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RICKY DEAN WHITNEY



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COMMONWEALTH OF PENNSYLVANIA VS.  
RICKY DEAN WHITNEY

1. Under the PCRA, a petitioner does not have an absolute right to a hearing.
2. A court is not required to entertain an evidentiary hearing before dismissing claims that are "clearly without merit."
3. To be eligible for relief under the Post Conviction Relief Act (PCRA), 42 Pa. C.S. §9541, et seq., a petitioner must plead and prove by a preponderance of the evidence, inter alia, that his or her conviction or sentence resulted from one or more of the circumstances enumerated in 42 Pa. C.S.A. §9543(a)(2) and that his or her claims have not been previously litigated or waived.
4. 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.
5. A Post Conviction Relief Act petitioner cannot obtain review of claims that were previously litigated by presenting new theories of relief, including allegations of ineffectiveness.

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

Adam J. Barr, Esq.  
Barbara Jo Entwistle, Esq.  
Ricky Dean Whitney, pro se

Campbell, J., January 5, 2016

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

Appellant, Ricky Dean Whitney, appeals the dismissal of his PCRA Petition. For the reasons set forth below, it is respectfully requested that the denial of Appellant's PCRA Petition be affirmed.

The relevant and extensive facts and procedural history were thoroughly discussed in this Court's Notice of Intent to Dismiss Appellant's PCRA. Exhibit A.

Appellant had counsel appointed on June 24, 2015. Appellant filed his pro se PCRA petition on July 10, 2015. 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. This Court denied that motion on September 23, 2015. Appointed counsel had ample time to file an amended PCRA petition, if necessary, to cure any defects in Appellant's pro se petition.

Despite Appellant's filing of a pro se Notice of Appeal, appointed PCRA is still counsel of record and has been direct to represent Appellant on appeal. By Order dated December 7, 2015, Counsel was directed to submit amended Concise Statement of Matters Complained of. Appointed Counsel has not filed an Amended Concise Statement. Instead on December 28, 2015, Appellant filed a pro se Amended Concise Statement of Matters Complained of on Appeal.

In his Concise Statement, Appellant asserts that the Court cannot dismiss a Pro Se PCRA petition without allowing the Petitioner through Counsel to file an Amended PCRA that would cure any defects.

Pennsylvania Rule of Criminal Procedure 907 requires a judge to promptly review PCRA petitions. Under the PCRA, a petitioner does not have an absolute right to a hearing, *Commonwealth v. Gaskins*, 692 A.2d 224, 226 (Pa. Super. 1997), and a judge may dismiss a petition without a hearing if, after thorough review, the judge determines that "there are no genuine issues concerning any material fact and that the defendant is not entitled to post-convic-

tion collateral relief.” *Pa. R. Crim. P. 907(1)*; *Gaskins*, 692 A.2d at 226. A court is not required to entertain an evidentiary hearing before dismissing claims that are “clearly without merit.” *Commonwealth v. Harris*, 852 A.2d 1168, 1180 (Pa. 2004). Prior to dismissing the petition, the judge must notify the parties of the intention to dismiss, state the reasons for the dismissal, and provide the defendant with 20 days to respond to the notice of intent to dismiss. *Pa. R. Crim. P. 907(1)*. At the expiration of 20 days, the judge must “order the petition dismissed, grant leave to file an amended petition, or direct that the proceedings continue.” *Pa. R. Crim. P. 907(1)*.

PCRA counsel was appointed on June 24, 2015, and had ample time to Amend or Supplement Appellant’s pro se third PCRA petition. Notice of intent to dismiss was given more than two months after PCRA counsel was appointed and the pro se PCRA petition was filed. More than 20 days after giving notice, this Court dismissed Appellant’s third PCRA petition pursuant to Rule 907(1). This Court did not abuse its discretion in dismissing Appellant’s meritless petition because under Rule 907(1) of Pennsylvania’s Rules of Criminal Procedure dismissal of a PCRA petition without a hearing is one of the alternatives available to the court at the expiration of 20 days.

Even if Appellant did file an amended PCRA petition, the petition would still be deemed untimely. In Appellant’s Concise Statement he specified the “new claims” that would be contained in his amended petition. The suggested claims that would have been contained in Appellant’s amended petition were the same claims already raised and then dismissed by this court. The reasons for dismissing those claims can be found in this Court’s Notice of Intent to Dismiss Appellant’s PCRA. Exhibit A. Therefore, Appellant was not prejudiced by being unable to file an amended petition.

Appellant has not raised any issues that would entitle him to post conviction collateral relief. Therefore, for all the reasons stated herein, it is respectfully requested that the denial of Appellant’s PCRA Petition 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 or of 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 RICHARD E. HELLER, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Martha Reiker, 11 Carly Drive, New Oxford, PA 17350

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF BETTY D. KLINE, a/k/a BETTY JANE KLINE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Victoria E. Wojtkowiak, 1889 Arthurs Court, York, PA 17408; Jeffrey S. Kline, 386 Green Ridge Road, New Oxford, PA 17350

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

## ESTATE OF MARY ELLEN MAUST, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Daniel P. Krueger, 4820 Glenville Road, Glen Rock, Pennsylvania 17327

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

## ESTATE OF AUDRIA MARDELL MCQUAIN, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Mickey Del McQuain, 25 Brae Drive, Lillington, NC 27546

## ESTATE OF LEGER OLIVIER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Eric Olivier, 18901 Alpenglow Lane, Brookeville, MD 20833

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF ELIZABETH ROOD, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Linda S. Miller, c/o Douglas G. Miller, Esq., Irwin & McKnight, P.C., 60 West Pomfret Street, Carlisle, PA 17013

Douglas G. Miller, Esq., Irwin & McKnight, P.C., 60 West Pomfret Street, Carlisle, PA 17013

## SECOND PUBLICATION

## ESTATE OF WAYNE FREDERICK BURT SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Wayne F. Burt Jr., 14209 Remington Court, Fontana, CA 92336; John M. Burt, 20 Longview Blvd., Gettysburg, PA 17325

## ESTATE OF SHIRLEY E. DAVIS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Paul Vincent Davis, III, 847 Long Lane, Gettysburg, PA 17325; Pamela Marie Davis, 847 Long Lane, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325

## ESTATE OF GLADYS M. KRUG, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Scott A. Krug, 454 Moulstown Road, Abbottstown, PA 17301; Jack L. R. Krug, 147 Adam Drive, New Oxford, PA 17350; Cindy M. Smith, 40 Edgemoor Road, Hanover, PA 17331; Kenny L. Krug, 836 Iron Ridge Road, Spring Grove, PA 17362

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

## ESTATE OF DONALD B. LARSON, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executrix: Betty R. Giannotto, 3306 Carlisle Pike, New Oxford, Pennsylvania 17350

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

## ESTATE OF E. JANE OHLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Douglas R. Appler, 25 Pine Court Drive, Abbottstown, PA 17301

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325

## ESTATE OF JANE I. SMITH, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Renea E. Fiorella, c/o Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

## ESTATE OF ANN L. YANNETTI, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Bernard A. Yannetti, Jr., 994 Knoxlyn Road, Gettysburg, PA 17325; Susan E. Yannetti, 119 Barlow Street, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF BETTY J. AILES a/k/a BETTY JO AILES, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Fred B. Ailes, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

## ESTATE OF ERVIN R. BAUGHER a/k/a ERVIN RICHARD BAUGHER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Eugene R. Baugher, 846 Broadway, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

## ESTATE OF MARY FRANCES DUTROW, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Lisa A. Williams, 417 Heritage Drive, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

**THIRD PUBLICATION CONTINUED**

ESTATE OF RICHARD L. GALUSHA,  
DEC'D

Late of the Borough of Arendtsville,  
Adams County, Pennsylvania

Co-Executors: Charles O. Galusha, 749  
Mt. Tabor Road, Gardners, PA 17324;  
Pauline Streett, PO Box 252,  
Biglerville, PA 17307

Attorney: John A. Wolfe, Esq., Wolfe &  
Rice, LLC, 47 West High Street,  
Gettysburg, PA 17325

ESTATE OF STACY M. HOBBS a/k/a  
STACY M. RIGGS, DEC'D

Late of Freedom Township, Adams  
County, Pennsylvania

Executor: Dwayne Gilbert, 301 S.  
Geyers Church Road, Middletown,  
PA 17057

Attorney: Peter J. Russo, Esq., Law  
Offices of Peter J. Russo, P.C., 5006  
E. Trindle Road, Suite 203,  
Mechanicsburg, PA 17050

ESTATE OF ROBERT C. PETERS, SR.  
a/k/a ROBERT C. PETERS, DEC'D

Late of Butler Township, Adams County,  
Pennsylvania

Executrix: Gertrude I. Peters, 350  
Benders Church Road, Biglerville, PA  
17307

Attorney: John A. Wolfe, Esq., Wolfe,  
Rice & Quinn, LLC, 47 West High  
Street, Gettysburg, PA 17325

ESTATE OF GARRY L. REINDOLLAR  
a/k/a GARRY LEIGHTON REINDOLLAR,  
DEC'D

Late of Straban Township, Adams  
County, Pennsylvania

Personal Representative: Merle L.  
Reindollar, 7 West Locust Lane, New  
Oxford, PA 17350

Attorney: Clayton A. Lingg, Esq.,  
Mooney & Associates, 230 York  
Street, Hanover, PA 17331

ESTATE OF BRIAN FRANCIS RISER,  
DEC'D

Late of the Borough of McSherrystown,  
Adams County, Pennsylvania

Executrix: Mary Small, 2403  
Meetinghouse Road, Spring Grove,  
PA 17362

Attorney: John A. Wolfe, Esq., Wolfe,  
Rice & Quinn, LLC, 47 West High  
Street, Gettysburg, PA 17325

