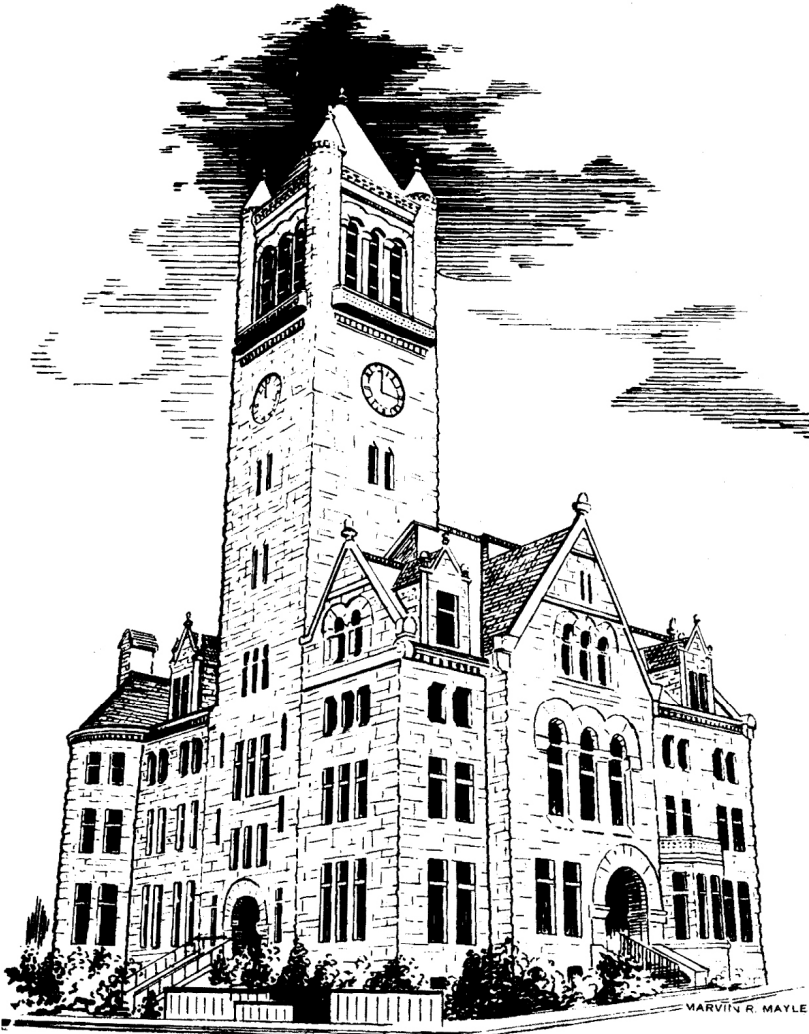


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

KATHERINE KARCHNAK, late of Franklin Township, Fayette County, PA ⁽³⁾

Personal Representative: Amy Jo Sobek
519 North Main Street
Masontown, PA 15461
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22 Bierer Avenue
P.O. Box 1206
Uniontown, PA 15401
Attorney: Mary Lenora Hajduk

MARY ELLEN LESSICK, a/k/a MARY E. LESSICK, late of Grindstone, Fayette County, PA ⁽³⁾

Executor: Thomas Eugene Lessick
c/o Hajduk and Associates
22 Bierer Avenue
P.O. Box 1206
Uniontown, PA 15401
Attorney: Mary Lenora Hajduk

MARY MARGARET PARODA, a/k/a MARY M. PARODA, late of South Union Township, Fayette County, PA ⁽³⁾

Personal Representative: Susan Black
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

MARIAN K. STOCKMAN, a/k/a MARIAN F. STOCKMAN, late of Dunbar Township, Fayette County, PA ⁽³⁾

Personal Representative: Lisa Malago
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, Pa 15425
Attorney: Charles W. Watson

Second Publication

DIANE EDWARDS, late of Menallen, Fayette County, PA ⁽²⁾

Administratrix: Katherine Edwards
6031 Albermarle Street
San Diego, CA 92139
Attorney: Shery Heid

MARY A. TARKA, late of Redstone, Fayette County, PA ⁽²⁾

Executrix: Barbara T. Leonard
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

NANCY ARLENE WELTZ, a/k/a NANCY A. WELTZ, late of Dunbar Township, Fayette County, PA ⁽²⁾

Executor: Jeffrey Weltz
c/o Casini and Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

First Publication

MARCIA SUE DILLOW, late of Smithfield
Borough, Fayette County, PA ⁽¹⁾

Personal Representatives:

Darrin Wade Dillow and Aaron J. Dillow
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, Pa 15425

Attorney: Charles W. Watson

**VIOLET D. GERBER, a/k/a VIOLET
GERBER**, late of Menallen Township, Fayette
County, PA ⁽¹⁾

Co-Executor:

George A. Gerber and Terry L. Gerber
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401

Attorney: Wendy L. O'Brien

LEGAL NOTICES

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about June 14, 2019, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of BigB's Barbecue with the principal place of business at: 200 Krepps Lane, East Millsboro, PA 15433. The name or names and addresses of persons owning and interested are: Salena Davis, 200 Krepps Lane, East Millsboro, PA 15433

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, August 5, 2019, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0669	JAMES L. POPOCHOCK a/k/a JAMES LEO POPOCHOCK	Robert B. Ferguson, Administrator CTA
2617-0825	SHIRLEY GEARING	James R. Foutz, Executor
2617-0621	DONALD R. LAUGHERTY	Carmine V. Molinaro, Jr., Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, August 19, 2019, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable JOSEPH M. GEORGE, JR.**, or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (1 of 2)

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
vs.	:	
	:	
SEVANAIA BAINIMARAMA,	:	No. 1430 of 2014
Defendants.	:	Honorable Linda R. Cordaro

OPINION AND ORDER

CORARO, J.

July 2, 2019

SUMMARY

Appellant was tried before a jury and found guilty of Aggravated Assault, Driving Under the Influence, and other offenses. Appellant was sentenced to a period of two to seven years of incarceration for Aggravated Assault and 90 days to 23 months for Driving Under the Influence, to run consecutive to the two to seven years. Appellant filed a timely PCRA Petition. Counsel was appointed to represent Appellant. Appellant withdrew his PCRA Petition. Appellant then filed a Second PCRA Petition. Separate counsel was appointed to represent Appellant. Appellant's counsel determined that the Second PCRA Petition was untimely and outside of this Court's jurisdiction as it was filed over a year after his date of judgment became final. This Court dismissed Appellant's Second PCRA Petition. This appeal followed.

BACKGROUND

Based on an incident that happened on or around April 20, 2 014, Appellant was charged with 15 counts including two counts of Attempted Homicide, three counts of Aggravated Assault, and two counts of Driving Under the Influence, among various other counts. A jury trial was held on January 11-13, 2016, at which time the jury found Appellant, Sevanaia Bainimarama, not guilty of both counts of Attempted Homicide. The jury found Mr. Bainimarama guilty of both counts of Driving Under the Influence, among several other counts. The jury did not reach a decision on the three counts of Aggravated Assault.

A second jury trial was held on May 1-3, 2017 on the three counts of Aggravated Assault. The jury found Mr. Bainimarama not guilty of one count of Aggravated Assault, but guilty on the other two counts of Aggravated Assault.

By an Amended Sentence Order dated June 6, 2017, this Court sentenced Mr. Bainimarama to a period of two to seven years of incarceration on Count 4, Aggravated Assault. This Court sentenced Mr. Bainimarama to 90 days to 23 months incarceration on Count 13, Driving Under the Influence: Highest Rate of Impairment. Mr. Bainimarama

was also ordered to pay fines, costs, and fees. Count 12, Driving under the Influence, merged with Count 13 for purposes of sentencing. This Court accepted the guilty verdicts without imposing additional penalties for the remaining counts of which Mr. Bainimarama was found guilty.

Mr. Bainimarama did not file a direct appeal in this case.

On March 29, 2018, Mr. Bainimarama filed a Petition for Post-Conviction Collateral Relief. On April 4, 2018, this Court appointed Attorney Diane Zerega to represent Mr. Bainimarama in his PCRA proceedings. Attorney Zerega filed an Amended PCRA Petition on July 2, 2018. A hearing on the Amended Petition was scheduled for September 10, 2018.

On September 6, 2018, the Commonwealth filed a Motion asking for a continuance on the PCRA Hearing, citing the unavailability of essential witnesses. This Court granted the Motion by Order dated September 7, 2018 and filed on September 10, 2018.

On September 10, 2018, Appellant filed a Motion to Withdraw his PCRA Petition. In the Motion, Attorney Zerega referenced correspondence she received from Mr. Bainimarama asking her to withdraw his PCRA Petition. Attorney Zerega represented to this Court that Mr. Bainimarama "believes it is in his best intere[s]t" to withdraw his PCRA Petition. On September 14, 2018, based on the Motion and Attorney Zerega's representations, this Court granted the Motion to Withdraw Mr. Bainimarama's PCRA Petition.

On November 29, 2018, this Court received a letter from Mr. Bainimarama. In the letter, dated "November 23rd 2017," Mr. Bainimarama stated that he "made a horrible mistake writing you that letter in late August informing you of my intention to abandon my appeal." He also asked whether this Court could nullify its Order and reopen his Petition. In response to the letter, this Court filed an Order on November 30, 2018, stating that the Court has "no jurisdiction to proceed on the basis of such a letter," but that nothing prevented Mr. Bainimarama from filing a petition pursuant to the Post-Conviction Relief Act, and that counsel would be appointed to represent him. This Court attached Mr. Bainimarama's letter to its Order.

On December 13, 2018, Mr. Bainimarama filed a Second PCRA Petition. On December 18, 2018, this Court appointed Attorney James Natale to represent Mr. Bainimarama and gave him 60 days to file an amended petition or withdraw the original petition.

On January 28, 2019, Attorney Natale filed a Motion to Withdraw Representation with Supporting Brief. In his brief, Counsel for Mr. Bainimarama stated that, "Defendant failed to file his second PCRA Petition within one year after his Judgment of Sentence was filed, and therefore the Petition is time barred," citing 42 Pa.C.S.A. §9545. Motion to Withdraw Representation with Supporting Brief at 6. Counsel also stated in the brief that Mr. Bainimarama failed to plead one of the enumerated exceptions to the one-year time bar, and that those exceptions do not apply to this case anyhow.

After reviewing the file and the Motion to Withdraw, this Court agreed with Attor-

ney Natale and filed a Notice of Intent to Dismiss on March 1, 2019 in accordance with Pa.R.Crim.P. 907. In the Notice, this Court cited the reasons for why the Petition was untimely- principally, because it was filed more than a year after Mr. Bainimarama's judgment of sentence became final and did not raise any exceptions that are enumerated in 42 Pa.C.S.A. §9545(b)(1). This Court also notified Mr. Bainimarama that the Court intended to dismiss the Petition within 20 days from the Order-on March 21, 2019-and that Mr. Bainimarama "may respond to this notice within 20 days."

On Friday, March 22, 2019, this Court dismissed the Second PCRA Petition without a hearing and notified Mr. Bainimarama of his appellate rights. At the time of the Order, this Court had not received a response from Mr. Bainimarama.

On Monday, March 25, 2019, this Court received a Response from Mr. Bainimarama. The Response, dated March 19, 2019, is 15 pages long and has 82 paragraphs. While the Response is reasoned and well-written, it fails to relevantly address why his Second PCRA Petition is not time barred considering it was filed over a year after his judgment of sentence became final and does not allege any of the enumerated exceptions in 42 Pa.C.S.A. §9545(b)(1).

ISSUE ON APPEAL

As a result of this Court dismissing his Second PCRA Petition, Mr. Bainimarama filed a timely Notice of Appeal on April 1, 2019. {1} In accordance with Pa.R.A.P. 1925(b), this Court ordered Appellant to file a concise statement of errors complained of on appeal. Appellant raises three issues on appeal:

- 1) Whether the Common Pleas Court ['s] dismissal of Appellant's Post- Conviction Collateral Relief Petition based on his request to withdraw [is] an error of law where the Court failed to hold a hearing to determine whether such request was a knowing and intelligent decision?
- 2) Did the Common Pleas Court [err] in dismissing Appellant's Post-Conviction Collateral Relief Petition based on its order of intent to dismiss[,] though Appellant ['s] objections were timely filed under the Mail Box Rule?
- 3) Did the Common Pleas Court [err] in dismissing the Post-Conviction Collateral Relief Petition as a second petition that was time barred under 42 Pa.C.S.A. §9544.

Appellant's Concise Issues.

{1} On April 1, 2019, the same day he filed a Notice of Appeal, Appellant also filed a "Motion for Reconsideration of Court's Decision to Dismiss the Post-Conviction Collateral Relief Petition." However, Appellant never put the Motion for Reconsideration through Motion's Court, and given the fact that he also filed an Appeal, this Court did not act on the Motion for Reconsideration.

DISCUSSION

The Pennsylvania Post-Conviction Relief Act provides an avenue for persons wrongfully convicted of crimes or serving illegal sentences to seek collateral relief. 42 Pa.C.S.A. §9542. The practical effect of the Act, as Pennsylvania Courts have interpreted it, "is to channel claims for post-conviction relief through the PCRA, to ensure that the post-conviction review process remains open for review of certain fundamental claims implicating the reliability of the conviction [and] sentence, but to limit this opportunity in most cases to a single, counseled petition." *Commonwealth v. Williams*, 782 A.2d 517, 524 (Pa. 2001). The nature of the legislative scheme "places substantial responsibility upon PCRA counsel to properly identify claims implicating a right to relief and to present them in a form [that merits] review." *Id.*

The timeliness of any PCRA petition is a jurisdictional requisite, and no court has the authority to review an untimely PCRA petition. *Commonwealth v. Zeigler*, 148 A.3d 849, 853 (Pa. Super. Ct. 2016); *Commonwealth v. Albrecht*, 994 A.2d 1091, 1093 (Pa. 2010). Without jurisdiction, courts do not have the legal authority to address the substantive claims. *Albrecht* at 1093 (citing *Commonwealth v. Chester*, 895 A.2d 520, 522 (Pa. 2006)).

Appellant's first issue is that the Trial Court erred by granting Appellant's Motion to Withdraw his PCRA Petition without first holding a hearing to determine whether his decision was voluntary and intelligent. Mr. Bainimarama's argument appears to be that his First PCRA Petition was timely filed-within one year of the date that his judgment of sentence became final. He then withdrew that Petition unintelligently, and so his Second PCRA Petition, which was not filed timely, should be deemed to have been filed within one year of the date that his judgment of sentence became final.

Under the Pennsylvania Rules of Criminal Procedure, a judge "may grant leave to amend or withdraw a petition for post-conviction collateral relief at any time." Pa.R.Crim.P. 905. Attorney Zerega, who was representing Mr. Bainimarama for his First PCRA Petition, filed a Motion to Withdraw the Petition on September 10, 2018. In that Motion, Attorney Zerega represented to the Court that she had received correspondence from Mr. Bainimarama asking her to withdraw his Petition, and that Mr. Bainimarama believed it was in his best interest to do so. Based on the Motion and the representations made by Attorney Zerega, this Court granted the Motion to Withdraw the PCRA Petition on September 14, 2018.

Appellant, in his concise statement of issues, cites *Commonwealth v. Shaffer*, 569 A.2d 360 (Pa. Super. Ct. 1990) in support of his proposition that the Court was required to hold a hearing to determine whether Appellant's decision to withdraw his Petition was intelligent. The Superior Court in *Shaffer* states that, "[w]here an [a]ppellant has voluntarily withdrawn a previous post-conviction petition, and then files a subsequent post-conviction petition, the second petition will be dismissed unless the withdrawal of the first petition was not intelligent." *Id.* at 363 (citing *Commonwealth v. Hamzik*, 240 A.2d 495 (Pa. 1968)). The *Shaffer* Court also states that, "where an issue is raised in a post-conviction petition, but is not pursued at a hearing, it is deemed to be waived unless the failure to pursue the issue was not knowing and understanding." *Id.* (citing

Commonwealth v. Payton, 269 A.2d 667 (Pa. 1970)).

Notably, however, the Superior Court in Shaffer never establishes a rule that a PCRA court must hold a hearing to determine the voluntariness of a petitioner's withdrawal of a PCRA Petition. In fact, none of the cases cited by Mr. Bainimarama in his Concise Issues on Appeal establish such a rule. Indeed, courts frequently decide issues based on representations by litigants and their counsel made in motions to the court. To establish a rule such as Mr. Bainimarama proposes would be impractical; it would require courts to bring in every petitioner and hold a hearing on every petition to determine whether every decision made between litigants and their attorneys are made intelligently.

Mr. Bainimarama's second issue on appeal is that this Court erred in dismissing his Second PCRA Petition even though Appellant's Objections were timely filed based on the Prisoner Mailbox Rule. The Rule to which Mr. Bainimarama is referring was adopted by caselaw in Pennsylvania and applies to appeals and other petitions filed by pro se prisoners.

Pennsylvania Rule of Appellate Procedure 905(a)(3) states, "[u]pon receipt of the notice of appeal the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket." Pennsylvania courts have determined that for pro se prisoners, the date on which an appeal is considered filed is not the date that it was received by the clerk of the lower court, but rather the date that the prisoner deposits the appeal with prison authorities or places it in a prison mailbox. See, e.g., Commonwealth v. Jones, 700 A.2d 423,426 (Pa. 1997); Commonwealth v. Little, 716 A.2d 1287, 1288-89 (Pa. Super. Ct. 1998). This Rule is one based on fairness; prisoners cannot monitor the process of their appeals the same ways in which a non-incarcerated litigant can. Little at 1289. The Superior Court in Little explicitly applied the Prisoner Mailbox Rule to PCRA petitions. Id.

In regard to deciding a PCRA petition, Pennsylvania Rule of Criminal Procedure 907(1) states:

[T]he judge shall promptly review the petition, any answer by the attorney for the Commonwealth, and other matters of record relating to the defendant's claim(s). If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post- conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal. The defendant may respond to the proposed dismissal within 20 days of the date of the notice. The judge thereafter shall order the petition dismissed, grant leave to file an amended petition, or direct that the proceedings continue.

That Rule allows a PCRA petitioner to respond to a proposed dismissal within 20 days of the date of the notice.

In the case at hand, this Court filed a Notice of Intent to Dismiss Mr. Bainimarama's PCRA Petition on March 1, 2019. In that Notice, this Court set out its reasons for dismissing the Petition; chiefly, the Petition was untimely under the Post-Conviction Relief Act based on 42 Pa.C.S.A. §9545(b)(1). In compliance with Pa.R.Crim.P. 907, this Court stated, "[t]his Petition shall be dismissed within 20 days from today's date-on March 21, 2019. Defendant may respond to this Notice within 20 days." On March 22, 2019, this Court had not received a Response from Mr. Bainimarama. This Court dismissed the PCRA Petition that day. Notably, this Court dismissed the Petition for the reasons set out in the Notice of Intent to Dismiss, not because of a lack of response from Mr. Bainimarama. On March 25, 2019, a Response from Mr. Bainimarama was filed in the Clerk of Courts.

While the appellate courts are clear in applying the Prisoner Mailbox Rule to filing PCRA petitions, there is apparently no published caselaw on whether or how the Prisoner Mailbox Rule applies to responses to a notice to dismiss under Pa.R.Crim.P. 907. In the cases where the higher courts applied the Prisoner Mailbox Rule to filing appeals and PCRA petitions, the courts of common pleas had dismissed those as untimely because the petitions were filed after the due date. The courts of common pleas in those cases were essentially looking at the filing dates on the petitions and dismissing them as untimely, even though the prisoners could prove that they had given their petitions to prison authorities or placed them in prison mailboxes.

The scenario here is quite different. Pennsylvania Rule of Criminal Procedure 907 (1) specifically directs judges to act after 20 days of when the notice of intent to dismiss is filed, either by dismissing the petition, granting leave to file an amended petition, or directing that the proceedings continue. Here, courts are not looking back at when a litigant filed a petition and determining whether it was timely filed; rather, courts are acting on the timeline imposed by Rule 907.

To require that a court consider a response received after the date on which the court is to proceed on an action would be paradoxical. It would be absurd if a court must proceed on an action within 20 days but also wait around for an indeterminate amount of time after that in case a response comes. Even if a response is given to prison authorities or placed in a prison mailbox, the courts acting on the timelines imposed by Rule 907 have no way of knowing that if the response does not reach the court before 20 days.

Additionally, in the case at issue, this Court did not dismiss Mr. Bainimarama's Second PCRA Petition for failure to provide a response to its Notice of Intent to Dismiss; it dismissed the Petition as untimely because the Petition was filed more than a year after Mr. Bainimarama's judgment of sentence became final. Likewise, even if this Court had received and considered Mr. Bainimarama's Response before dismissing his Second PCRA Petition, there would have been no difference in the outcome: his Response failed to explain how this Court could consider his Second PCRA Petition as timely filed under 42 Pa.C.S.A. §9545 and thus within this Court's jurisdiction.

Mr. Bainimarama's third issue on appeal is that this Court erred in dismissing his PCRA Petition because it was "a second petition that was time barred under 42

Pa.C.S.A. §9544." Appellant's Concise Issues on Appeal. This issue is based on an inaccurate account of why this Court dismissed Appellant's Second PCRA Petition.

This Court did not cite 42 Pa.C.S.A. §9544 in its Notice of Intent to Dismiss filed on March 1, 2019. That section of the Post-Conviction Relief Act deals with previous litigation and waiver. In order to be eligible for relief under the Pennsylvania Post-Conviction Relief Act, there are certain issues that the petitioner must plead and prove by a preponderance of the evidence, including that the allegation of error has not been previously litigated or waived. 42 Pa.C.S.A. §9543. Section 9544 of the Act defines what is meant by previously litigated or waived, stating that,

[A]n issue has been previously litigated if... (2) the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or (3) it has been raised and decided in a proceeding collaterally attacking the conviction or sentence.

42 Pa.C.S.A. §9544(a). Waiver of an issue occurs "if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal[,] or in a prior state postconviction proceeding." 42 Pa.C.S.A. §9544(b).

This Court did not cite that Section of the Act in its Notice of Intent to Dismiss because it does not apply here. This Court does not challenge whether the issues raised in Appellant's First or Second PCRA were litigated based on their merits. Rather, in its Notice of Intent to Dismiss, this Court cited 42 Pa.C.S.A. §9545, which deals with the timeliness of a PCRA petition. That Section of the Act states that,

(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.

42 Pa.C.S.A. §9545(b).

For purposes of the Post-Conviction Relief Act, judgment becomes final at the conclusion of direct review, or at the expiration of time for seeking review. 42 Pa.C.S.A. §9545(b)(3). Pennsylvania Rule of Appellant Procedure 903 states that a notice of appeal "shall be filed within 30 days after the entry of the order from which the appeal is taken." Mr. Bainimarama was sentenced on June 6, 2017. His judgment therefore be-

came final on July 6, 2017.

The Post-Conviction Relief Act requires that any petition, including a second or subsequent petition, be filed within one year of the date the judgment becomes final. 42 Pa.C.S.A. §9545(b). For Mr. Bainimarama, that date would have been July 6, 2018. When Mr. Bainimarama first filed a PCRA Petition on March 29, 2018, that was clearly a timely petition because it was filed within the time limit established by the Act. When Mr. Bainimarama withdrew that Petition, however, there was no resetting of the time limit; his Second PCRA Petition would still have to comply with 42 Pa.C.S.A. §9545 (b).

The Act is clear that any petition filed after one year of the date that judgment becomes final must include one of the enumerated allegations. 42 Pa.C.S.A. §9545(b)(1)(i-iii). The PCRA Petition filed by Mr. Bainimarama on December 13, 2018 does not set forth any of those allegations. This is the reason why this Court dismissed Mr. Bainimarama's Second PCRA Petition; it had nothing to do with the issues having been previously litigated, as Mr. Bainimarama suggests. The Pennsylvania Supreme Court has stated that, "PCRA timeliness requirements are jurisdictional in nature and, accordingly, a PCRA court cannot hear untimely PCRA petition s." *Commonwealth v. Rienzi*, 827 A.2d 369, 371 (Pa. 2003).

In his third issue on appeal, Mr. Bainimarama also focuses on this Court labeling his PCRA Petition filed December 13, 2018 as his "Second PCRA Petition." However, it would not matter whether it was considered his First or his Second PCRA Petition. The fact is that Mr. Bainimarama filed the December 13, 2018 Petition over a year after his judgment of sentence became final. As a result, this Court dismissed the PCRA Petition as untimely and outside of this Court's jurisdiction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court's order dismissing Appellant's Petition should be AFFIRMED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

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