)  
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NLB/laf