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RICKY DEAN WHITNEY



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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on December 12, a petition for name change was filed in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of Petitioner, Christina May Rice to Christina May Reese. The Court has affixed the 17th day of February, 2017 at 10 am in courtroom #4, third floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petitioner should not be granted.

1/20

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on December 12, a petition for name change was filed in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of Petitioner, Michael Joseph Strese to Michael Joseph Reese. The Court has affixed the 17th day of February, 2017 at 10 am in courtroom #4, third floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petitioner should not be granted.

1/20

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on December 12, a petition for name change was filed in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of Petitioner, Paskalina Dorothy Rice to Paskalina Dorothy Reese. The Court has affixed the 17th day of February, 2017 at 10 am in courtroom #4, third floor of the Adams County Courthouse as the time, and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petitioner should not be granted.

1/20

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Limited Liability Company was filed on December 16, 2016, with the Department of State of the Commonwealth of Pennsylvania, on behalf of DOUBLE A TO Z, LLC, a limited liability company, whose address is 575 Farm View Road, York Springs, PA. The said Business Corporation was organized under the Pennsylvania Business Corporation Law, 15 Pa. C.S.A. § 8913.

Mark W. Allshouse, Esq.
Christian Lawyer Solutions, LLC
4833 Spring Road
Shermans Dale, PA 17090

1/20

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that the Application for Domestic Limited Liability Company was filed by INDEPENDENCE HEATING & COOLING, LLC with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of registering under 15 Pa. C.S. § 8913, relating to Domestic Limited Liability Companies.

Samuel A. Gates, Esq.
Solicitor

1/20

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about November 16, 2016 for the incorporation of TNT STORAGE SHEDS, INC. under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 3930 York Road, New Oxford, PA 17350.

Bernard A. Yannetti, Jr., Esq.
Hartman & Yannetti
Solicitors

1/20

COMMONWEALTH OF PENNSYLVANIA VS.
RICKY DEAN WHITNEY

1. This Court has no jurisdiction to consider a post-trial Motion to Vacate Sentence filed more than a decade after the sentence was imposed. The proper course of seeking relief would have been for Appellant to file a PCRA petition and not a Motion to Vacate Sentence.

2. The limitation on the time that a PCRA petition may be filed implicates the court's jurisdiction; thus, a court may not amend or ignore the statutory limitation in order to address the merits of an untimely petition.

3. A defendant must show that the United States Supreme Court recognized a constitutional right and that the U.S. Supreme Court ruling applies retroactively in order for a PCRA timeliness exception to apply. *Alleyne v. United States* only applies retroactively to cases pending on direct appellate review and does not apply to cases pending on collateral review.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CP-01-CR-789-1997, COMMONWEALTH OF
PENNSYLVANIA VS. RICKY DEAN WHITNEY.

Ricky Dean Whitney, pro se
Brian R. Sinnett, Esq., Attorney for Commonwealth
Campbell, J., January 9, 2017

OPINION PURSUANT TO PA. R.A.P. 1925(A)

Appellant, Ricky Dean Whitney, appeals this Court's October 18, 2016 Order denying Appellant's Motion to Vacate Illegal Sentence. For the reasons set forth below, it is respectfully requested that the denial of Appellant's Motion be affirmed.

Appellant's conviction arose out of an incident between himself and police officers that began on the evening of July 3, 1997 and continued into the early morning hours of July 4, 1997. The relevant facts as adduced at trial are as follows: Appellant and his wife were separated, however, Appellant was helping her repair her home that was recently placed on the market for sale. Appellant's wife agreed to drive him to the store to buy some paint, and on the way there an argument ensued. While stopped at a red light, Appellant took the keys out of the car and hitch-hiked back to his wife's home. Once he arrived, he continued drinking heavily, which he had begun doing before the trip to the store. Appellant's wife then called the police and requested that they retrieve her keys.

As police arrived, they saw a car parked near the home. The occupants of the car, who had stopped to look at the house, were leaving the property and reported that Appellant had a gun. As the police attempted to talk to Appellant he became irate and began yelling obscenities at them. Appellant then started shooting at the police officers. Throughout the incident, Appellant fired at civilians and their vehicles, police vehicles, police officers, and a helicopter. He used a shotgun, rifle, and pistol. During the incident, he got into his truck and drove in the yard randomly shooting. Appellant also set off fireworks and shot out a transformer, so his property was dark and police could not see him. At some point, Appellant's wife's home caught on fire and eventually burned to the ground because firefighters could not approach due to the gunfire. The incident ended when Appellant was shot and disabled by a state police corporal.

On August 14, 1998, Defendant was found guilty by a jury of two counts of attempted criminal homicide¹, 15 counts of aggravated assault², four counts of simple assault³, 10 counts of recklessly

¹ 18 Pa. C.S. § 901

² 18 Pa. C.S. § 2702

³ 18 Pa. C.S. § 2701(a)(1)

endangering another person⁴, three counts of criminal mischief⁵, and one count of propulsion of missiles into an occupied vehicle⁶. On October 13, 1998, Appellant was sentenced to an aggregate of 30 years to 72 years⁷.

The Appellant's case has an extensive procedural history. The relevant portions are as follows: on June 25, 2001, Appellant filed his first PCRA petition, making a number of ineffective assistance of counsel claims, including one related to the failure of counsel to timely file a petition for allowance of appeal. On December 26, 2001, the PCRA court⁸ denied the motion without a hearing on timeliness grounds, without addressing any of Appellant's claims on the merits. Defendant filed a notice of appeal, addressing only the timeliness issue. The Superior Court affirmed the PCRA court's denial. Appellant then filed a petition for allowance of appeal. The Supreme Court granted the petition and remanded the case to the PCRA court for hearing on the timeliness of the PCRA motion. On June 8, 2004, Appellant filed an amended PCRA motion, asking for a reinstatement of his right to petition for allowance of appeal *nunc pro tunc*. Based on agreement of parties, the PCRA court granted the reinstatement of Appellant's right to petition for allowance of appeal *nunc pro tunc*. Appellant then filed a petition for allowance of appeal to the Supreme Court. On March 8, 2005, the Supreme Court denied such petition. On January 4, 2006, Appellant filed his second PCRA petition, again alleging various ineffective assistance of counsel claims. On October 20, 2006, the PCRA court dismissed Appellant's PCRA petition in its entirety except for the issues relating to resentencing⁹. Appellant filed a notice of appeal to the Superior Court of

⁴ 18 Pa. C.S. § 2705

⁵ 18 Pa. C.S. § 3304(a)(2)

⁶ 18 Pa. C.S. § 2707(a)

⁷ Because Appellant visibly possessed firearms and used the firearms during the commission of his offenses to place others in fear of death or serious bodily injury, a mandatory minimum under 42 Pa. C.S. § 9712 was applied at sentencing.

⁸ The Honorable John D. Kuhn, (Ret.) presided over all proceedings until the third PCRA petition filed July 10, 2015.

⁹ Defendant was resentenced on December 1, 2006. Defendant's original sentence for counts 13-20 was vacated and he was resentenced to SCI for no less than 15 months to no more than 30 months on counts 13-16 and SCI for no less than 21 months to no more than 42 months on counts 17-20, to run concurrent with each other and with all other sentences imposed previously by the court. This did not affect Defendant's aggregate sentence.

Pennsylvania. The Superior Court remanded the case for an evidentiary hearing limited to the act and omissions of Albert V.F. Nelthropp, Esq., during his representation of Appellant, rejecting all other claims of ineffectiveness. The Superior Court affirmed the PCRA court's ruling dismissing the PCRA petition. Appellant then filed a Petition for Allowance of Appeal to the Supreme Court which was denied on March 9, 2010.

More than five years later on July 10, 2015, Appellant filed his third PCRA petition pro se. Appellant had counsel appointed on June 24, 2015, but Appellant decided to file his PCRA petition pro se rather than through his appointed counsel. On September 8, 2015, this Court issued its Notice of Intent to Dismiss, giving Appellant twenty (20) days to respond to the notice. On September 23, 2015, Appellant's appointed counsel filed a motion for an Extension of Time to File an Amended PCRA petition, which this Court denied. Appellant filed an Amended Concise Statement of Matters Complained of on Appeal pro se on December 28, 2015 despite the fact that Appellant still had appointed counsel. The Superior Court affirmed this Court's denial of Appellant's PCRA Petition on August 9, 2016.

On October 13, 2016, Appellant filed a Motion to Vacate Illegal Sentence, and on October 18, 2016, this Court denied Appellant's Motion. Appellant filed a Notice of Appeal and a Concise Statement on the Matters Complained of on November 9, 2016 and January 3, 2017, respectively.

In his Concise Statement on the Matters Complained of, Appellant claims that his sentence is illegal under 42 Pa. C.S.A. § 9542 and 42 Pa. C.S.A. § 9712. This Court believes that Appellant is trying to allege that under *Alleyne v. United States*, 133 S. Ct. 2151 (2013), his mandatory minimum sentence under 42 Pa. C.S. § 9712 is illegal.

This Court has no jurisdiction to consider a post-trial motion to vacate sentence filed more than a decade after the sentence was imposed. The proper course of seeking relief would have been for Appellant to file a PCRA petition and not a Motion to Vacate Sentence. Petitions for Post-Conviction Relief must be filed within one year of the date the judgment of sentence becomes final, unless the petitioner can show that one of the statutory exceptions is applicable. **42 Pa. C.S. § 9545(b)(1)**. The PCRA specifies that "a judgment

becomes final at the conclusion of direct review... or at the expiration of time for seeking the review.” **42 Pa. C.S. § 9545(b)(3)**. The limitation on the time that a PCRA petition may be filed implicates the court’s jurisdiction; thus, a court may not amend or ignore the statutory limitation in order to address the merits of an untimely petition. *Commonwealth v. Bennett*, 930 A.2d 1264, 1267 (Pa. 2007); *Commonwealth v. Johnson*, 803 A.2d 1291, 1294 (Pa. Super. 2002).

Even if Appellant would have filed a fourth PCRA petition alleging that his sentence is illegal instead of a motion to vacate sentence, the petition would have been untimely. Appellant filed his Motion to Vacate Sentence at a minimum of a decade after Appellant’s sentence became final. This Court does not have the jurisdiction to decide an untimely PCRA petition on the merits.

Further, even if Appellant had filed a PCRA petition arguing that an exception applied, it would have been without merit. A defendant must show that the United States Supreme Court recognized a constitutional right and that the U.S. Supreme Court ruling applies retroactively in order for a PCRA timeliness exception to apply. **42 Pa. C.S.A. § 9545(b)(1)(iii)**. *Alleyne v. United States* only applies retroactively to cases pending on direct appellate review and does not apply to cases pending on collateral review. *See generally Commonwealth v. Washington*, 142 A.3d 810 (Pa. 2016). Appellant’s sentence became final at a minimum of seven years before *Alleyne* was decided, and any collateral review of his case at the time that *Alleyne* was decided still does not make *Alleyne* applicable to Appellant’s case. Therefore, Appellant may not argue that *Alleyne* is an exception to the one year time bar for PCRA petitions. Consequently, Appellant may not rely on *Alleyne* for relief. Accordingly, even if Appellant had filed a fourth PCRA petition arguing that an exception applied, this Court would not have had jurisdiction to decide the petition on its merits.

Therefore, for all the reasons stated herein, it is respectfully requested that this Court’s denial of Appellant’s Motion to Vacate Illegal Sentence be affirmed.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF HENRY PAUL FISSEL, a/k/a HENRY P. FISSEL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Jeffrey C. Fissel, c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

ESTATE OF KENNETH LEE JAMES, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administratrix: Sandra L. Triplett, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF EDGAR J. MILLER, DEC'D

Late of the Borough of Bonneville, Adams County, Pennsylvania

Executrix: Karen A. Gettel, c/o Amy S. Loper, Esq., 11 Carlisle Street, Suite 301, Hanover, PA 17331

Attorney: Amy S. Loper, Esq., 11 Carlisle Street, Suite 301, Hanover, PA 17331

ESTATE OF DORIS B. MORGAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Carroll M. Davenport, 675 Iron Ridge Rd., Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF REVA MAE RARIG, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrices: Elizabeth Tyson, P.O. Box 127, Gardners, PA 17324; Susan Makler, 918 Clinton Road, Los Altos, CA 94024

Attorney: Kenneth E. Ahl, Esq., Archer & Greiner, P.C., 1650 Market St., 32nd Fl., Philadelphia, PA 19103

ESTATE OF ETHEL C. RILEY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Luxie Ann Althoff, 671 March Creek Road, Gettysburg, PA 17325; Linda K. Luckenbaugh, 691 March Creek Road, Gettysburg, PA 17325

Attorney: Adam C. Zei, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF DONALD P. SELL, a/k/a DONALD SELL, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Donald P. Sell, II, 7103 Aldrich Court, Spotsylvania, VA 22553

Attorney: Thomas E. Miller, Esq., Law Office of Thomas E. Miller, Esq., LLC, 249 York Street, Hanover, PA 17331

ESTATE OF CATHERINE M. WITHERS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Jane C. Bedford, 419 North Street, McSherrystown, PA 17344

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF MAYNARD S. BARNHART JR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Erma L. Barnhart, 10 Pine Court, Abbottstown, PA 17301

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF CONNIE A. FRITZ, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrators CTA: Nicole B. Harris, 13085 Iroquois Trail, Waynesboro, PA 17268; Wendy L. Clapsaddle, 685 Fairview Fruit Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF SEBASTIAN R. HAFER a/k/a SEBASTIAN ROBERT HAFER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARION A. MURREN a/k/a MARION ANN MURREN, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Anthony J. Murren, c/o Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

Attorney: Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF I. LORETTA GRIM, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: J. Michael Grim, 200 E. King Street, East Berlin, PA 17316; William S. Grim, 611 Boundary Avenue, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF MICHAEL LEBO a/k/a MICHAEL ALAN LEBO, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Amy Lebo, 15 Curtis Drive, East Berlin, PA 17316

Attorney: Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 211 Kennedy Court, Suite 5 Hanover, PA 17331

ESTATE OF GEORGE H. LOMAS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Susan K. Saum-Wicklein, 45 Steinwehr Avenue, Gettysburg, PA 17325

Attorney: Todd A. King, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

