

# Adams County Legal Journal


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PAUL JOHN KASPER, JR.



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COMMONWEALTH OF PENNSYLVANIA VS.  
PAUL JOHN KASPER, JR.

1. Appellant filed a PCRA petition after finding out that the Supreme Court in *Alleyne v. U.S.*, 133 S.Ct. 2151 (2013), stated that mandatory minimum sentences may be unconstitutional. It appears that Appellant is contending that the ruling in *Alleyne v. U.S.* is an exception to the timeliness rule.

2. In *Alleyne*, the Supreme Court held that "facts that increase mandatory minimum sentences must be submitted to the jury" and must be found beyond a reasonable doubt. Even assuming that *Alleyne* did announce a new constitutional right, neither the Pennsylvania Supreme Court nor the United States Supreme Court has held that *Alleyne* is to be applied retroactively to cases in which the judgment of sentence had become final. *Commonwealth v. Miller*, 102 A.3d 988 (PA 2014).

3. A new rule of constitutional law is applied retroactively to cases on collateral review only if the United States Supreme Court or the Pennsylvania Supreme Court specifically holds it to be retroactively applicable to those cases.

4. For a Court to review a PCRA claim, there must be a basis for jurisdiction to engage in such review. In an untimely PCRA petition for which no time-bar exception applies, the court is deprived of jurisdiction over the claim.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CRIMINAL, CP-01-CR-462-2010, CR-969-  
2010, COMMONWEALTH OF PENNSYLVANIA VS. PAUL  
JOHN KASPER, JR.

Megan C. Zei, Esq.

Thomas R. Nell, Esq.

Paul John Kasper, Jr., Defendant

Campbell, J., January 8, 2016

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

Appellant, Paul John Kasper, Jr., appeals from the Order of Court dated November 5, 2015, dismissing his PCRA Petition without a hearing. For the reasons set forth below, it is respectfully requested that the denial of Appellant's PCRA Petition be affirmed.

On June 23, 2011, Appellant was found guilty by jury verdict on charges of: Rape-Forcible Compulsion<sup>1</sup>; Statutory Sexual Assault<sup>2</sup>; Sexual Assault<sup>3</sup>; Aggravated Indecent Assault-Statutory<sup>4</sup>; Unlawful Contact with a Minor<sup>5</sup>; Corruption of Minors<sup>6</sup>; and Indecent Assault-Statutory<sup>7</sup>. Appellant was sentenced on September 29, 2011.

In CR-462-2010, on the Rape conviction Appellant was sentenced to a mandatory minimum of ten (10) years in a state correctional institution, pursuant to 42 Pa. C.S.A. §9718(a)(1) for violating 18 Pa. C.S.A. §3121(a)(1). On the Aggravated Indecent Assault-Statutory, Appellant was sentenced to a consecutive mandatory minimum of five (5) years in a state correctional institution, under 42 Pa. C.S.A. §9718(a)(1) for violating 18 Pa. C.S.A. §3125(a)(2). Appellant appealed his sentence to the Pennsylvania Superior Court on October 26, 2011. On August 3, 2012, the Superior Court affirmed Appellant's sentence. Appellant's sentence became final on August 3, 2012, giving him one (1) year from that date to file his PCRA Petition. Appellant filed his PCRA Petition on October 19, 2015. As previously stated in this Court's November 5, 2015 Order, Appellant does not raise any exception to the timeliness rule. Exhibit A.

In his Concise Statement, Appellant asserts that this Court erred in denying his PCRA claim without a hearing, when Appellant filed a PCRA petition after finding out that the Supreme Court in *Alleyn v. U.S.*, 133 S.Ct. 2151 (2013) stated that mandatory minimum sentences may be unconstitutional. It appears that Appellant is contending that the ruling in *Alleyn v. U.S.* is an exception to the timeliness rule.

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<sup>1</sup> 18 Pa. C.S.A. §3121(a)(1)

<sup>2</sup> 18 Pa. C.S.A. §3122.1

<sup>3</sup> 18 Pa. C.S.A. §3124.1

<sup>4</sup> 18 Pa. C.S.A. §3125(a)(2)

<sup>5</sup> 18 Pa. C.S.A. §6318(a)(5)

<sup>6</sup> 18 Pa. C.S.A. §6301(a)(1)

<sup>7</sup> 18 Pa. C.S.A. §3126(a)(8)

It should be noted that, although Appellant filed his Appeal under two dockets, CR-462-2010 and CR-969-2010, Appellant was only sentenced pursuant to mandatory minimum sentencing provisions in CR-462-2010.

In *Alleyne*, the Supreme Court held that “facts that increase mandatory minimum sentences must be submitted to the jury” and must be found beyond a reasonable doubt. *Alleyne v. U.S.* 133 S.Ct. 2151 (2013). Even assuming that *Alleyne* did announce a new constitutional right, neither the Pennsylvania Supreme Court nor the United States Supreme Court has held that *Alleyne* is to be applied retroactively to cases in which the judgment of sentence had become final. *Commonwealth v. Miller*, 102 A.3d 988 (PA 2014). A new rule of constitutional law is applied retroactively to cases on collateral review only if the United States Supreme Court or the Pennsylvania Supreme Court specifically holds it to be retroactively applicable to those cases. *Id.* The Pennsylvania Superior Court has declined to construe the decision in *Alleyne* as applying retroactively to cases during PCRA review. *Commonwealth v. Riggle*, 119 A.3d 1058(2015). The *Miller* Court opined that because neither high court announced that *Alleyne* applied retroactively, that decision would not qualify as a timeliness exception even if applicable. *Id.*

For a Court to review a PCRA claim, there must be a basis for jurisdiction to engage in such review. *Commonwealth v. Borovichka*, 18 A.3d 1242, 1254 (Pa.Super.2011). In an untimely PCRA petition for which no time-bar exception applies, the court is deprived of jurisdiction over the claim. *Commonwealth v. Seskey*, 86 A.3d 237, 241 (Pa. Super.2014). In the instant case Appellant’s PCRA petition was untimely filed without any exception to the time bar; this Court does not have jurisdiction to consider the merits of Appellant's claims.

Therefore, for all the reasons stated herein, it is respectfully requested that this Court’s dismissal of Appellant's PCRA petition without a hearing 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 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

## 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

## SECOND PUBLICATION

## ESTATE OF MARION W. BASTA, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Audrey L. Bierley, 6 Meadow Lane, Hanover, PA 17331

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

## ESTATE OF RANDALL L. BENNETT a/k/a RANDALL LYNN BENNETT, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executrix: Karin L. Bennett, 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 EDWARD H. GASTLEY, JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Lisa Tomko, 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 LEITHA R. HOUCK, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Susan D. Miller, 31 Bonnieland Circle, Gettysburg, PA 17325

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

## ESTATE OF JAMES L. LAWRENCE, SR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: James L. Lawrence, Jr., c/o Craig A. Diehl, Esq., CPA, Law Offices of Craig A. Diehl, 119A West Hanover Street, Spring Grove, PA 17362

Attorney: Craig A. Diehl, Esq., CPA, Law Offices of Craig A. Diehl, 119A West Hanover Street, Spring Grove, PA 17362

## ESTATE OF BETTY J. LEADER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Carol L. Ross, 1951 Cranberry Road, York Springs, Pennsylvania 17372; Sharon E. Brandt, 1993 Roosevelt Avenue, York, PA 17408

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

## ESTATE OF WILDA G. PUCKETT a/k/a WILDA GAY PUCKETT, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Robin S. Keller, 567 Meals Road, Gardners, PA 17324

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

## ESTATE OF PATRICIA J. RICE, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Virginia L. Martin, 649 Shippensburg Road, Biglerville, PA 17307

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

## SECOND PUBLICATION CONTINUED

## ESTATE OF MARY ELIZABETH ROBINSON, DEC'D

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

Executrix: Sandra K. Bell, 2 Bunny Trail,  
Fairfield, PA 17320

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

## ESTATE OF GENEVIEVE C. SLEGAL, DEC'D

Late of Franklin Township, Adams  
County, Pennsylvania

Executor: Gary E. Hartman, 126  
Baltimore Street, Gettysburg, PA  
17325

Attorney: Bernard A. Yannetti, Jr., Esq.,  
Hartman & Yannetti, 126 Baltimore  
Street, Gettysburg, PA 17325

## ESTATE OF CONNIE R. SMITH, DEC'D

Late of Straban Township, Adams  
County, Pennsylvania

Executor: Edward Smith, c/o Sharon E.  
Myers, Esq., CGA Law Firm, PC, P.O.  
Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA  
Law Firm, PC, P.O. Box 606, East  
Berlin, PA 17316

## ESTATE OF NANCY L. SMITH a/k/a NANCY LOUISE SMITH, DEC'D

Late of Reading Township, Adams  
County, Pennsylvania

David A. Smith, 750 Fleshman Mill  
Road, New Oxford, PA 17350

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

## ESTATE OF LARRY W. STONESIFER, DEC'D

Late of Union Township, Adams  
County, Pennsylvania

Executrix: Carla J. Scott, 1710  
Westminster Rd., Hanover, PA 17331

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

## THIRD PUBLICATION

## ESTATE OF NEAL EITEL, DEC'D

Late of Franklin Township, Adams  
County, Pennsylvania

Executrix: Victoria Eitel, 21 Frederick  
Street, Taneytown, MD 21787

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

## ESTATE OF PAUL K. HOOVER, SR., DEC'D

Late of Butler Township, Adams County,  
Pennsylvania

Executrix: Jane E. Hoover, 1236  
Russell Tavern Road, Gettysburg,  
PA 17325

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

## ESTATE OF MARGARET A. SITES a/k/a MARGARET ANN SITES, DEC'D

Late of Franklin Township, Adams  
County, Pennsylvania

Executor: Terry L. Monn, 509 Bollinger  
Road, Littlestown, PA 17340

Attorney: Robert L. McQuaide, Esq.,  
Suite 204, 18 Carlisle Street,  
Gettysburg, PA 17325

## ESTATE OF JEFFREY A. TOPPER a/k/a JEFFREY ANDREW TOPPER, DEC'D

Late of Oxford Township, Adams County,  
Pennsylvania

Courtney K. Zinn, 1020 Dicks Dam  
Road, New Oxford, PA 17350

Attorney: Ann C. Shultis, Esq., Shultis  
Law, LLC, 1147 Eichelberger Street,  
Suite F, Hanover, PA 17331

## ESTATE OF WILLIAM PATRICK WALLACE, DEC'D

Late of Conewago Township, Adams  
County, Pennsylvania

Personal Representative: George N.  
Norton, 148 N. Allwood Drive,  
Hanover, PA 17331

