

*Erie
County
Legal
Journal*

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Commonwealth v. James Earl Troop
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Commonwealth v. Larry Troop

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Heidi M. Weismiller

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Erie County Bar Association Calendar of Events and Seminars

THURSDAY, JULY 26, 2016

ECBA Mid-Year Membership Meeting
Sheraton Hotel

11:45 a.m. - 12:15 p.m. - Lunch

12:15 - 12:45 p.m. - Business Meeting

12:45 - 1:45 p.m. - Seminar

Judicial Independence: Perceptions and Reality

Guest Speaker: Hon. John E. Jones, III

\$45 (ECBA member) \$30 (Member Judge not needing CLE)

1 hour ethics credit

WEDNESDAY, AUGUST 10, 2016

ECBA Live Lunch-n-Learn Seminar

Mindfulness: The benefits of being present in the moment for your clients and yourself

Bayfront Convention Center

12:15 p.m. - 1:45 p.m. (registration/lunch - 11:45 a.m.)

\$67 (ECBA member/non-attorney staff)

\$87 (nonmember) \$47 (member judge not needing CLE)

1.5 hours ethics

To view PBI seminars visit the events calendar on the ECBA website
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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

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Jul. 22

Attorneys Join Quinn Law Firm

The Quinn Law Firm is pleased to announce Attorney Jenna Strohmeyer and Attorney Melissa Larese have joined the firm. Attorney Strohmeyer specializes in municipal and land use law, as well as environmental law and general litigation. Attorney Larese's practice focuses on the probate and administration of decedent's estates, Estate Planning, including Wills, Powers of Attorney, Health Care Powers of Attorney, and Living Wills.



Jenna Strohmeyer, Attorney
Nova Southeastern University Shepard Broad College of Law,
Ft. Lauderdale, Florida - Juris Doctorate 2013
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COMMONWEALTH OF PENNSYLVANIA

v.

JAMES EARL TROOP

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION NO. 1234 OF 1988

AND

COMMONWEALTH OF PENNSYLVANIA

v.

LARRY TROOP

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION NO. 1235 OF 1988 NO. 1076 OF 1988

PCRA / JURISDICTION AND PROCEEDINGS

A PCRA petition must be filed within one year of the date judgment becomes final unless the petition alleges and the petitioner proves one of the following exceptions apply: (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. Any petition invoking any of the above exceptions to the filing time requirement must be filed within sixty days of the date the claim could have been presented.

PCRA – JURISDICTION AND PROCEEDINGS

The Post-Conviction Collateral Relief Act makes clear that where the petition is untimely, it is the petitioner's burden to plead in the petition and prove that one of the exceptions applies. That burden necessarily entails an acknowledgment by the petitioner that the PCRA petition under review is untimely but that one or more of the exceptions apply. It is for the petitioner to allege in his petition and to prove the petitioner falls within one of the exceptions found in 42 Pa. C. S. §9545(b)(1)(i)-(iii).

PCRA – JURISDICTION AND PROCEEDINGS

The Post-Conviction Collateral Relief Act's timeliness requirements are mandatory and jurisdictional in nature, and no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner.

PCRA – SECOND OR SUBSEQUENT REVIEW

Requests for review of a second or subsequent post-conviction petition will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred. This standard is met only if petitioner can demonstrate either: (a) the proceedings resulting in his conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (b) he is innocent of the crimes charged.

PCRA – SECOND OR SUBSEQUENT REVIEW

A *Lawson* determination is not a merits determination. Like the threshold question of timeliness, whether a second petition satisfies the *Lawson* standard must be decided before a PCRA court may entertain the petition. Like an untimely petition, a *Lawson*-barred petition yields a dismissal. The merits are not addressed.

PCRA – LEGALITY OF SENTENCE

When a petitioner files an untimely PCRA Petition raising a legality-of-sentence claim, the claim is not waived, but the jurisdictional limits of the PCRA itself render the claim incapable of review.

PCRA – INEFFECTIVE ASSISTANCE OF COUNSEL

In order to prevail on a claim of ineffective assistance of counsel, a petitioner must overcome the presumption that counsel is effective by establishing all of the following three elements, as set forth in *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973, 975-76 (Pa. 1987): (1) the underlying legal claim has arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) the petitioner suffered prejudice because of counsel's ineffectiveness.

PCRA – INEFFECTIVE ASSISTANCE OF COUNSEL

A claim for ineffective assistance of counsel does not save an otherwise untimely petition for review on the merits.

PCRA – NEWLY-DISCOVERED FACTS

Pennsylvania courts have expressly rejected the notion that judicial decisions can be considered newly-discovered facts, as a judicial opinion does not qualify as a previously unknown "fact" capable of triggering the newly-discovered fact exception.

PCRA – AFTER-RECOGNIZED 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 OF PENNSYLVANIA

v.

JAMES EARL TROOP

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

NO. 1234 OF 1988

Appearance: D. Robert Marion, Jr., Esq., Attorney for Appellee
 James Earl Troop, *Pro se*, Appellant

OPINION

Domitrovich, J., February 16th, 2016

The instant matter is currently before the Pennsylvania Superior Court on the Appeal of James Earl Troop (hereafter referred to as “Appellant”) from this Trial Court’s Opinion and Order dated November 20th, 2015, whereby this Trial Court dismissed Appellant’s sixth (6th) Motion for Post-Conviction Collateral Relief and/or Petition to Set Aside/Modify Unlawful Sentencing Order (hereafter referred to as “PCRA Petition”). In his sixth PCRA Petition, Appellant argued (1) the sentencing judge had no authority to impose Appellant’s current

sentence of incarceration as the sentencing guidelines and mandatory sentences applied to Appellant's case were suspended; (2) any timeliness issues were attributable to the ineffective assistance of counsel; and (3) the sentencing judge, not the jury, imposed the sentencing and weapon enhancements to Appellant's sentence in violation of *Alleyne v. United States*, 133 S. Ct. 2151 (2013). This Trial Court dismissed Appellant's sixth PCRA Petition as patently untimely since he filed his sixth PCRA Petition twenty-four (24) years after Appellant's judgment of sentence became final, and Appellant failed to argue successfully any of the three (3) timeliness exceptions pursuant to 42 Pa. C. S. §9545(b)(1). Furthermore, assuming *arguendo* Appellant would have filed his sixth PCRA Petition in a timely fashion, this Trial Court properly concluded Appellant would not be entitled to any relief as (1) Appellant failed to sufficiently prove the three elements for ineffective assistance of counsel, i.e. the underlying legal claim has arguable merit; counsel had no reasonable basis for his or her action or inaction; and Appellant suffered prejudice because of counsel's ineffectiveness, and (2) the holding in *Alleyne v. United States* cannot be considered a "newly-discovered fact" in order to raise the newly-discovered evidence timeliness exception pursuant to 42 Pa. C. S. §9545(b)(1)(ii).

Factual and Procedural History

Appellant was found guilty by a jury on November 18th, 1988 of Count 1 – Robbery, in violation of 18 Pa. C. S. §3701(a); Count 2 – Theft by Unlawful Taking or Disposition, in violation of 18 Pa. C. S. §3921; Count 3 – Receiving Stolen Property, in violation of 18 Pa. C. S. §3925; Count 4 - Criminal Conspiracy/Robbery, in violation of 18 Pa. C. S. §903(a)(1); Count 5 – Robbery, in violation of 18 Pa. C. S. §3701(a); Count 6 - Theft by Unlawful Taking or Disposition, in violation of 18 Pa. C. S. §3921; Count 7 - Receiving Stolen Property, in violation of 18 Pa. C. S. §3925; Count 8 – Criminal Conspiracy/Robbery, in violation of 18 Pa. C. S. §903(a)(1); Count 9 – Robbery, in violation of 18 Pa. C. S. §3701(a); Count 10 - Theft by Unlawful Taking or Disposition, in violation of 18 Pa. C. S. §3921; Count 11 - Receiving Stolen Property, in violation of 18 Pa. C. S. §3925; and Count 12 – Criminal Conspiracy/Robbery, in violation of 18 Pa. C. S. §903(a)(1) Thereafter, on January 9th, 1989, Appellant was sentenced by Judge Michael T. Joyce as follows:

- Count 1: Ninety-six (96) to one hundred ninety-two (192) months state incarceration;
- Counts 2 & 3 merged with Count 1 for sentencing purposes;
- Count 4: Eighteen (18) to thirty-six (36) months state incarceration consecutive to Count 1;
- Count 5: Sixty (60) to one hundred twenty (120) months state incarceration consecutive to Count 4;
- Counts 6 & 7 merged with Count 5 for sentencing purposes;
- Count 8: Eighteen (18) to thirty-six (36) months state incarceration consecutive to Count 5;
- Count 9: Ninety-six (96) to one hundred ninety-two (192) months state incarceration consecutive to Count 8;
- Counts 10 & 11 merged with Count 9 for sentencing purposes; and
- Count 12: Eighteen (18) to thirty-six (36) months state incarceration consecutive to Count 9

On January 25th, 1989, Appellant, by and through his counsel, Jack E. Grayer, Esq., filed a Motion for Reconsideration of Sentence. On February 7th, 1989, Appellant filed a Notice of Appeal to the Pennsylvania Superior Court, by and through his counsel, David L. Hunter, Jr., Esq. On March 1st, 1989, Judge Joyce denied Appellant's Motion for Reconsideration of Sentence. On March 19th, 1990, the Pennsylvania Superior Court affirmed the Judgment of Sentence.

Appellant filed his first PCRA Petition on September 11th, 1991. On October 25th, 1991, Anthony A. Logue, Esq., was appointed as Appellant's counsel. Attorney Logue filed an Amended PCRA Petition on December 3rd, 1991. On March 23rd, 1992, Judge Joyce denied Appellant's first PCRA Petition. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on April 15th, 1992, and the Pennsylvania Superior Court affirmed Judge Joyce's denial of Appellant's first PCRA Petition on April 23rd, 1993.

Appellant, *pro se*, filed his second PCRA Petition on January 28th, 1994. Appellant filed a Supplemental PCRA Brief on September 20th, 1994. Judge Joyce denied Appellant's second PCRA Petition on October 11th, 1995. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on October 20th, 1995, and the Pennsylvania Superior Court affirmed Judge Joyce's denial of Appellant's second PCRA Petition on November 21st, 1996.

Appellant filed his first "Motion for New Trial based upon After-Discovered Evidence" on April 17th, 1997. Robert A. Sambroak, Jr., Esq., was appointed as Appellant's counsel on May 19th, 1997. Judge Joyce denied Appellant's first "Motion for New Trial based upon After-Discovered Evidence" on December 30th, 1997. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on January 7th, 1998. Appellant filed his second "Motion for New Trial based on Newly Discovered Evidence" on November 13th, 1998. This Trial Court denied Appellant's second "Motion for New Trial based on Newly Discovered Evidence" on January 7th, 1999. Appellant filed a Motion for Reconsideration on January 13th, 1999. This Trial Court denied Appellant's Motion for Reconsideration on January 21st, 1999. The Pennsylvania Superior Court affirmed Judge Joyce's denial of Appellant's first "Motion for New Trial based upon After-Discovered Evidence" on September 27th, 1999.

Appellant, *pro se*, filed his third "Motion for New Trial based on Newly Discovered Evidence" on December 27th, 1999. This Trial Court denied Appellant's third "Motion for New Trial based on Newly Discovered Evidence" on February 3rd, 2000. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on February 7th, 2000, and the Pennsylvania Superior Court affirmed this Trial Court's denial of Appellant's third "Motion for New Trial based on Newly Discovered Evidence" on August 11th, 2000.

Appellant filed his third PCRA Petition, by and through his counsel, William J. Hathaway, Esq., on August 26th, 2004. This Trial Court denied Appellant's third PCRA Petition on February 23rd, 2005. Appellant, by and through his counsel, William J. Hathaway, Esq., filed a Notice of Appeal to the Pennsylvania Superior Court on March 17th, 2005, and the Pennsylvania Superior Court affirmed this Trial Court's denial of Appellant's third PCRA Petition on September 15th, 2005.

Appellant, *pro se*, filed his fourth PCRA Petition, *pro se*, on May 12th, 2009. This Trial Court denied Appellant's fourth PCRA Petition on August 18th, 2009. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on September 11th, 2009, and the Pennsylvania Superior Court affirmed this Trial Court's denial of Appellant's fourth PCRA

Petition on April 9th, 2010.

Appellant, *pro se*, filed a “Motion to Vacate Illegal Sentence,” *pro se*, on December 28th, 2011, which this Trial Court treated as Appellant’s fifth PCRA Petition. This Trial Court denied Appellant’s fifth PCRA Petition on March 5th, 2012.

Appellant, *pro se*, filed a “Petition for Writ of *Habeas Corpus*,” *pro se*, with Judge Ernest J. DiSantis, Jr. on March 14th, 2012. Judge DiSantis denied Appellant’s “Petition for Writ of *Habeas Corpus*” on March 15th, 2012. Appellant filed a *pro se* Notice of Appeal to the Pennsylvania Superior Court on April 13th, 2012, and the Pennsylvania Superior Court affirmed Judge DiSantis’ denial of Appellant’s “Petition for Writ of *Habeas Corpus*” on January 18th, 2013.

Appellant filed the instant PCRA Petition, his sixth, by and through his counsel, John E. Cooper, Esq., on June 16th, 2015. By Order dated July 10th, 2015, this Trial Court directed the Commonwealth to respond to Appellant’s sixth PCRA Petition within thirty (30) days. The Commonwealth filed its Brief in Opposition to Appellant’s sixth PCRA Petition on July 28th, 2015. On October 28th, 2015, this Trial Court notified Appellant of its intention to dismiss his sixth PCRA Petition and Appellant was permitted twenty (20) days to file any Objections. On November 20th, 2015, and with no Objections filed by Appellant or his counsel, this Trial Court dismissed Appellant’s sixth PCRA Petition.

On December 21st, 2015, Appellant, by and through his counsel, John E. Cooper, Esq.,¹ filed a Notice of Appeal. This Trial Court filed its 1925(b) Order on December 22nd, 2015. Appellant filed his “Concise Statement of Reasons Complained of on Appeal 42 Pa. R. A. P. 1925(b),” *pro se*, on January 6th, 2016.

Legal Argument

1. This Trial Court properly dismissed Appellant’s sixth PCRA Petition as it patently untimely and fails to argue successfully any of the timeliness exceptions pursuant to 42 Pa. C. S. §9545(b)(1).

A PCRA petition must be filed within one year of the date the judgment becomes final unless the petition alleges and the petitioner proves one of the following exceptions applies:

- (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. §9545(b)(1)(i)-(iii). Any PCRA Petition invoking any of the above exceptions to the timeliness requirement must be filed within sixty (60) days of the date the claim could have been presented. 42 Pa. C. S. §9545(b)(2). The Pennsylvania Supreme Court has

¹ This Trial Court notes that, although John E. Cooper, Esq., did file Appellant’s Notice of Appeal to the Pennsylvania Superior Court, Appellant now is proceeding *pro se* as indicated on the Superior Court docket (2021 WDA 2015).

stated the statute makes clear that where, as here, a PCRA Petition is untimely, petitioner carries the burden to plead and prove in his Petition that one of the exceptions of 42 Pa. C. S. §9545(b)(1) applies. *See Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999). “That burden necessarily entails an acknowledgment by the petitioner that the PCRA Petition under review is untimely but that one or more of the exceptions apply.” *Id.* Petitioner is to allege and prove in his Petition that he falls within one of the exceptions found in 42 Pa. C. S. §9545(b)(1)(i)-(iii). *See Commonwealth v. Holmes*, 905 A.2d 507, 511 (Pa. Super. 2006). As the PCRA’s timeliness requirements are mandatory and jurisdictional in nature, no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA Petition that is filed in an untimely manner. *See Commonwealth v. Taylor*, 933 A.2d 1035, 1042-43 (Pa. Super. Ct. 2007).

Additionally, as the instant PCRA Petition is Appellant’s sixth PCRA Petition, Appellant is also required to comply with the mandates of *Commonwealth v. Lawson*, 549 A.2d 107, 112 (Pa. 1988) and its progeny. *See Commonwealth v. Palmer*, 814 A.2d 700, 709 (Pa. Super. 2002). As part of its holding in *Palmer*, the Pennsylvania Superior Court stated:

Requests for review of a second or subsequent post-conviction petition will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred.... This standard is met only if the petitioner can demonstrate either: (a) the proceedings resulting in his conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (b) he is innocent of the crimes charged.

Id. at 709. Furthermore, in *Palmer*, the Pennsylvania Superior Court also stated:

A *Lawson* determination is not a merits determination. Like the threshold question of timeliness, whether a second petition satisfies the *Lawson* standard must be decided **before** a PCRA court may entertain the petition. Like an untimely petition, a *Lawson*-barred petition yields a dismissal. The merits are not addressed.

Id. at 709, footnote 18 [emphasis added].

Regarding the instant PCRA Petition, pursuant to 42 Pa. C. S. §9545(b)(3), Appellant’s judgment of sentence became final on December 31st, 1990, when the Pennsylvania Supreme Court denied Appellant’s Petition for Allowance of Appeal to the Pennsylvania Supreme Court. Therefore, Appellant could have filed a timely PCRA Petition on or before December 31st, 1991, one year after Appellant’s judgment of sentence became final. As Appellant now has filed his sixth PCRA Petition nearly twenty-four (24) years after his judgment of sentence became final, his sixth PCRA Petition is clearly untimely, unless Appellant proves one of the three exceptions enumerated in 42 Pa. C. S. §9545(b)(1) applies.

In his sixth PCRA Petition, Appellant failed to argue successfully any of the three (3) timeliness exceptions to the filing requirement, pursuant to 42 Pa. C. S. §9545(b)(1). As initially raised in his sixth PCRA Petition, Appellant again argues the sentencing judge, i.e. Judge Michael T. Joyce, had no statutory authority to impose mandatory minimum and weapon-enhanced sentences upon Appellant as the sentencing guidelines at the time of Appellant’s sentence were suspended. Although Appellant vehemently argues his sentence is illegal and unconstitutional in light of the sentencing guidelines being suspended at the

time Appellant's sentence was imposed, this Trial Court properly dismissed Appellant's sixth PCRA as this Trial Court was without jurisdiction to grant the relief requested. When a petitioner files an untimely PCRA Petition raising a legality-of-sentence claim, the claim is not waived, **but the jurisdictional limits of the PCRA itself render the claim incapable of review.** *Commonwealth v. Jones*, 932 A.2d 179, 182 (Pa. Super. 2007) [emphasis added]. Appellant's failure to argue successfully any of three (3) timeliness exceptions to the filing requirement, pursuant to 42 Pa. C. S. §9545(b)(1), apply to his sixth PCRA Petition rendered this Trial Court incapable of reviewing Appellant's arguments; therefore, this Trial Court properly dismissed Appellant's sixth PCRA Petition as patently untimely.

As originally raised in his sixth PCRA Petition and more thoroughly pursued in his "Concise Statement of Reasons Complained of on Appeal 42 Pa. R. A. P. 1925(b)," Appellant alleges the lack of timeliness is attributable to the "ineffective assistance of counsel," in violation of Appellant's sixth Amendment rights under the United States Constitution. In order to prevail on a claim of ineffective assistance of counsel, a petitioner must overcome the presumption that counsel is effective by establishing all of the following three elements, as set forth in *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973, 975-76 (Pa. 1987): (1) the underlying legal claim has arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) the petitioner suffered prejudice because of counsel's ineffectiveness. See *Commonwealth v. Chmiel*, 30 A.3d 1111, 1127 (Pa. 2011). However, although Appellant argues "Counsel's ineffectiveness is a bar from being denied collateral relief based on the time limitations of the P.C.R.A.," a claim for ineffective assistance of counsel **does not save an otherwise untimely petition for review on the merits.** *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 785 (Pa. 2000) [emphasis added]; see *Commonwealth v. Lark*, 746 A.2d 585, 589-90 (Pa. 2000) (holding that couching argument in terms of ineffectiveness cannot save a petition that does not fall into exception to jurisdictional time bar). As stated above, Appellant failed to argue successfully any of three (3) timeliness exceptions to the filing requirement, pursuant to 42 Pa. C. S. §9545(b)(1), applied to his sixth PCRA Petition; therefore, contrary to Appellant's belief, a claim of ineffective assistance of counsel does not overcome the PCRA's timeliness requirements. This Trial Court properly dismissed Appellant's sixth PCRA Petition as patently untimely.

Although not specifically addressed in his "Concise Statement of reasons Complained of on Appeal 42 Pa. R. A. P. 1925(b)," Appellant, in his sixth PCRA Petition, also raised a claim that the sentencing judge, not the jury, applied the sentencing and weapon enhancements and, therefore, the United States Supreme Court's holding in *Alleyne v. United States*, 133 S. Ct. 2151 (2013) was violated and Appellant's sentence must be vacated. Appellant further argued the holding in *Alleyne* constitutes after-discovered evidence. However, Appellant's argument fails for two separate reasons. First, Pennsylvania courts have expressly rejected the notion that judicial decisions can be considered newly-discovered facts, as a judicial opinion does not qualify as a previously unknown "fact" capable of triggering the newly-discovered fact exception. See *Commonwealth v. Cintora*, 69 A.3d 759, 763 (Pa. Super. 2013); see also *Commonwealth v. Brandon*, 51 A.3d 231, 235 (Pa. Super. 2012). In addition, 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. See *Commonwealth v. Miller*, 102 A.3d 988, 995 (Pa. Super 2014). Therefore,

this Trial Court properly dismissed Appellant's sixth PCRA Petition regarding Appellant's allegations of an *Alleyne* violation.

Finally, Appellant was to adhere to the requirements of *Commonwealth v. Lawson*, 549 A.2d 107 (Pa. 1988), as this is Appellant's sixth PCRA Petition. Appellant's arguments, more thoroughly addressed above, fail to raise a strong *prima facie* case to demonstrate either the proceedings resulting in Appellant's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate, or Appellant is innocent of the crimes charged. As Appellant has failed to meet the *Lawson* standard for second or subsequent PCRA Petitions, this Trial Court properly dismissed Appellant's sixth PCRA Petition.

Conclusion

For all of the foregoing reasons, this Trial Court concludes the instant appeal is without merit and respectfully requests the Pennsylvania Superior Court affirm its Order dated November 20th, 2015.

BY THE COURT

/s/ **Stephanie Domitrovich, Judge**

COMMONWEALTH OF PENNSYLVANIA

v.

LARRY TROOP

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION NO. 1235 OF 1988 NO. 1076 OF 1988

Appearance: D. Robert Marion, Jr., Esq., Attorney for Appellee
 Larry Troop, *Pro Se*, Appellant

OPINION

Domitrovich, J., February 16th, 2016

The instant matter is currently before the Pennsylvania Superior Court on the Appeal of Larry Troop (hereafter referred to as “Appellant”) from this Trial Court’s Opinion and Order dated November 20th, 2015, whereby this Trial Court dismissed Appellant’s sixth (6th) Motion for Post-Conviction Collateral Relief and/or Petition to Set Aside/Modify Unlawful Sentencing Order (hereafter referred to as “PCRA Petition”). In his sixth PCRA Petition, Appellant argued (1) the sentencing judge had no authority to impose Appellant’s current sentence of incarceration as the sentencing guidelines and mandatory sentences applied to Appellant’s case were suspended; (2) any timeliness issues were attributable to the ineffective assistance of counsel; and (3) the sentencing judge, not the jury, imposed the sentencing and weapon enhancements to Appellant’s sentence in violation of *Alleynes v. United States*, 133 S. Ct. 2151 (2013). This Trial Court dismissed Appellant’s sixth PCRA Petition as patently untimely since he filed his sixth PCRA Petition twenty-four (24) years after Appellant’s judgment of sentence became final, and Appellant failed to argue successfully any of the three (3) timeliness exceptions pursuant to 42 Pa. C. S. §9545(b)(1). Furthermore, assuming *arguendo* Appellant would have filed his sixth PCRA Petition in a timely fashion, this Trial Court properly concluded Appellant would not be entitled to any relief as (1) Appellant failed to sufficiently prove the three elements for ineffective assistance of counsel, i.e. the underlying legal claim has arguable merit; counsel had no reasonable basis for his or her action or inaction; and Appellant suffered prejudice because of counsel’s ineffectiveness, and (2) the holding in *Alleynes v. United States* cannot be considered a “newly-discovered fact” in order to raise the newly-discovered evidence timeliness exception pursuant to 42 Pa. C. S. §9545(b)(1)(ii).

Factual and Procedural History

At docket no. 1076 – 1988, Appellant was found guilty by a jury on November 18th, 1988 of Count 1 – Robbery, in violation of 18 Pa. C. S. §3701(a); Count 2 – Theft by Unlawful Taking or Disposition, in violation of 18 Pa. C. S. §3921; Count 3 – Receiving Stolen Property, in violation of 18 Pa. C. S. §3925; Count 4 - Criminal Conspiracy/Robbery, in violation of 18 Pa. C. S. §903(a)(1); Count 6 – Robbery, in violation of 18 Pa. C. S. §3701(a); Count 7 - Theft by Unlawful Taking or Disposition, in violation of 18 Pa. C. S. §3921; Count 8 - Receiving Stolen Property, in violation of 18 Pa. C. S. §3925; and Count 9 - Criminal Conspiracy/Robbery, in violation of 18 Pa. C. S. §903(a)(1). At docket no. 1235 – 1988, Appellant was found guilty by a jury on November 18th, 1988 of Count 1 – Robbery, in violation of 18 Pa. C. S. §3701(a); Count 4 – Theft by Unlawful Taking or Disposition, in

violation of 18 Pa. C. S. §3921; Count 5 – Receiving Stolen Property, in violation of 18 Pa. C. S. §3925; and Count 6 - Criminal Conspiracy/Robbery, in violation of 18 Pa. C. S. §903(a)(1). Thereafter, on January 9th, 1989, Appellant was sentenced by Judge Michael T. Joyce as follows:

- At docket no. 1076 – 1988:
 - o Count 1: Eighty-four (84) to one hundred sixty-eight (168) months state incarceration consecutive to the sentence imposed at docket no. 97 – 1988;
 - o Counts 2 & 3 merged with Count 1 for sentencing purposes;
 - o Count 4: Twelve (12) to twenty-four (24) months state incarceration consecutive to Count 1;
 - o Count 6: Sixty (60) to one hundred twenty (120) months state incarceration consecutive to Count 4;
 - o Counts 7 & 8 merged with Count 6 for sentencing purposes; and
 - o Count 9: Twelve (12) to twenty-four (24) months state incarceration consecutive to Count 6.
- At docket no. 1235 – 1988:
 - o Count 1: Sixty (60) to one hundred twenty (120) months state incarceration consecutive to Count 9 of docket no. 1076 – 1998
 - o Counts 4 & 5 merged with Count 1 for sentencing purposes; and
 - o Count 6: Twelve (12) to twenty-four (24) months state incarceration consecutive to Count 1.

On January 23rd, 1989, Appellant, by and through his counsel, David G. Ridge, Esq., filed a Motion for Reconsideration of Sentence. On February 3rd, 1989, Appellant filed a Notice of Appeal to the Pennsylvania Superior Court. On March 20th, 1989, Judge Joyce denied Appellant's Motion for Reconsideration of Sentence. On April 20th, 1989, Appellant pled guilty at docket no. 1235 – 1988 to Count 7 – Former Convict not to Own a Firearm, in violation of 18 Pa. C. S. §6105, and was sentenced to one (1) to two (2) years state incarceration concurrent to Count 6 at docket no. 1235 – 1988. On March 9th, 1990, the Pennsylvania Superior Court affirmed the Judgment of Sentence. On December 31st, 1990, the Pennsylvania Supreme Court denied Appellant's Petition for Allowance of Appeal.

Appellant filed his first PCRA Petition on June 14th, 1993. Appellant filed an Amended PCRA Petition on February 10th, 1994. On April 6th, 1994, William J. Hathaway, Esq., was appointed as Appellant's counsel. Attorney Hathaway filed an Amended PCRA Petition on November 6th, 1995. Appellant filed a Supplement to Counsel's Amended PCRA Petition on December 14th, 1995. On June 13th, 1996, Judge Joyce denied Appellant's first PCRA Petition. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on July 12th, 1996, and the Pennsylvania Superior Court affirmed Judge Joyce's denial of Appellant's first PCRA Petition on March 12th, 1997.

Appellant, *pro se*, filed his second PCRA Petition in September of 1997. Judge Joyce denied Appellant's second PCRA Petition on December 30th, 1997. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on January 16th, 1998. Sue A. Pfadt, Esq., was appointed as Appellant's appellate counsel on April 1st, 1998, and the Pennsylvania Superior Court affirmed Judge Joyce's denial of Appellant's second PCRA Petition on September 7th, 1999.

Appellant, *pro se*, filed an “Application for Leave of Court to File Supplemental/Amended Motion for New Trial After-Discovered Evidence,” *pro se*, in March of 2000. This Trial Court denied Appellant’s “Application for Leave of Court to File Supplemental/Amended Motion for New Trial After-Discovered Evidence” on April 12th, 2000. Appellant filed a *pro se* Notice of Appeal to the Pennsylvania Superior Court on May 4th, 2000, and the Pennsylvania Superior Court affirmed this Trial Court’s denial of Appellant’s “Application for Leave of Court to File Supplemental/Amended Motion for New Trial After-Discovered Evidence” on February 26th, 2001.

Appellant filed his third PCRA Petition, by and through his counsel, William J. Hathaway, Esq., on August 26th, 2004. This Trial Court denied Appellant’s third PCRA Petition on February 23rd, 2005. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on March 17th, 2005, and the Pennsylvania Superior Court affirmed this Trial Court’s denial of Appellant’s third PCRA Petition on September 15th, 2005.

Appellant, *pro se*, filed his fourth PCRA Petition on May 12th, 2009. This Trial Court denied Appellant’s fourth PCRA Petition on August 18th, 2009. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on September 11th, 2009, and the Pennsylvania Superior Court affirmed this Trial Court’s denial of Appellant’s fourth PCRA Petition on April 9th, 2010.

Appellant, *pro se*, filed a “Motion to Vacate Illegal Sentence” on December 28th, 2011, which this Trial Court treated as Appellant’s fifth PCRA Petition. This Trial Court denied Appellant’s fifth PCRA Petition on March 5th, 2012.

Appellant, *pro se*, filed a “Petition for Writ of *Habeas Corpus*” with Judge Ernest J. DiSantis, Jr. on March 14th, 2012. Judge DiSantis denied Appellant’s “Petition for Writ of *Habeas Corpus*” on March 15th, 2012. Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on April 13th, 2012, and the Pennsylvania Superior Court affirmed Judge DiSantis’ denial of Appellant’s “Petition for Writ of *Habeas Corpus*” on January 18th, 2013.

Appellant filed the instant PCRA Petition, his sixth, by and through his counsel, John E. Cooper, Esq., on June 16th, 2015. By Order dated July 10th, 2015, this Trial Court directed the Commonwealth to respond to Appellant’s sixth PCRA Petition within thirty (30) days. The Commonwealth filed its Brief in Opposition to Appellant’s sixth PCRA Petition on July 28th, 2015. On October 28th, 2015, this Trial Court notified Appellant of its intention to dismiss his sixth PCRA Petition, and Appellant was permitted twenty (20) days to file any Objections. On November 20th, 2015, and with no Objections filed by Appellant or his counsel, this Trial Court dismissed Appellant’s sixth PCRA Petition.

On December 21st, 2015, Appellant, by and through his counsel, John E. Cooper, Esq.,¹ filed a Notice of Appeal. This Trial Court filed its 1925(b) Order on December 22nd, 2015. Appellant filed his “Concise Statement of Reasons Complained of on Appeal 42 Pa. R. A. P. 1925(b)” on January 6th, 2016.

¹ This Trial Court notes that, although John E. Cooper, Esq., did file Appellant’s Notice of Appeal to the Pennsylvania Superior Court, Appellant now is proceeding pro se as indicated on the Superior Court docket (2021 WDA 2015).

Legal Argument

1. This Trial Court properly dismissed Appellant's sixth PCRA Petition as it is patently untimely and fails to argue successfully any of the timeliness exceptions pursuant to 42 Pa. C. S. §9545(b)(1).

A PCRA petition must be filed within one year of the date the judgment becomes final unless the petition alleges and the petitioner proves one of the following exceptions applies:

- (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. §9545(b)(1)(i)-(iii). Any PCRA Petition invoking any of the above exceptions to the timeliness requirement must be filed within sixty (60) days of the date the claim could have been presented. 42 Pa. C. S. §9545(b)(2). The Pennsylvania Supreme Court has stated the statute makes clear that where, as here, a PCRA Petition is untimely, petitioner carries the burden to plead and prove in his Petition that one of the exceptions of 42 Pa. C. S. §9545(b)(1) applies. *See Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999). "That burden necessarily entails an acknowledgment by the petitioner that the PCRA Petition under review is untimely but that one or more of the exceptions apply." *Id.* Petitioner is to allege and prove in his Petition that he falls within one of the exceptions found in 42 Pa. C. S. §9545(b)(1)(i)-(iii). *See Commonwealth v. Holmes*, 905 A.2d 507, 511 (Pa. Super. 2006). As the PCRA's timeliness requirements are mandatory and jurisdictional in nature, no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA Petition that is filed in an untimely manner. *See Commonwealth v. Taylor*, 933 A.2d 1035, 1042-43 (Pa. Super. Ct. 2007).

Additionally, as the instant PCRA Petition is Appellant's sixth PCRA Petition, Appellant is also required to comply with the mandates of *Commonwealth v. Lawson*, 549 A.2d 107, 112 (Pa. 1988) and its progeny. *See Commonwealth v. Palmer*, 814 A.2d 700, 709 (Pa. Super. 2002). As part of its holding in *Palmer*, the Pennsylvania Superior Court stated:

Requests for review of a second or subsequent post-conviction petition will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred.... This standard is met only if the petitioner can demonstrate either: (a) the proceedings resulting in his conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (b) he is innocent of the crimes charged.

Id. at 709. Furthermore, in *Palmer*, the Pennsylvania Superior Court also stated:

A *Lawson* determination is not a merits determination. Like the threshold question of timeliness, whether a second petition satisfies the *Lawson* standard must be decided **before** a PCRA court may entertain the petition. Like an untimely petition, a *Lawson*-barred petition yields a dismissal. The merits are not addressed.

Id. at 709, footnote 18 [emphasis added].

Regarding the instant PCRA Petition, pursuant to 42 Pa. C. S. §9545(b)(3), Appellant's judgment of sentence became final on April 18th, 1990, when the Pennsylvania Supreme Court denied Appellant's Petition for Allowance of Appeal to the Pennsylvania Supreme Court. Therefore, Appellant could have filed a timely PCRA Petition on or before April 18th, 1991, one year after Appellant's judgment of sentence became final. As Appellant now has filed his sixth PCRA Petition nearly twenty-four (24) years after his judgment of sentence became final, his sixth PCRA Petition is clearly untimely, unless Appellant proves one of the three exceptions enumerated in 42 Pa. C. S. §9545(b)(1) applies.

In his sixth PCRA Petition, Appellant failed to argue successfully any of the three (3) timeliness exceptions to the filing requirement, pursuant to 42 Pa. C. S. §9545(b)(1). As initially raised in his sixth PCRA Petition, Appellant again argues the sentencing judge, i.e. Judge Michael T. Joyce, had no statutory authority to impose mandatory minimum and weapon-enhanced sentences upon Appellant as the sentencing guidelines at the time of Appellant's sentence were suspended. Although Appellant vehemently argues his sentence is illegal and unconstitutional in light of the sentencing guidelines being suspended at the time Appellant's sentence was imposed, this Trial Court properly dismissed Appellant's sixth PCRA as this Trial Court was without jurisdiction to grant the relief requested. When a petitioner files an untimely PCRA Petition raising a legality-of-sentence claim, the claim is not waived, **but the jurisdictional limits of the PCRA itself render the claim incapable of review.** *Commonwealth v. Jones*, 932 A.2d 179, 182 (Pa. Super. 2007) [emphasis added]. Appellant's failure to argue successfully any of three (3) timeliness exceptions to the filing requirement, pursuant to 42 Pa. C. S. §9545(b)(1), apply to his sixth PCRA Petition rendered this Trial Court incapable of reviewing Appellant's arguments; therefore, this Trial Court properly dismissed Appellant's sixth PCRA Petition as patently untimely.

As originally raised in his sixth PCRA Petition and more thoroughly pursued in his "Concise Statement of Reasons Complained of on Appeal 42 Pa. R. A. P. 1925(b)," Appellant alleges the lack of timeliness is attributable to the "ineffective assistance of counsel," in violation of Appellant's sixth Amendment rights under the United States Constitution. In order to prevail on a claim of ineffective assistance of counsel, a petitioner must overcome the presumption that counsel is effective by establishing all of the following three elements, as set forth in *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973, 975-76 (Pa. 1987): (1) the underlying legal claim has arguable merit; (2) counsel had no reasonable basis for his or her action or inaction; and (3) the petitioner suffered prejudice because of counsel's ineffectiveness. *See Commonwealth v. Chmiel*, 30 A.3d 1111, 1127 (Pa. 2011). However, although Appellant argues "Counsel's ineffectiveness is a bar from being denied collateral relief based on the time limitations of the P.C.R.A.," a claim for ineffective assistance of counsel **does not save an otherwise untimely petition for review on the merits.** *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 785 (Pa. 2000) [emphasis added]; *see Commonwealth v. Lark*, 746 A.2d 585, 589-90 (Pa. 2000) (holding that couching argument in terms of ineffectiveness cannot save a petition that does not fall into exception to jurisdictional time bar). As stated above, Appellant failed to argue successfully any of three (3) timeliness exceptions to the filing requirement, pursuant to 42 Pa. C. S. §9545(b)(1), applied to his sixth PCRA Petition; therefore, contrary to Appellant's belief, a claim of ineffective assistance of counsel does

not overcome the PCRA's timeliness requirements. This Trial Court properly dismissed Appellant's sixth PCRA Petition as patently untimely.

Although not specifically addressed in his "Concise Statement of reasons Complained of on Appeal 42 Pa. R. A. P. 1925(b)," Appellant, in his sixth PCRA Petition, also raised a claim that the sentencing judge, not the jury, applied the sentencing and weapon enhancements and, therefore, the United States Supreme Court's holding in *Alleyne v. United States*, 133 S. Ct. 2151 (2013) was violated and Appellant's sentence must be vacated. Appellant further argued the holding in *Alleyne* constitutes after-discovered evidence. However, Appellant's argument fails for two separate reasons. First, Pennsylvania courts have expressly rejected the notion that judicial decisions can be considered newly-discovered facts, as a judicial opinion does not qualify as a previously unknown "fact" capable of triggering the newly-discovered fact exception. *See Commonwealth v. Cintora*, 69 A.3d 759, 763 (Pa. Super. 2013); *see also Commonwealth v. Brandon*, 51 A.3d 231, 235 (Pa. Super. 2012). In addition, 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. *See Commonwealth v. Miller*, 102 A.3d 988, 995 (Pa. Super 2014). Therefore, this Trial Court properly dismissed Appellant's sixth PCRA Petition regarding Appellant's allegations of an *Alleyne* violation.

Finally, Appellant was to adhere to the requirements of *Commonwealth v. Lawson*, 549 A.2d 107 (Pa. 1988), as this is Appellant's sixth PCRA Petition. Appellant's arguments, more thoroughly addressed above, fail to raise a strong *prima facie* case to demonstrate either the proceedings resulting in Appellant's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate, or Appellant is innocent of the crimes charged. As Appellant has failed to meet the *Lawson* standard for second or subsequent PCRA Petitions, this Trial Court properly dismissed Appellant's sixth PCRA Petition.

Conclusion

For all of the foregoing reasons, this Trial Court concludes the instant appeal is without merit and respectfully requests the Pennsylvania Superior Court affirm its Order dated November 20th, 2015.

BY THE COURT

/s/ Stephanie Domitrovich, Judge

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

v.

JAMES EARL TROOP, Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 2022 WDA 2015

Appeal from the PCRA Order November 20, 2015
in the Court of Common Pleas of Erie County,
Criminal Division, No(s): 1234 of 1988

BEFORE: BOWES, DUBOW and MUSMANN, JJ.

MEMORANDUM BY MUSMANN, J.:

FILED JULY 08, 2016

James Earl Troop (“Troop”) appeals, pro se, from the Order dismissing his tenth Petition for relief filed pursuant to the Post Conviction Relief Act (“PCRA”). See 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On November 15, 1988, a jury found Troop guilty of multiple crimes. The trial court sentenced Troop to an aggregate prison term of twenty-five and a half to fifty-one years. On March 19, 1990, this Court affirmed Troop’s judgment of sentence. See *Commonwealth v. Troop*, 576 A.2d 1139 (Pa. Super. 1990) (unpublished memorandum). Troop did not file a petition for allowance of appeal to our Supreme Court. Troop subsequently filed numerous unsuccessful PCRA Petitions.

On June 16, 2015, Troop filed the instant PCRA Petition. The PCRA court entered a Pa.R.Crim.P. 907 Notice of Intent to Dismiss. Thereafter, on November 20, 2015, the PCRA court dismissed Troop’s PCRA Petition as patently untimely, after which Troop filed a timely Notice of Appeal.

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. This review is limited to the findings of the PCRA court and the evidence of record. We will not disturb a PCRA court’s ruling if it is supported by evidence of record and is free of legal error. This Court may affirm a PCRA court’s decision on any grounds if the record supports it. Further, we grant great deference to the factual findings of the PCRA court and will not disturb those findings unless they have no support in the record. However, we afford no such deference to its legal conclusions. Where the petitioner raises questions of law, our standard of review is *de novo* and our scope of review plenary.

Commonwealth v. Ford, 44 A.3d 1190, 1194 (Pa. Super. 2012) (citations omitted).

Under the PCRA, a defendant must file any PCRA petition within one year of the date that the judgment becomes final. 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence becomes final “at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or the expiration of time for seeking review.” *Id.* § 9545(b)(3). The PCRA’s timeliness requirements are jurisdictional in nature, and a court may not address the merits of the issues raised if the PCRA petition was not timely filed. *Commonwealth v. Albrecht*, 994 A.2d 1091, 1093 (Pa. 2010).

Here, Troop's judgment of sentence became final on April 18, 1990, when the time to seek review with the Supreme Court of Pennsylvania expired. *See Commonwealth v. Lawson*, 90 A.3d 1, 5 (Pa. Super. 2014). Troop had until April 18, 1991, to file a timely PCRA petition. Therefore, Troop's June 2015 PCRA Petition is facially untimely.

However, in the event that a petition is not filed within the one-year time limitation, the PCRA provides three timeliness exceptions: (1) the failure to raise the claim was the result of government interference; (2) the facts of the new claim were unknown to the petitioner and could not have been discovered with due diligence; or (3) the right asserted is a constitutional right recognized by the United States Supreme Court or the Pennsylvania Supreme Court after the time period provided in the section and has been held to apply retroactively. 42 Pa.C.S.A. § 9545(b)(1)(i-iii). Any PCRA petition invoking one of these exceptions shall be filed within sixty days of the date the claim could have been presented. *Id.* § 9545(b)(2).

Here, Troop invokes the newly recognized constitutional right exception based on the United States Supreme Court's recent decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013). Brief for Appellant at 7-12. In *Alleyne*, the Supreme Court held that any fact that increases the sentence for a given crime must be submitted to the jury and found beyond a reasonable doubt. *Alleyne*, 133 S. Ct. at 2155. The Supreme Court reasoned that a Sixth Amendment violation occurs where these sentence-determinative facts are not submitted to a jury. *Id.* at 2156. Troop argues that his mandatory minimum sentence is, therefore, illegal based upon *Alleyne*. Brief for Appellant at 8, 12, 13.

Here, Troop filed the instant PCRA Petition on June 16, 2015, well over sixty days after June 17, 2013, the date that *Alleyne* was decided. *See* 42 Pa.C.S.A. § 9545(b)(2); *see also Commonwealth v. Boyd*, 923 A.2d 513, 517 (Pa. Super. 2007) (stating that "[w]ith regard to an after-recognized constitutional right, this Court has held that the sixty-day period begins to run upon the date of the underlying judicial decision.").

Even if Troop had properly invoked the exception at section 9545(b)(1)(iii), the rule established in *Alleyne* does not apply retroactively where the judgment of sentence is final. *See Commonwealth v. Miller*, 102 A.3d 988, 995 (Pa. Super. 2014) (stating that neither the United States Supreme Court nor the Pennsylvania Supreme Court has held that *Alleyne* applies retroactively where the judgment of sentence has become final); *id.* (stating that although *Alleyne* claims implicate the legality of the sentence, courts cannot review a legality claim where the court does not have jurisdiction); *see also Commonwealth v. Riggle*, 119 A.2d 1058, 1067 (Pa. Super. 2015).¹ Because Troop failed to meet the requirements of the third timeliness exception, the PCRA court properly dismissed Troop's PCRA Petition.

Order affirmed.

Judgment Entered.
/s/ Joseph D. Seletyn, Esq.
Prothonotary

¹ In support of his argument that *Alleyne* applies retroactively, Troop cites *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), which retroactively nullified mandatory life sentences without the possibility of parole for defendants under the age of eighteen at the time of the commission of the crime. However, unlike *Miller*, *Alleyne* does not apply retroactively.

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

v.

LARRY TROOP, Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 2021 WDA 2015

Appeal from the PCRA Order November 20, 2015
in the Court of Common Pleas of Erie County,
Criminal Division, No(s): CP-25-MD-0001076-1988;
CP-25-MD-0001235-1988

BEFORE: BOWES, DUBOW and MUSMANN, JJ.

MEMORANDUM BY MUSMANN, J.:

FILED JUNE 30, 2016

Larry Troop (“Troop”) appeals, *pro se*, from the Order dismissing his sixth Petition for post-conviction relief filed pursuant to the Post Conviction Relief Act (“PCRA”). *See* 42 Pa.C.S.A. §§ 9541-9546. We affirm.

On November 18, 1988, a jury convicted Troop of three counts each of robbery, conspiracy, theft by unlawful taking, and receiving stolen property. On January 9, 1989, the trial court sentenced Troop to an aggregate term of 24 to 48 years in prison. This Court affirmed Troop’s judgment of sentence, and our Supreme Court denied Troop’s Petition for allowance of appeal on December 31, 1990. *See Commonwealth v. Troop*, 571 A.2d 1084 (Pa. Super. 1990), *appeal denied*, 584 A.2d 317 (Pa. 1990).

Troop filed five previous PCRA Petitions, all of which were denied. Troop filed the instant Petition on June 16, 2015. The PCRA court entered a Pa.R.Crim.P. 907 Notice of Intent to Dismiss. The PCRA court subsequently dismissed the Petition.

We review an order dismissing a petition under the PCRA in the light most favorable to the prevailing party at the PCRA level. *Commonwealth v. Spatz*, 84 A.3d 294, 311 (Pa. 2014). “[A]n appellate court reviews the PCRA court’s findings of fact to determine whether they are supported by the record, and reviews its conclusions of law to determine whether they are free from legal error.” *Id.* (citation omitted).

Under the PCRA, any PCRA petition “shall be filed within one year of the date the judgment [of sentence] becomes final.” 42 Pa.C.S.A. § 9545(b)(1). A judgment of sentence becomes final “at the conclusion of direct review, including discretionary review in the Supreme Court of Pennsylvania, or at the expiration time for seeking the review.” *Id.* § 9545(b)(3). The timeliness of a PCRA petition is a “jurisdictional requisite” because “jurisdictional time limits go to a court’s right or competency to adjudicate a controversy.” *Commonwealth v. Robinson*, 12 A.3d 477, 479 (Pa. Super. 2011).

Troop’s judgment of sentence became final on April 1, 1991, 90 days after the Pennsylvania Supreme Court denied Troop’s Petition for Allowance of Appeal, and the time for filing a Petition for writ of certiorari with the United States Supreme Court expired. *See* 42 Pa.C.S.A. § 9545(b)(3); U.S.Sup.Ct.R. 13. Thus Troop had until April 1, 1992, to file a timely PCRA petition. The instant Petition, which was filed on June 16, 2015, is facially untimely.

However, Pennsylvania courts may consider an untimely PCRA Petition if the appellant can explicitly plead and prove one of three exceptions set forth at Section 9545(b)(1)(i)-(iii). *See Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999). The exceptions to the timeliness

requirements are as follows: (i) the failure to raise the claim was the result of government interference; (ii) the facts upon which the claim is predicated were unknown and could not have been discovered with due diligence; or (iii) the right asserted is a Constitutional right recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in the section, and the court has held that it applies retroactively. 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Any petition invoking one of the exceptions “shall be filed within 60 days of the date the claim could have been presented.” *Id.* § 9545(b)(2).

Troop invokes the newly recognized constitutional right exception. Brief for Appellant at 7-8, 9. Troop argues that the United States Supreme Court’s decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013), applies retroactively and rendered his sentence illegal. Brief for Appellant at 8, 9-12. The *Alleyne* Court held that any fact that increases the mandatory minimum sentence for a crime is an element that must be submitted to the jury and found beyond a reasonable doubt. *Alleyne*, 133 S. Ct. at 2155, 2163.

Here, Troop failed to file his PCRA Petition within 60 days of June 17, 2013, the date of the *Alleyne* decision. See *Commonwealth v. Cintora*, 69 A.3d 759, 763 (Pa. Super. 2013) (stating that to fulfill the 60-day requirement, defendants need to file their Petition within 60 days from the date of the court’s decision). Moreover, *Alleyne* is not retroactive to cases where, as here, the judgment of sentence was final at the time of the petitioner’s filing a petition invoking *Alleyne*. See *Commonwealth v. Miller*, 102 A.3d 988, 995 (Pa. Super. 2014) (stating that 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 the sentence has become final); see also *Commonwealth v. Riggle*, 119 A.3d 1058, 1067 (Pa. Super. 2015). Further, despite Troop’s argument that *Alleyne* implicates the legality of his sentence, this Court does not have jurisdiction to review the matter. *Commonwealth v. Seskey*, 86 A.3d 237, 241 (Pa. Super. 2014) (stating that “though not technically waivable, a legality [of sentence] claim may nevertheless be lost should it be raised for the first time in an untimely PCRA Petition for which no time-bar exception applies, thus depriving the court of jurisdiction over the claim”).¹

Troop also argues that the sentencing guidelines controlling his sentence were suspended at the time of his sentencing, and that the sentencing court lacked the statutory authority to use the guidelines. Brief for Appellant at 5, 13. However, Troop has failed to plead or prove an exception to the timeliness requirement.²

Thus, the PCRA court properly dismissed Troop’s untimely PCRA Petition.

Order affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn, Esq.

Prothonotary

¹ We note that Troop claims that his sentence violates the 14th Amendment’s Due Process and Equal Protection Clauses, as well as the 8th Amendment. Brief for Appellant at 8. In doing so, however, Troop did not plead or prove one of the three listed exceptions. See 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). In support of his *Alleyne* argument, Troop also cites to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), which retroactively nullify mandatory life sentences without the possibility of parole for defendants under 18 years old at the time of commission of the crime. As noted above, *Alleyne* does not apply retroactively. To the extent that Troop invokes *Miller* and *Montgomery* under Section 9545(b)(1)(iii), we conclude that the cases do not apply as Troop was over the age of 18 years old at the time he committed the crimes.

² To the extent that Troop claims that the ineffectiveness of his trial counsel invokes an exception to the timeliness requirement, we affirm “that allegations of ineffective counsel will not overcome the jurisdictional timeliness requirements of the PCRA.” *Commonwealth v. Wharton*, 886 A.2d 1120, 1127 (Pa. 2005).



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CERTIFICATE OF AUTHORITY

Notice is hereby given that Cheme Engineering Inc. d/b/a Cheme Consulting Inc., a foreign corporation formed under the laws of the Providence of Ontario, Canada where its principal office is located at 35 Crawford Cres., Unit #1, PO Box 595, Campbellville, Ontario, Canada L0B 1B0, has or will register to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on June 24, 2016, under the provisions of the Pennsylvania Business Corporation Law of 1988. The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Erie County.

Jul. 22

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania
Docket No. 11803-2016

In re: Lilly I. Reynolds, a minor
Notice is hereby given that a petition was filed in the above named Court, by Shayna L. Sandell, requesting an Order to change the name of Lilly I. Reynolds to Lilly I. Sandell.

The Court has fixed the 12th day of August, 2016 at 11:00 a.m. in Courtroom G, Room 222 of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and date for the hearing on said petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the petitioner should not be granted.

Jul. 22

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

1. Fictitious Name: Sneaky Pete's Inn
2. Address of the principal place of business, including street and number: 5511 Blenner Road, McKean, PA 16426
3. The real name(s) and address, including street and number, of the persons who are the parties to the registration: SB69, LLC, 5511 Blenner Road, McKean, PA 16426
4. An application for registration of a fictitious name under the Fictitious Name Act was filed on or about July 7, 2016 with the Pennsylvania Department of State.

Jul. 22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on or about July 8, 2016:

Big G Management, Inc.
9620 Donation Road
Waterford, PA 16441

The corporation has been incorporated under the provisions of the Business Corporation Law of 1988, as amended.

Jul. 22

INCORPORATION NOTICE

Latouf Law Firm, Inc. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

Jeffrey D. Scibetta, Esq.
Knox McLaughlin Gornall & Sennett, P.C.

120 West Tenth Street
Erie, Pennsylvania 16501

Jul. 22

INCORPORATION NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Department of State for RA DISTRIBUTION Inc., a corporation organized under the Pennsylvania Business Corporation Law of 1988.

Jul. 22

INCORPORATION NOTICE

Notice is hereby given that the incorporators of The Church of Spiritual Oneness filed articles of incorporation with the Department of State, Commonwealth of Pennsylvania, and set forth as follows:

1. The name of the corporation is The Church of Spiritual Oneness, Inc.
2. The corporation was organized under the Business Corporation Law of 1988.
3. The purpose of the corporation is to establish a church based on the religion of Spiritualism.
4. The articles of incorporation were filed with the Department of State, Commonwealth of Pennsylvania on May 9, 2016, effective May 11, 2016.

Jul. 22

LEGAL NOTICE

A Motion for Involuntary transfer of vehicle ownership for a 1999 Dodge Ram 1500 1B7HF13Z5XJ567908 in the Court of Common Pleas of Erie County, Pennsylvania has been scheduled for July 26, 2016, at 10:30 a.m. in Courtroom 222-G.

Jul. 22

LEGAL NOTICE

Anyone with an interest in the 1977, mobile home Vin #1185690 located at 86-A Applewood Lane Erie, Pa 16509, please contact Mae at 814-868-9069 or appear at the court hearing scheduled August 12th 2016 Court room "222G" Judge Domitrovich @ 2:00 PM.

Jul. 22

LEGAL NOTICE

Anyone with an interest in the 1968, mobile home Vin #1185690 located at 12 Rosewood Lane Erie, Pa 16509, please contact Mae at 814-868-9069 or appear at the court hearing scheduled August 12th 2016 Court room "222G" Judge Domitrovich @ 2:15 PM.

Jul. 22

LEGAL NOTICE

TO: THOMAS MOORE, NANCY MOORE, ELIZABETH MOORE, AND KENNETH MOORE AND ALL UNKNOWN HEIRS OF

ELIAS MOORE AND SALLY ANN MOORE:

Please take notice that a Third Amended Complaint has been filed in the Court of Common Pleas of Centre County, Pennsylvania, to No. 2013-2949 requesting a Quiet Title of Land located in Burnside Township, Centre County, Pennsylvania, more particularly described as 77.5 acres more or less identified in Centre County Deed Book Volume 42, Page 349 and also known as Parcel No. 1-003-001.

The request for relief in said legal action is that all heirs of Elias Moore and Sally Ann Moore other than Carol J. Tripp, James W. Moore, Sr., David L. Moore, Grace Gemballa, Richard Moore and the legal heirs to the property of Marianne Moore be precluded from claiming any right, title or interest in said property and that title to the property in question be quieted and to the said individuals

based on their proportionate ownership of said property and the fact that they have made adverse possession of said premises for a period in excess of 21 years.

Anyone claiming adverse to the aforesaid named parties is required to file an Answer to the Complaint.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claim set forth in the following pages, you must take action within twenty (20) days after this Complaint is served, by entering a written appearance personally, or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
 Centre County Courthouse
 Allegheny Street
 Bellefonte, PA 16823
 814-355-6727
 Rosamilia, Brungard & Rosamilia
 Charles R. Rosamilia, Jr., Esquire
 241 W. Main Street
 Lock Haven, PA 17745
 (570) 748-5572
 Attorney ID. No. 27619

July 22

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**AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE**

**Clerk of Records,
Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the
Court of Common Pleas of Erie County, Pennsylvania**

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **July 25, 2016** and confirmed Nisi.

August 18, 2016 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2016</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
170.	Geneva M. Bleakley, a/k/a Geneva Margaret Bleakley	Heidi Marcinko, Executrix	David R. Devine, Esquire
171.	Joseph J. Chromik, a/k/a Joseph Chromik, a/k/a Joseph J. Chromik, Sr.	Joseph J. Chromik, Jr., Executor	James R. Steadman, Esquire
172.	Hazel W. Corbin	Richard O. Corbin, Administrator	Evan E. Adair, Esquire
173.	Mary Hanlin Havrilla a/k/a Mary H. Havrilla	First National Bank, Executor	William J. Schaaf, Esquire
174.	Evelyn E. Leshor, a/k/a Evelyn Leshor	Evan E. Adair, Administrator	Evan E. Adair, Esquire
175.	Francis R. Ross	Carol Anderson, Executrix	Joseph P. Martone, Esquire
176.	Margaret A. Vandercoy	Phillip L. Vandercoy, Administrator CTA	David E. Vandercoy, Esquire
177.	Paul E. Zarenko	Barbara Smith and Martha Young, Co-Executrices	Christine Hall McClure, Esquire
178.	Dorothy M. Zupanick, a/k/a Dorothy Zupanick	Mary Carole Sparks, Executrix	Darlene M. Vlahos, Esquire

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

Jul. 15, 22

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 their attorneys named below.

FIRST PUBLICATION**CALLAHAN, WILLIAM R., JR., deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Karen Marshall, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

GRAML, JEFFREY P., deceased

Late of the City of Erie, Erie County and Commonwealth of Pennsylvania
Administrator: Jordan N. Graml, c/o Michael J. Graml, Esq., 714 Sassafras Street, Erie, PA 16501
Attorney: Michael J. Graml, Esq., 714 Sassafras Street, Erie, PA 16501

JOHNSON, BRUCE D., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Dawn M. Johnson, 2380 Ridgewood Road, Akron, OH 44313-4466
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

KARLINCHAK, ARLENE, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Lori A. Lesniewski, c/o Quinn, Buseck, Leemhuis, Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., c/o Quinn, Buseck, Leemhuis, Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

LEOFOSKY, EDWARD E., a/k/a EDWARD LEOFOSKY, deceased

Late of the Borough of Girard, County of Erie, State of Pennsylvania
Executrix: Nancy A. Slomsky, 5271 Northern Drive, Fairview, PA 16415
Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87 Girard, PA 16417

LEVIS, ROBERT J., a/k/a REV. ROBERT J. LEVIS, deceased

Late of the County of Erie and Commonwealth of Pennsylvania
Executor: Alfred J. Kunz, c/o Norman A. Stark, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

MIGDAL, MICHELLE M., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Nina E. Shirk, 8813 Eden Cove Drive, Winter Garden, FL 34787
Attorneys: MacDonald, Illig, Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

MONG, BETTY J., deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Judith A. Dietz, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Damon C. Hopkins, Esquire, 504 State Street, Suite 300 Erie, PA 16501

RESTA, ROBERT L., deceased

Late of the City of Erie, Erie County and Commonwealth of Pennsylvania
Administrator: Darcel A. Resta, c/o Michael J. Graml, Esq., 714 Sassafras Street, Erie, PA 16501
Attorney: Michael J. Graml, Esq., 714 Sassafras Street, Erie, PA 16501

STASZEWSKI, ANN, a/k/a STASZEWSKI ANNA L., deceased

Late of Millcreek Township, Erie County, Pennsylvania
Administratrix: Mary Alfieri Richmond, Esquire, Jones School Square - First Floor, 150 East 8th Street, Erie, PA 16501
Attorney: Mary Alfieri Richmond, Esquire, Jones School Square - First Floor, 150 East 8th Street, Erie, PA 16501

VOGEL, BETTY L., a/k/a BETTY LEE VOGEL, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Bryan S. Vogel, c/o Norman A. Stark, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

WHEELER, MARJORIE M., deceased

Late of Girard, PA
Administrator: Victor J. Wheeler, c/o 731 French Street, Erie, PA 16501
Attorney: Jeffrey J. Jewell, Esquire, 731 French Street, Erie, PA 16501

SECOND PUBLICATION

**AQUINO, JAMES D.,
deceased**

Late of the City of Erie, Erie County, Commonwealth of Pennsylvania
Executrix: Marcianne Honard, c/o Jerome C. Wegley, Esquire, 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**CARLUCCI, ROSE M., a/k/a
CARLUCCI, ROSE MARIE,
deceased**

Late of the Erie City
Executrix: Mary Beth Pfister
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**DITZ, GERALD B.,
deceased**

Late of the Township of Millcreek, Erie County, PA
Executrix: Mary Ditz Kalivoda, 4403 West 28th Street, Erie, PA 16506
Attorney: None

**MILLER, CARL J., a/k/a
CARL J. MILLER, JR.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Co-Executors: Mark J. Miller & Frances M. Wilson, c/o Robert G. Dwyer, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501
Attorney: Robert G. Dwyer, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**RICHTER, GARY T., a/k/a GARY
THOMAS RICHTER,
deceased**

Late of the Township of Greene, County of Erie and Commonwealth of Pennsylvania
Co-Executors: Louis P. Richter and Judith A. Richter, c/o Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507
Attorney: Gary H. Nash, Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507

**SIEROTA, CHRISTINE M.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executrices: Susan Cermak, 6624 Richardsons Road, Fairview, PA 16415; Deborah Milligan, 344 Indian Ridge Drive, Coraopolis, PA 15108; and Doreen Szparaga, 5636 Sandalwood Court, Erie, PA 16506
Attorney: Gary J. Shapira, Esq., 305 West Sixth Street, Erie, PA 16507

**THOMPSON, GLEN
THEODORE,
deceased**

Co-Administrators: Patricia Uhl, 254 Toby Road, Kersey, PA 15846; Jeanne Sheeley, 130 Sheeley Road, Kersey, PA 15846; and Roger D. Thompson, 109 Hemlock Lane, Kersey, PA 16846
Attorneys: Meyer Wagner Brown & Kraus, 115 Lafayette Street, St. Marys, PA 15857

THIRD PUBLICATION

**BUKOWSKI, VIRGINIA R.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Co-Executors: Nancy Bukowski-Werner and Karen Bukowski, c/o Norman A. Stark, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**DINGLE, RUTH ANN,
deceased**

Late of the Township of Springfield, County of Erie, State of Pennsylvania
Administratrix: Tammy Pickens, 9476 Griffey Road, Albion, PA 16401
Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

**FUREY, PATRICIA A.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Terry Shrout, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Valerie H. Kuntz, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**GARSKÉ, RAYMOND GEORGE,
a/k/a RAYMOND G. GARSKÉ
a/k/a RAYMOND GARSKÉ,
deceased**

Late of the Township of Millcreek, County of Erie, State of Pennsylvania
Executor: Raymond Daniel Garske, 5028 Amherst Road, Erie, Pennsylvania 16506
Attorney: Grant M. Yochim, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

**HALLORAN, JOSEPH P., III,
deceased**

Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Executor: James A. Sitter, 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**JACOB, GWENDOLYN,
deceased**

Late of the City of Erie, Erie County, Commonwealth of Pennsylvania
Executor: James E. Depew, c/o 120 W. 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

**LOMBARDOZZI, JOHN LOUIS,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administratrix: Alicia A. Lombardozzi
Attorney: Craig A. Zonna, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**MANNARELLI, ELVERA M.,
a/k/a ELVIRA M. MANNARELLI,
a/k/a ELVIRA MARY
MANNARELLI,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Esther M. Gallagher, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Darlene M. Vlahos, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**MARAS, EDWIN L.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Matthew Maras, 3818 Floral Ave., Cincinnati, OH 45212
Attorney: Richard T. Ruth, Esq., 1026 West 26th St., Erie, PA 16508

**MARWOOD, SHIRLEY W.,
deceased**

Late of McKean, County of Erie and Commonwealth of Pennsylvania
Executor: Carolyn J. Wiegel, c/o Eugene C. Sundberg Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**McCAFFERTY, MARGARET
PRESTON, a/k/a MARGARET
PRESTON SMITH,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Administrator: Susan M. Busse, 328 Roslyn Ave., Erie, PA 16505
Attorney: None

**McLAUGHLIN, CYNTHIA
R., a/k/a CYNTHIA ROSE
McLAUGHLIN,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: M. Eileen McLaughlin
Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**POUND, ARLENE E., a/k/a
ARLENE POUND,
deceased**

Late of the Township of Harborcreek
Co-Executors: David L. Pound and Darrell R. Pound
Attorney: Michael G. Nelson, Esquire, Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, Pennsylvania 16507

**SHYLER, FREDERICK L., a/k/a
FRED SHYLER,
deceased**

Late of Fairview, Erie County, Pennsylvania
Executrices: Diane P. Squires, 7281 New Road, Edinboro, PA 16412 and Christine M. Zuzak, 8390 Proctor Drive, Erie, PA 16509-5226
Attorney: Randy L. Shapira, Esq., 305 West Sixth Street, Erie, PA 16507

**STONE, LESLIE Z., a/k/a LESLIE
STONE,
deceased**

Late of Millcreek Township, County of Erie, State of Pennsylvania
Executor: Paul S. Stone, 3973 Ozer Road, Erie, PA 16505
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**WURST, IRWIN R.,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Thomas J. Wurst, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

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