IN THE COURT OF COMMON PLEAS
FOR THE COMMONWEALTH OF PENNSYLVANIA
FIRST JUDICIAL DISTRICT

COMMONWEALTH,	)	
	)	Case No. 8201-1357-59
	)	
Respondent,	)	
	)	
-vs-	)	RECEIVED
	)	NOV 21 2001
MUMIA ABU-JAMAL	)	PCRA UNIT
	)	
Petitioner.	)	PCRA

MEMORANDUM AND ORDER

In accordance with Criminal Rule of Procedure 909 (formerly 1509), the Court hereby announces its intention to dismiss the Instant Post Conviction Relief Act Petition on December 11, 2001. Petitioner will be given the appropriate notice. The reasons for dismissal are detailed below.

HISTORY OF THE CASE

On December 9, 1981, Philadelphia Police Officer Daniel Faulkner was shot and killed while on duty in Center City, Philadelphia. Petitioner Wesley Cook a/k/a Mumia Abu Jamal was arrested at the scene, taken to the hospital, then taken to Police Headquarters where he was charged and held for trial in the murder of Officer Faulkner.

Anthony Jackson, Esq., was appointed to represent Petitioner at trial. Petitioner was also permitted to represent himself at various stages of the proceedings with Jackson acting as backup counsel.[1]

[1] The Pennsylvania Supreme Court provided a succinct account of Petitioner's legal representation during his trial: "Appellant, who had been granted indigent status, steadfastedly insisted from the initiation of this matter that he be permitted to proceed with "counsel" of his choice. However, he insisted on proceeding with an individual known as John Africa who was not a licensed attorney and had apparently never received any formal legal schooling. The court properly refused this request and, when Appellant requested to then proceed *pro se*, the court initially permitted such status and as a precaution appointed back-up counsel to assist Appellant. When it became apparent that Appellant was unable to properly conduct voir dire, the court first asked Appellant whether his back-up counsel could take over the questioning or whether

On July 2, 1982 following a jury trial, the Honorable Albert F. Sabo presiding, Petitioner was convicted of murder in the first degree and related offenses.[2] On July 3, 1983, following the penalty phase of the trial, the same jury sentenced Petitioner to death.

A direct appeal was timely filed. Marilyn Gelb, Esq. was appointed as appellate counsel. The Supreme Court of Pennsylvania affirmed Petitioner's judgment of sentence. *Commonwealth v. Abu-Jamal*, 521 Pa. 188, 555 A.2d 846 (1989), *reargument denied*, 524 Pa. 105, 569 A.2d 915 (1990). The United States Supreme Court denied certiorari, *Abu-Jamal v. Pennsylvania*, 498 U.S. 881 (1990), and two petitions for rehearing, *Abu-Jamal v. Pennsylvania*, 498 U.S. 993 (1990); *Abu-Jamal v. Pennsylvania*, 501 U.S. 1214 (1991). The direct appeal process concluded on June 10, 1991.

On July 5, 1995, Leonard Weinglass, Esq., and Daniel R. Williams, Esq., who had been retained by Petitioner, filed a Post Conviction Relief Act [hereinafter PCRA] petition on his behalf in the Court of Common Pleas. In 1995, there were no time limitations for the filing of PCRA petitions. As is the usual procedure, the trial Judge, the Honorable Albert F. Sabo, presided over hearings on that first petition, during which Petitioner was permitted to present evidence. Following these proceedings, post conviction relief was denied. Pending appeal to the Pennsylvania Supreme Court, Petitioner filed three separate requests for remand to the trial court. These applications encompassed requests for opportunities to present further testimony, requests for discovery, requests to submit a videotape allegedly relevant to Batson issues,[3] and requests to reassign the case to another judge. Twice, remand was granted for the purpose of including additional testimony in the record. Other requests were denied, and both the trial court and the Supreme Court declined PCRA relief. *Commonwealth v. Mumia Abu-Jamal, a/k/a Wesley Cook*, 553 Pa. 485, 720 A.2d 79 (1998).

---

he preferred the court to conduct voir dire. Appellant steadfastedly refused to permit his back-up counsel to take part in any of the proceedings and argued vehemently that the court should not perform the voir dire questioning. We find the court properly took over the questioning and then properly ordered that back-up counsel take control." *Commonwealth v. Mumia Abu-Jamal*, 553 Pa 485, 720 A.2d 79, 109 (1998) (footnotes omitted).

[2] The evidence presented at trial was summarized by the Pennsylvania Supreme Court in its opinion on Petitioner's direct appeal. See, *Commonwealth v. Abu-Jamal*, 521 Pa. 188, 555 A.2d 846, 848 (1989)

[3] *Batson v. Kentucky*, 476 U.S. 79 (1986).

On October 15, 1999, Petitioner filed a *pro se* petition for a writ of habeas corpus in the United States District Court for the Eastern District of Pennsylvania. He also requested that Leonard Weinglass, Esq., and Daniel R. Williams, Esq., be removed from the case. On April 6, 2000, these attorneys were allowed to withdraw from federal court proceedings. New counsel, Marlene Kamish, Esq., Nick Brown, Esq., Eliot Grossman, Esq. and Michael Farrell, Esq. entered their appearances. On May 4, 2001, they filed a motion in federal court requesting an order authorizing the deposition of Arnold Beverly, who in 1999 confessed to Officer Faulkner's murder. On July 19, 2001, the Honorable William H. Yohn, Jr., U.S.D.J., issued a memorandum and order denying the motion. *Mumia Abu-Jamal v. Horn*, Case No. 88 Civ 5089 (E.D. Pa. 2001).

Meanwhile, on July 3, 2001, Petitioner filed this, his second PCRA petition, in the Philadelphia Court of Common Pleas. The petition was accompanied by a motion to admit attorneys Kamish, Grossman and Brown *pro hac vice*, requests for 286 items of discovery and a request for depositions of ten persons. Petitioner also filed a motion in federal court requesting that federal *habeas* proceedings be held in abeyance pending the resolution of the PCRA petition.[4]

Following a reply by the Commonwealth, a status hearing was held before the undersigned[5] and counsel were directed to provide the court with briefs on two specific issues:[6]

1) whether the Court had jurisdiction to entertain the PCRA petition; and
2) whether a hearing was necessary for any purpose.

These briefs and numerous unsolicited pleadings were filed.

DISCUSSION

Having considered the submissions by the parties and the appropriate law, the Court concludes that it lacks jurisdiction to entertain the PCRA petition.[7]

---

[4] This relief was denied by Judge Yohn.

[5]The out of state attorneys were admitted *pro hac vice* at this hearing.

[6]The Court placed page limits on the briefs and stated that it would not consider the case on the merits until the jurisdictional issues were resolved.

Consequently, the petition will be denied, and requests for discovery, depositions and further hearings are also denied. Additionally, Petitioner's filing of November 16, 2001, entitled "Petitioner Jamal's Notice of Filing of Evidence in Support of Memorandum of law on Court's Jurisdiction to Hear Petition for Post-Conviction Relief and/or Habeas Corpus" is stricken because it was not filed with leave of court.

Before 1986, the legislation enabling the filing of PCRA petitions did not contain timeliness requirements for the filing of requests for relief. In November, 1995, the Legislature amended the Act[8] and limited the power of the Court of Common Pleas to entertain PCRA claims[9] by placing time restrictions on the filing of petitions.

> The applicable time requirements for filing PCRA petitions are:
>
> (b) Time for filing petition.
>
> (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

---

[7] Petitioner's filing of July 3, 2001 is titled "Petition for Post-Conviction Relief and/or Habeas Corpus." State *Habeas Corpus* relief is entirely different from federal *habeas* relief and is not available in the instant case. "The PCRA subsumes the remedy of habeas corpus with respect to remedies offered under the PCRA." The writ exists only in cases in which there is no remedy under the PCRA. The question then becomes whether a petitioner has a remedy under the PCRA and whether the petition is timely under the relevant PCRA provisions. *Commonwealth v. Peterkin*, 554 Pa. 547, 722 A.2d 638 at 640 (1998). Having already availed himself of PCRA relief in 1997, no *habeas* relief can be sought.

[8] 42 Pa., C. S. A. 9545 (Act of November 17, 1995, Special Session No. 1 P.L. 1118 No. 32, effective in 60 days).

[9]Congress and state legislatures are permitted to enact laws limiting the right to post-trial relief. See, e.g., *Calderon v. Thompson*, 523 U.S. 538 (1998); *Loncher v. Thomas*, 517 U.S. 314 (1996).

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within *60 days* of the date the claim could have been presented.

42 Pa. C.S.A. 9545(b)(1)-(2). (Emphasis added).

These provisions, which apply to all PCRA petitions filed after January 16, 1996, are "mandatory and jurisdictional in nature . . . [N]o 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. Carr*, 768 A.,2d 1164, 1167 (Pa. Super. 2001); *citing Commonwealth v. Murray*, 562 Pa. 1, 753 A.2d 201 202-03 (2000). (Emphasis added).

The term "jurisdiction" has a specialized meaning in the law. Jurisdiction is the power of a court to act in a given case. All courts have limits on their jurisdiction or right to hear cases. For example, a court lacks jurisdiction if the parties have no connection to the place where the court sits or if the events of the case did not take place within a limited geographical area. Some courts can only hear family law cases, or cases involving a limited amount of money. Similarly, a court does not have the power, or jurisdiction, to hear a case unless it is filed within a certain time period, or if it is not brought to trial within deadlines that have been established. In order for a court to rule on a case, it must have jurisdiction over both the parties and the subject matter.

A PCRA court, like any other court, cannot create its own jurisdiction; this can be done only by the legislature or by the state or federal constitutions. The PCRA court is required to apply the law enacted by the legislature and interpreted by the appellate courts of Pennsylvania in order to determine whether a PCRA petition was timely filed and, consequently, whether the PCRA court has the legal power (jurisdiction) to rule on the merits of the petition.

Although the Court of Common Pleas is a court of general jurisdiction under the Pennsylvania Constitution, post-conviction relief was unknown at common law and is

purely a creature of statute. As such, it is subject to such limitations and conditions as the legislature has seen fit to establish. These terms not only guide the court in administering the Act but also limit its power to do so.

The legislature and appellate courts of this Commonwealth have made it clear that a PCRA petition must be filed within strict time limits or a court lacks jurisdiction to entertain that petition. *Commonwealth v. Fahy*, 558 Pa. 313, 737 A.2d 214 (1999); *Commonwealth v. Banks*, 556 Pa. 1, 726 A.2d 374 (1999); *Commonwealth v. Peterkin*, 554 Pa. 547, 722 A.2d 638 (1999). Again, without jurisdiction, a court does not have the legal power to act. See, *Bernhard v. Bernhard*, 447 Pa. Super 118, 668 A.2d 546 (1995).

It is clear from the language of the statute and the case law cited above that if the claims in a PCRA petition have not been raised in a timely manner, the court lacks jurisdiction and must dismiss the petition; it has no discretion to do otherwise. *Commonwealth v. Hoffman*, 780 A.2d 700 (Pa. Super. 2001).

The instant PCRA petition is Petitioner's second. As is clearly set out in the PCRA statute, second and subsequent PCRA petitions cannot be considered unless filed either within one year of the time that direct appeals were finished, or "within 60 days of the date the claim could have been presented." 18 Pa. C.S.A. 9545 (b)(2). The statute goes on to explain that this means that the Act only permits the raising of claims where "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." 18 Pa. C.S.A. 9545 (b)(1)(ii). Direct appeals ended on June 10, 1991, and this petition was filed more than one year after that date. Therefore, PCRA relief is available to Mr. Abu-Jamal only it these claims have been raised within sixty days of the time he knew or should have known of the important facts giving rise to these claims.

No new material facts were discovered within the sixty days immediately preceding the filing of this Petition (i.e., the interval between May 4, 2001 and July 3, 2001, the Petition's filing date). One allegedly new fact, as discussed below, is not material. Petitioner argues, however, that the court has jurisdiction to consider the merits of his claims by reason of several alternative arguments. First, Petitioner invokes §9445 (b)(1)(i) which offers an exception to the sixty-day time limit "where 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."

This argument faces an initial hurdle because, as Petitioner concedes, §9545(b)(4) expressly excludes defense counsel from the definition of government officials, and these claims are based on the alleged malfeasance or nonfeasance of his defense counsel, not of the prosecutors or other government officials.[10] He addresses this difficulty by claiming that earlier defense counsel refused to investigate or utilize various facts and theories that Petitioner now wishes to present to the courts. He next contends that since his trial and appeals have so far been unsuccessful, his prior attorneys should be deemed to have acted as agents of the Commonwealth and, therefore, are government officials. In other words, counsels' claimed errors or misdeeds are equated with governmental interference.

For numerous reasons, the court cannot accept this argument. There is no exception to the timely filing requirement premised on what amounts to a claim of ineffective assistance of counsel. The language of the Post Conviction Hearing Act is unambiguous, and this court cannot disregard the clear language of the statute. Elementary principals of statutory construction forbid evading the jurisdictional time limit in this manner.[11]

Extending the jurisdictional filing limit exemplifies the concept of the exception that swallows the rule. In addition to a tradition of respect for clear statutory language, the courts are also guided by an understanding that finality is necessary in all litigation.[12] In any case where the defense counsel has made an error or has chosen a strategy that is unsuccessful, the Commonwealth is arguably the beneficiary. Under Petitioner's reading of the Act, defense counsel could be treated as agents of the Commonwealth in any case where a Petitioner is not acquitted. Such an absurd result cannot have been within the legislature's intention of bringing finality to litigation.

---

[10] The statute provides that "for purposes of this subchapter, 'government officials' shall not include defense counsel, whether appointed or retained." see §9545(b)(4)(e).

[11] A court cannot disregard the clear and unambiguous statutory language under the pretext of pursuing the spirit of a statute. It is only when a statute is unclear that a court may embark upon the task of ascertaining intent of the legislature. *Commonwealth v. Barnhart*, 722 A.2d 1093 (Pa. Super. 1999).

[12] See, *Peterkin, supra*.

Petitioner alternatively asserts jurisdiction based on §9445(b)(1)(ii), which provides an exception to the filing deadline, where the facts supporting a claim "were unknown to the petitioner and could not have been ascertained by the exercise of due diligence." In plain language, when a convicted defendant learns something new and important about his case, or when the time comes when he should have learned such a fact, he must file his PCRA petition within no more than sixty days.

Again, this argument faces a serious obstacle because Petitioner does not, and indeed cannot allege that the facts giving rise to the claims in the instant petition were unknown to *him* personally.[13] Since his petition was filed on July 3, 2001, he must only base his claims on material facts which he learned of on or after May 4, 2001. Unfortunately, it is clear from the record and from Petitioner's own pleadings and exhibits that Petitioner, prior counsel, and even current counsel knew of the existence of the facts on which this petition is premised months, or in some cases years, before May 4, 2001. Petitioner never alleges that he was personally unaware of the relevant facts or strategies chosen by former counsel (including himself).

The Petitioner asserts an additional, more convoluted, explanation for demanding that a petition filed on July 3, 2001, should be considered to be timely. This theory relies upon an assertion that the lawyers who filed and litigated Abu-Jamal's first PCRA petition, Messrs. Weinglass and Williams, intentionally declined to raise points of error concerning the conduct of trial and direct appeal counsel, intentionally refused to present the testimony of various witnesses who either changed their stories or mysteriously appeared years after the original trial, and skewed their presentation of those witnesses who did appear at the first PCRA hearings in order to insure that Petitioner would fail to overturn his conviction.[14]

The reason offered for this course of conduct is that all of these attorneys believed that foreclosing Petitioner's chances for a new trial would increase the sales of Mr. Williams' book. The theory further posits that in order to destroy Petitioner's chances of

[13] For example, who was chosen for the jury; what questions were or were not asked of various witnesses, what witnesses were not called to testify. See, Petition of July 3, 2001, general allegations, pp 13-17.

[14] There was a third attorney, Ms. Wolkenstein, who also represented the Petitioner during this time period. Other than to indicate that she withdrew from the defense team in a strategy dispute, the instant petition is utterly unclear as to whether and to what extent she also should be tarred with the brush of unprofessionalism.

success, and thereby boost book sales, the lawyers intentionally misled Petitioner into acquiescing in decisions which were harmful to his interests.

May 4, 2001 is the date on which present counsel entered their appearances in the U.S. District Court for purposes of pursuing federal habeas corpus relief. Petitoner's argument is that May 4, 2001 is somehow the first date on which Petitioner could have raised his claims. To do this, he claims that his previous attorneys intentionally subverted his cause by failing or refusing to present helpful evidence and by presenting damaging evidence. In his view, these former attorneys must necessarily have at all times been "actively undermining and sabotaging his (Petitioner's) true case."[15]

At the outset, it must be pointed out that this attorney fraud theory collapses by virtue of its lack of external and internal logic. Why would hitherto honorable, capable and professional attorneys desert their training, their ethics, their professionalism and place their very right to practice law in jeopardy? Why would one or more of these attorneys behave so heinously when the only possible advantage would be to the one among them who authored the book? How would a public failure to secure relief for a client facing the death penalty improve sales of a book?

However, it is not necessary to make a credibility determination as to whether Petitioner's former attorneys intentionally caused his first PCRA petition to fail in order to promote the sales of Mr. Williams' book, *Executing Justice*.[16] It is not even necessary to inquire how Petitioner's failure, and by extension, counsel's failure, would enhance Mr. Williams' marketability as an author because Petitioner was aware of any claims relating to that book on or before March 21, 2001. We know this because he filed a lawsuit against Williams and the publisher on that date to prevent the book's publication.[17] This lawsuit, *Mumia Abu-Jamal v. St. Martin's Press and Attorney Daniel*

[15] The claim in essence is that prior counsel gave the Petitioner bad advice about trial and post-trial and PCRA strategy; that they lied to the Petitioner or hid from him strategies and choices which they knew to be better ones for the success of his case. This could also be viewed as a thinly-veiled attempt to expand the jurisdictional restrictions of the Act by implying an ineffective assistance of counsel exception. Had the legislature intended this, there would have been no reason to amend the old Act which did not contain such jurisdictional limitations.

[16]Williams, Daniel R. *Executing Justice* (New York: Martin's Press, 2001.)

[17]Petitioner tells about learning of the book and filing the lawsuit in his petition para. 7 p. 7.

R. Williams, USDC (W. Pa.), Case No. 01-540, was unsuccessful and *Executing Justice* published in April, 2001.

In any event, the savagery of the attacks on prior counsel does not prevent the underlying requirements of the law. All of these accusations are mere conjectures built upon two facts. One fact is the result of the first PCRA petition, i.e., its failure to persuade the Court of Common Pleas or the Supreme Court to overturn the original verdict, and the other fact is that attorney Daniel Williams published a book describing in part his experiences representing Petitioner.

Both events took place well outside the time limits for the filing of this petition. The first PCRA was ruled upon by the Court of Common Pleas, the Pennsylvania Supreme Court and finally by the U.S. Supreme Court by 1999. The book was published in April, 2001. Petitioner's own evidence establishes that drafts of the book chapters in progress were made available to Petitioner throughout the year 2000, or at the latest March, 2001. A letter addressed to Petitioner discussing the book is dated February 2001. Petitioner was in federal court trying to halt that publication on March 21, 2001. Petitioner knew of the book's contents before May 4, 2001. By exercise of even minimal diligence he could and indeed may have actually been aware of its contents sometime in 2000. To the extent that it is the content of the Williams book which allegedly provided the epiphany revealing counsels' purported treachery, Petitioner should reasonably have been aware of the necessary information in the year 2000.

The attacks on prior counsel are seemingly also designed to draw attention away from the fact that this portion of Abu-Jamal's petition is based upon disagreements with trial strategy decisions made in 1995 through 1997, and upon exceptions to the weight and credibility of the evidence. Neither of these issues is reviewable in PCRA proceedings. There is nothing very surprising about prior counsels' decisions not to call various witnesses, including Arnold Beverly, at the PCRA hearings. Aggrandizing themselves by confessing to participation in high profile cases is not unusual for persons. Rightly or wrongly, if counsel believes that a witness is dishonest, there is an ethical duty not to present such perjury to the court, and there is a very real risk of doing more harm than good to a client's cause. It is hornbook law that witnesses who recant and witnesses who mysteriously appear long after trial are regarded with suspicion by the courts.

The Beverly confession, which is the linchpin for all the arguments for reconsidering and reinterpreting the trial evidence, was not rejected behind the Petitoner's back. The debate among counsel was apparently so bitter that one of them removed herself from further participation in the case. Not only was Petitioner aware of the controversy, it is impossible not to infer that he chose to align himself with the lawyers who refused to call Beverly as a witness: he had a choice, and the fact that he continued to permit Weinglass and Williams to represent him refutes quite effectively any argument that he either did not know of or did not agree with their trial strategy.

The statute places the requirement of filing a timely PCRA petition on the Petitioner personally, not on counsel. The reason is a simple and practical one. After direct appeals have been exhausted, counsel cease to represent a Petitioner in most cases. At the time of filing these petitions, most convicted persons have no counsel because they have no open case before the courts: appeals have ended. The Rules of Criminal Procedure address this situation by providing for the appointment of counsel after the filing of a PCRA petition (see Pa.R.Crim.Pro. 1504).[18] By way of contrast, there is nothing in the statute which provides for tolling of the filing deadline while a defendant obtains PCRA counsel. Petitioner attempts to designate a petition as timely merely because it is filed sixty days after new counsel formally entered their appearances on his behalf in a different court and in a different matter. There is no logical or legal support for this position.

The defendant is a literate and articulate man, who has participated actively in his case from its inception. There can be no argument that he is or was unable to articulate or write a petition. There is no claim that prison or other government officials denied him access to the mails or to pen and paper. It is this latter situation that § 9545(b)(1)(i) was intended to remedy.

The requirements of a petition are not onerous: the courts regularly receive nearly illiterate and illegible petitions scribbled laboriously on scrap paper. These are treated with seriousness. Surely the drafting of even a minimally informative petition was not

[18] For the same reason, Petitioner's argument that the 60 day period runs from the date on which new counsel entered their appearance must also fail. In addition to there being no sound legal basis for that position, relaxing the time requirements in this manner would evade the purpose of the amendments to the Act.

beyond the skills of the Petitioner, who is regularly described by his partisans as an award winning journalist. Petitioner has advanced no reasons why he could not have filed a timely petition.

In summary, Petitioner was not deceived as to any aspect of his case, and was not obstructed from filing a petition. Petitioner's additional argument is a generalized appeal to the equitable powers of this court and must also fail. Equity only permits a range of remedies in cases where the power to act already exists.[19] As discussed above, untimely filing deprives this court of jurisdiction, and a court has no equitable powers absent underlying jurisdiction.

An equally unsupportable request is that the trial court should treat the instant petition as an 'amendment' of the first petition. That matter was litigated, and ruled on by the Pennsylvania Supreme Court. The matter is closed and this court can neither reopen it nor overturn a higher court.

The court will specifically review the timeliness issues with respect to Petitioner's claims in approximately the order which they are raised. The petition is more than 250 pages long, poorly organized, and extremely repetitive, making exact references difficult.

Claim I is that evidence, in the form of the confession of Arnold Beverly that Beverly and an unnamed accomplice shot Officer Daniel Faulkner, entitles Petitioner to a new trial. Claim I goes on to allege that Beverly's confession

> "destroys the whole edifice" of the case which the prosecution constructed against the Petitioner at the original trial and at the [1995] PCRA hearing. It demands a complete reassessment of the whole of the prosecution case. [T]he prosecution . . . suborn[ed] perjury and present[ed] fabricated evidence throughout Petitioner's trial. In so doing, the prosecution perpetrated a fraud upon the court" Petition of July 3, 2001 at 48-49.

To bolster this claim, Petitioner challenges the weight and sufficiency of other evidence presented at the trial in 1982, advancing arguments that have repeatedly been made and rejected by the appellate courts.[20] Most critically, the elements of Claim I revolve around facts long known to the Petitioner, as discussed above. The internal

[19] Unlike a statute of limitations, a jurisdictional time limitation is not subject to equitable principles, such as tolling, except as provided by statute. To conclude otherwise would effectively create a new exception not permitted under the Act. *Commonwealth v. Lambert*, 765 A.2d 306 (Pa. Super. 2000).

[20] Claims raised on direct review and prior PCRA petitions are not reviewable in later PCRA proceedings. *Commonwealth v. Szuchon*, 548 Pa. 37, 693 A.2d 959 (1997).

dispute among counsel concerning the Beverly confession and the controversy and litigation surrounding the publication of the Williams book establish that Petitioner knew or should have known what he need to know to evaluate counsels' good faith before May 2001.

Claim II is that PCRA counsel improperly failed to file a second PCRA petition in 1999 setting forth the arguments raised in Claim I, but that does not explain why Petitioner himself did not file a new PCRA or amend the first one. There is no contention that Petitioner was misled into believing that such a petition had been filed. The duty to file is Petitioner's personal obligation, as discussed above.

Claim III opens with a contention that former PCRA counsel did not ask Petitioner for his version of events. There is no showing that Petitioner was prevented from giving his version of events to counsel, to the jury during the trial, or to the courts. Even if he had been somehow prevented from doing so, he knew of this fact well before May 4, 2001. Claim III also accuses counsel of including falsehoods in his book, *Executing Justice*. The accuracy of that book is of no legal significance. The remainder of Claim III is a vague and disjointed laundry list of lapses in first PCRA counsels' representation. All of these claims rest upon facts and events of which Petitioner was aware before May 4, 2001. Additionally, they are baseless because prior counsel presumably read the statute and record of the case and understood that these claims had been previously litigated and so were not properly raised at the PCRA state. See, *Commonwealth v. Beasley*, 544 Pa. 554, 673 A.2d 773 (1996).

Claim IV asserts that prior PCRA counsel failed to address trial counsel's failure to show the existence or supposed importance of a passenger in Petitioner's brother's automobile. Since Petitioner was unarguably present at the scene, and has never posited any reason why information known to him or his brother could not have been brought forth twenty years ago, this claim is also untimely. This issue was previously litigated. The conduct of trial counsel and the failure to present defendant's brother at trial has already been ruled upon. See, *Commonwealth v. Mumia Abu-Jamal*, 553 Pa. 485, 720 A.2d 79 (1998); *Commonwealth v. Abu-Jamal*, 521 Pa. 188, 555 A.2d 846 (1989).

Claim V is that trial counsel and prior PCRA counsel did not attack the allegedly damaging testimony of eyewitness Robert Chobert. These facts were also known to

Petitioner no later than 1995 as he attended the PCRA hearing. In addition, the Supreme Court has already addressed these claims. A claim of ineffective assistance of counsel "does not save an otherwise untimely [PCRA] petition for review on the merits." *Fahy, supra*, 737 A.2d at 223.

Claim VI is a synthesis of the earlier claims, organized under the heading of failure to call various persons to testify at the 1995 PCRA hearings. Again, Petitioner knew in 1995 who did and did not testify at those hearings, as he attended them, and has not alleged that he was unaware of then counsel's decisions. In addition, he knew or should have known of the information necessary to evaluate counsels' good faith before May, 2001.

Claim VII is in part an objection to a procedural ruling by the judge at the PCRA hearing and in part a claim of failure to call a ballistics expert as a witness. Since they should have raised this claim in the appeal of the first PCRA petition, it is waived. There is no showing that Petitioner did not know or could not have raised these allegations at the proper time.

Claim VIII is that former PCRA counsel failed to investigate allegations of disciplinary actions taken against trial counsel some ten years after his representation of the Petitioner. Assuming for the sake of argument that Petitioner's allegations are true, he has not explained, and this court is unable to discern, how disciplinary actions against trial counsel in the 1990s had any impact on trial counsel's representation of him in the 1980s. Nor is there any showing that Petitioner did not know, nor could not have learned of such disciplinary action before May 4, 2001.

Claim IX is a claim of error by appellate counsel Marilyn Gelb, Esq. Her representation ended in 1991, and the time in which Petitioner knew or should have known of any lapses on her part and within which he should have acted regarding them, has long since passed.

Claim X is the only one where Petitioner purports to meet the threshold requirement of filing a PCRA claim within 60 days of discovery of the facts giving rise to that claim. It is not possible to ascertain if the claim is timely filed because it is not clear that Petitioner could not have learned of the facts sooner. Even if the issue of timeliness is resolved in Petitioner's favor, he is still not entitled to relief.

Claim X avers that a former court reporter working in City Hall during the trial in this case in 1983 overheard a racist remark privately made by the trial judge regarding Petitioner. If true, intemperate remarks and racist attitudes by anyone involved in the justice system are deeply troubling. The Supreme Court, the ultimate disciplinary mechanism for governance of the courts, takes these matters seriously and can be expected to address them promptly and firmly. That is not the function of the PCRA court. The question before this court is not what attitudes and opinions the trial judge may have held, the question is whether the rulings he made were improper. Since this was a jury trial, as long as the presiding Judge's rulings were legally correct, claims as to what might have motivated or animated those rulings are not relevant. The legal propriety of Judge Sabo's rulings and courtroom conduct have already been examined on direct appeal, and on appeal from prior PCRA hearings. See, *Commonwealth v. Mumia Abu-Jamal*, 553 Pa. 485, 720 A.2d 79 (1998), and cases cited therein. There is no legal basis for this court to reexamine them at this time.

Therefore, the following Notice is given:

NOTICE PURSUANT TO PENNSYLVANIA
RULE OF CRIMINAL PROCEDURE 909

Date: November 21, 2001

You are hereby advised that in twenty (20) days from the date of this NOTICE, your request for post-conviction relief will be dismissed without further proceedings. No response to this notice is required. If, however, you choose to respond, your response is due within twenty (20) calendar days of the above date.

BY THE COURT,

Signature
Dembe, J.