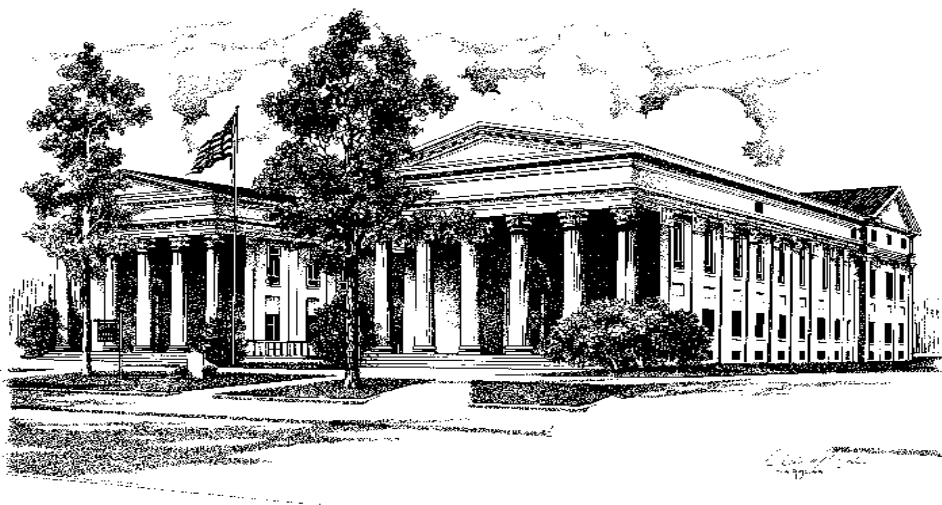


*Erie
County
Legal
Journal*

May 26, 2017

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Commonwealth v. Grier

Erie County Legal Journal

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

Administrator of Publications: Paula J. Gregory

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Erie County Bar Association

Calendar of Events and Seminars

MONDAY, MAY 29, 2017

ECBA Office Closed
Erie County & Federal Courthouses Closed

WEDNESDAY, MAY 31, 2017

Defense Bar Meeting
Noon
ECBA Headquarters

FRIDAY, JUNE 2, 2017

Citizenship Ceremony
10:00 a.m.
Federal Courthouse

FRIDAY, JUNE 2, 2017

Law Day Committee Meeting
Noon
ECBA Headquarters

WEDNESDAY, JUNE 14, 2017

AKT Kid Konnection
Niagara Falls Trip
8:00 a.m. - 5:00 p.m.

TUESDAY, JUNE 20, 2017

ECBA Live Lunch-n-Learn Seminar
Clean and Green
Sheraton Bayfront Hotel
12:15 p.m. - 2:15 p.m. (11:45 lunch/registration)
\$94 (ECBA member/non-attorney staff)
\$120 (nonmember)
\$65 (member judge not needing CLE)
2 hours substantive

THURSDAY, JUNE 22, 2017

Solo/Small Firm Division Meeting
Noon
Plymouth Tavern

MONDAY, JUNE 26, 2017

ECBA Board of Directors Meeting
Noon
ECBA Headquarters

WEDNESDAY, JUNE 28, 2017

Defense Bar Meeting
4:00 p.m.
ECBA Headquarters

THURSDAY, JUNE 29, 2017

ECBA Annual Charity Golf Tournament
Venango Valley Inn & Golf
12:00 p.m. Shotgun Start

TUESDAY, JULY 4, 2017

ECBA Office Closed
Erie County and Federal Courthouses Closed

To view PBI seminars visit the events calendar
on the ECBA website
<http://www.eriebar.com/public-calendar>



Erie County Bar
Association



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CLEAN
and **green**

Tuesday, June 20, 2017

Sheraton Bayfront Hotel

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

12:15 p.m. - 2:15 p.m. - Seminar

\$94 (ECBA member/non-attorney staff)

\$120 (nonmember)

\$65 (member Judge not needing CLE)

THIS SEMINAR HAS BEEN APPROVED BY THE PA CLE BOARD FOR 2 HOURS SUBSTANTIVE CREDITS.

TOPICS OF DISCUSSION

- ✓ What is the Clean and Green Tax Abatement Program?
- ✓ Definitions of Categories (Ag use; Ag reserve; Farmland) and their respective subcategories
- ✓ What it means to be enrolled in any of the categories
 - Rights and responsibilities of the landowner when applying for and being enrolled in C&G or when a buyer is being transferred property already enrolled
 - Liability issues
- ✓ Forms and Procedures for enrolling and transferring
- ✓ Rollback Taxes including,
 - Subdivision Issues
 - Violations of the Obligations that can cause Rollbacks
- ✓ When Rollback Taxes become due and payable:
 - When are the taxes levied against the property, and;
 - Who's responsibility is it to pay the same when a transfer causes a rollback
- ✓ Other situations/scenarios that may occur that Real Estate Practitioners should know

Our Speaker

AMY FRANCIS

Amy has worked for Erie County for the last 12 years. In 2006, she joined Assessment as a Clerk and obtained the Assessor position in 2008. Amy is currently a Certified Pennsylvania Evaluator (CPE) and has managed the Erie County Clean and Green Program since 2008. The most recent Reassessment started in 2008 which taught her more than she could ever ask for in this field of work. In 2017, Amy was promoted to the GIS Coordinator/Appraiser position where she currently helps train new employees, coordinates all GIS requests and processes in the office, manages Clean and Green and values real property for Ad Valorem purposes. Most of her time in Assessment has been spent doing appraisal work, educating the public on the appraisal process and managing the Clean and Green Program.



Reservations due to the ECBA office by Wednesday, June 14

Cancellation Policy for ECBA Events/Seminars:

Cancellations received on or before the last reservation deadline will be fully refunded. Cancellations received after the deadline or non-attendance will not be refunded. If you register for an event without payment in advance and don't attend, it will be necessary for the ECBA to send you an invoice for the event.

Online!
REGISTRATION
Available at
www.eriebar.com

COMMONWEALTH OF PENNSYLVANIA

v.

EMMITT J. GRIER, JR.

RULES OF PROFESSIONAL CONDUCT / CANDOR TOWARDS TRIBUNAL

A lawyer shall not knowingly (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal any legal authority in the controlling jurisdiction known to the lawyer directly adverse to the position of the client; or (3) offer evidence that the lawyer knows is false.

CRIMINAL LAW / PARTICULAR TESTS OR EXPERIMENTS

Test results of rape kit, showing lack of semen and foreign pubic hair, were relevant to issue of whether sexual intercourse occurred, and should have been admitted, although inconclusive; competing allegations in case rested on testimonial evidence, and scientific evidence corroborative of defendant's denial of sexual intercourse would have been highly probative of his credibility.

CRIMINAL LAW / ADMISSIBILITY

Relevant, though inconclusive, DNA evidence was admissible, and its weight and persuasiveness were properly matters for the jury to determine.

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'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 / DNA TESTING / POST-TESTING PROCEDURE

After the DNA testing conducted under this section has been completed, the applicant may, pursuant to section 9545(b)(2) (relating to jurisdiction and proceedings), during the 60-day period beginning on the date on which the applicant is notified of the test results, petition to the court for post-conviction relief pursuant to section 9543(a)(2)(vi) (relating to eligibility for relief). Upon receipt of a petition filed under paragraph (1), the court shall consider the petition along with any answer filed by the Commonwealth and shall conduct a hearing thereon. In any hearing on a petition for post-conviction relief filed under paragraph (1), the court shall determine whether the exculpatory evidence resulting from the DNA testing conducted under this section would have changed the outcome of the trial as required by section 9543(a)(2)(vi)

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

No. 2646 – 1999

2647 – 1999

2648 – 1999

APPEARANCES: Thomas D. Brasco, Jr., Esq., for Emmitt J. Grier, Jr., Appellant
Michael E. Burns, Esq., for the Commonwealth of Pennsylvania, Appellee

OPINION

Domitrovich, J.,

August 9, 2016

The instant matter is currently before the Pennsylvania Superior Court on the Appeal of Emmitt J. Grier, Jr. (hereafter referred to as “Appellant”) from this Trial Court’s Order dated May 27, 2016, whereby this Trial Court dismissed Appellant’s third (3rd) Petition for Post-Conviction Collateral Relief (hereafter referred to as “PCRA Petition”). Appellant’s third PCRA Petition, which argued exculpatory DNA evidence tested by Bode Technology from several Sexual Assault Evidence Collection Kits collected on June 30, 1998 and August 31, 1999 proved Appellant was not the perpetrator of the crimes charged, was patently untimely as it was filed over thirteen (13) years after Appellant’s judgment of sentence became final, and Appellant failed to prove any of the three (3) timeliness exceptions pursuant to 42 Pa. C. S. §9545(b)(1). Furthermore, assuming arguendo Appellant’s third PCRA Petition was filed timely, this Trial Court concluded Appellant was not entitled to any relief as Appellant did not plead and prove by a preponderance of the evidence that (1) the DNA evidence would have changed the outcome of his trial if such DNA evidence had been introduced; and (2) that failure to pursue DNA testing prior to or during trial, during unitary review or on direct appeal was not the result of any rational, strategic or tactical decision by Appellant’s trial counsel.

Factual and Procedural History

On August 31, 1999, Appellant was arrested and charged with two counts of Rape by Forcible Compulsion, in violation of 18 Pa. C. S. §3121(a)(1), one count of Criminal Attempt – Rape, in violation of 18 Pa. C. S. §901(a), three counts of Unlawful Restraint – Risking Serious Bodily Injury, in violation of 18 Pa. C. S. §2902(1), one count of Kidnapping to

Facilitate a Felony, in violation of 18 Pa. C. S. §2901(a)(2), and one count of Burglary, in violation of 18 Pa. C. S. §3502(a), regarding three separate incidents occurring on June 30, 1998; November 12, 1998 and August 31, 1999. Appellant's counsel, A. J. Adams, Esq., filed a Motion for Competency Evaluation and Continuance on March 8, 2000, which was granted by Judge William R. Cunningham on March 8, 2000. A. J. Adams, Esq., filed a Motion to Withdraw as Counsel on April 18, 2000, citing "a personality conflict." Judge Cunningham granted Attorney Adam's Motion to Withdraw as Counsel on April 20, 2000 and appointed the Erie County Public Defender's Office to represent Appellant. Appellant's counsel, James A. Pitonyak, Esq., filed a Notice of Alibi Defense on May 26, 2000.

A Jury Trial was held before the undersigned judge from June 20th to June 22, 2000. The jury found Appellant guilty of Counts 1 & 2 at docket no. 2646 – 1999, Counts 1 & 2 at docket no. 2647 – 1999¹, and Counts 1, 2 & 3 on 2648 – 1999. On August 10, 2000, this Trial Court sentenced Appellant as follows:

- At docket no. 2646 – 1999:
 - o Count 1: seven and one-half (7 ½) to fifteen (15) years' incarceration;
 - o Count 2: one (1) to five (5) years' incarceration, consecutive to Count 1;
- At docket no. 2647 – 1999:
 - o Count 1: six and one-half (6 ½) to fifteen (15) years' incarceration, consecutive to Count 2 of 2646 – 1999;
 - o Count 2: one (1) to five (5) years' incarceration, consecutive to Count 1;
- At docket no. 2648 – 1999;
 - o Count 1: four (4) to fifteen (15) years' incarceration, consecutive to Count 2 of 2647 – 1999;
 - o Count 2: seven and one-half (7 ½) to fifteen (15) years' incarceration, consecutive to Count 1; and
 - o Count 3: one (1) to five (5) years' incarceration, consecutive to Count 2.

Appellant, by and through Attorney Pitonyak, filed a Motion for Judgment of Acquittal/Motion for a New Trial/Motion for Reconsideration and/or Modification of Sentence on August 15, 2000, which were denied by this Trial Court on August 15, 2000. Appellant, by and through Attorney Pitonyak, filed a Notice of Appeal to the Pennsylvania Superior Court on August 30, 2000. The Pennsylvania Superior Court affirmed Appellant's judgment of sentence on October 2, 2001. Appellant filed a *pro se* Petition for Allowance of Appeal to the Pennsylvania Supreme Court on October 15, 2001, which was denied on May 15, 2002.

Appellant, *pro se*, filed his first PCRA Petition on August 6, 2002. On August 7, 2002, this Trial Court appointed William J. Hathaway, Esq., as Appellant's PCRA counsel and directed Attorney Hathaway to supplement/amend Appellant's first PCRA Petition within thirty (30) days. Following a request for extension of time, which was granted, Attorney Hathaway filed a Supplement to Appellant's first PCRA Petition on October 1, 2002. By Order dated October 3, 2002, this Trial Court directed the Commonwealth to respond to Appellant's first PCRA Petition within thirty (30) days. Assistant District Attorney Chad J. Vilushis filed a Response to Appellant's first PCRA Petition on October 24, 2002. Following

¹ Count 3: Kidnapping to Facilitate a Felony at docket no. 2647 – 1999 was withdrawn by the Commonwealth.

two Evidentiary Hearings on November 27, 2002 and December 23, 2002, this Trial Court dismissed Appellant's first PCRA Petition on January 24, 2003.

On April 10, 2003, upon consideration of correspondence received from Appellant on April 9, 2003², wherein Appellant requested his right to appeal the dismissal of his first PCRA Petition be granted *nunc pro tunc*, this Trial Court directed the Commonwealth to respond to Appellant's correspondence within fourteen (14) days. Assistant District Attorney Chad J. Vilushis filed a Response on April 11, 2003 objecting to the reinstatement of Appellant's right to appeal. Following an Evidentiary Hearing on May 19, 2003, this Trial Court granted Appellant's second PCRA Petition, reinstated Appellant's right to appeal the dismissal of his first PCRA Petition *nunc pro tunc* and directed Attorney Hathaway to file said appeal within thirty (30) days. On June 5, 2003, Appellant, by and through Attorney Hathaway, filed a Notice of Appeal to the Pennsylvania Superior Court. On September 23, 2003, Appellant filed a Motion for Appointment of New Counsel, which this Trial Court denied on September 24, 2003. The Pennsylvania Superior Court affirmed the dismissal of Appellant's first PCRA Petition on May 6, 2004. Appellant, by and through Attorney Hathaway, filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court on May 18, 2004, which was denied on December 20, 2004.

On January 6, 2005, Appellant filed a *pro se* 42 U. S. C. §1983 claim in the United States District Court for the Western District of Pennsylvania against Superintendent Edward J. Klem, Erie County District Attorney's Office, the Commonwealth of Pennsylvania and the Office of Prothonotary, claiming these parties violated his procedural due process rights by refusing him access to the rape kits for DNA testing. Appellant filed a *pro se* Motion for Summary Judgment on July 28, 2005, which was dismissed as premature by United States District Magistrate Judge Susan Paradise Baxter on August 1, 2005. Edward J. Klem, by and through his counsel, Mary L. Friedline, Esq., filed a Motion to Dismiss on October 4, 2005. The Erie County District Attorney's Office, by and through its counsel, Matthew J. McLaughlin, Esq., Assistant Solicitor for Erie County, filed a Motion to Dismiss on January 23, 2006. On January 24, 2006, United States District Judge Sean J. McLaughlin, who was initially assigned to preside over Appellant's §1983 claim, recused himself and reassigned the matter to Senior United States District Judge Maurice B. Cohill, Jr. Appellant filed a second *pro se* Motion for Summary Judgment on March 30, 2006, and filed a third *pro se* Motion for Summary Judgment on April 10, 2006. On May 15, 2006, Judge Baxter filed her Report and Recommendation, wherein she recommended Edward J. Klem's and the Erie County District Attorney's Office's Motions to Dismiss be granted and Appellant's two Motions for Summary Judgment be dismissed as "an improper attempt to collaterally attack his state court criminal conviction and sentence." By Order dated June 29, 2006, Judge Cohill, Jr. adopted Judge Baxter's Report and Recommendation, granted Edward J. Klem's and the Erie County District Attorney's Office's Motions to Dismiss and denied Appellant's two Motions for Summary Judgment. Appellant filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit on July 26, 2006. On January 12, 2010, the United States Court of Appeals for the Third District, in an Opinion published by Senior United States

² Appellant's April 9, 2003 correspondence was treated as Appellant's second PCRA Petition. William J. Hathaway, Esq. consented to assist Appellant.

Circuit Judge Franklin S. Van Antwerpen, vacated Judge Cohill, Jr.'s Order and remanded for further proceedings, holding the case of *Heck v. Humphrey*, 512 U.S. 477 (1994), does not bar a §1983 claim requesting access to evidence for post-conviction DNA testing. On remand, Judge Baxter, in a Report and Recommendation dated September 19, 2011, determined Appellant's procedural due process rights had been violated and recommended Appellant's Motion for Summary Judgment be granted. On October 19, 2011, Judge Cohill, Jr. adopted Judge Baxter's Report and Recommendation and granted Appellant's Motion for Summary Judgment, wherein final judgment for Appellant was entered on November 10, 2011. The Erie County District Attorney's Office filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit. Prior to a decision being rendered by the United States Court of Appeals for the Third Circuit, the parties agreed upon a Stipulated Order for Post-Conviction DNA Testing and filed a Joint Motion for Entry of Consent Judgment on September 10, 2012. The Erie County District Attorney's Office filed a Motion to Voluntarily Dismiss the Appeal, which was granted on September 17, 2012.

The rape kits were submitted to Bode Technology in Lorton, Virginia for testing. A Forensic Case Report dated January 31, 2013 and a Supplemental Forensic Case Report dated October 5, 2014 were both submitted. Upon receiving these Reports, Appellant filed the instant *pro se* PCRA Petition, his third, on January 9, 2015. This Trial Court appointed William J. Hathaway, Esq., as Appellant's PCRA counsel on January 22, 2015. Attorney Hathaway filed a Motion to Withdraw as Counsel on January 28, 2015, citing a conflict. This Trial Court granted Attorney Hathaway's Motion to Withdraw on February 4, 2015, and appointed Thomas D. Brasco, Jr., Esq., as Appellant's PCRA counsel, who was directed to supplement/amend Appellant's third PCRA Petition within thirty (30) days. Following several extensions, Attorney Brasco filed a Supplement to Appellant's third PCRA Petition on January 22, 2016. On January 26, 2016, this Trial Court directed the Commonwealth to respond to the Supplement to Appellant's third PCRA Petition within thirty (30) days. Assistant District Attorney Michael E. Burns filed a Response to Supplement to Motion for Post-Conviction Collateral Relief on February 24, 2016. An Evidentiary Hearing was scheduled for April 18, 2016, where, by Stipulation, counsel only presented oral arguments. Following the Evidentiary Hearing, this Trial Court filed its Notice of Intent to Dismiss Appellant's third PCRA Petition as patently untimely and stating no grounds for which relief may be granted under the Post-Conviction Relief Act, 42 Pa. C. S. §9541 et seq. Appellant filed Objections to PCRA Court's Notice of Intent to Dismiss on May 27, 2016. On May 27, 2016, this Trial Court dismissed Appellant's third PCRA Petition.

Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on June 10, 2016. This Trial Court filed its 1925(b) Order on June 10, 2016. Appellant filed a Motion for Extension of Time to file Concise Statement on July 1, 2016, which was granted by this Trial Court on July 1, 2016 and provided an additional five (5) days for Appellant to file his Concise Statement. On July 6, 2016, Appellant filed his Concise Statement of Errors Complained of on Appeal.

Legal Argument

In his "Concise Statement of Matters Complained of on Appeal, Pursuant to Pa. R. A. P. 1925(b)," Appellant raises six (6) separate issues on appeal, which this Trial Court addresses and provides its position as follows:

1. Due to the voluntariness and candor of James A. Pitonyak, Esq., Appellant's trial counsel, before this Trial Court, the statements of Attorney Pitonyak, who voluntarily appeared at the November 27, 2002 Evidentiary Hearing, were found credible by this Trial Court and thereby properly considered by this Trial Court.

Pursuant to Pennsylvania Rule of Professional Conduct 3.3 – “Candor Towards The Tribunal,” a lawyer shall not knowingly (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal any legal authority in the controlling jurisdiction known to the lawyer directly adverse to the position of the client; or (3) offer evidence that the lawyer knows is false. *See Pa. RPC 3.3(a)*.

On November 27, 2002, an Evidentiary Hearing was scheduled; however, counsel agreed there was no need for an Evidentiary Hearing, but only presentation of argument. *See Notes of Testimony, PCRA Hearing, November 27, 2002, pg. 3, lines 19-23*. James A. Pitonyak, Esq., who was Appellant's trial counsel, appeared voluntarily at the hearing by noticing this Trial Court's written schedule on the courtroom door as Attorney Pitonyak was passing by and informed this Trial Court as follows: “I was his lawyer, Judge. I saw this on the board,” “I said oh, that name sounds familiar, and it came back to me,” and “I just walked by. And as you can see judge, I'm informally today.” *pg. 6, lines 16-17; pg. 8, lines 7-8, 11-12*.

Attorney Pitonyak indicated Appellant's own trial strategy was that the incidents of June 30, 1998, and November 12, 1998, were perpetrated by another individual and that the incident of August 31, 1999 was consensual. Furthermore, Attorney Pitonyak credibly stated: “I discussed that matter [DNA testing] with him [Appellant]. And he [Appellant] did not request it himself.” *See id, pg. 7, lines 3-6*. Attorney Pitonyak, as a licensed, practicing attorney in good standing with the Commonwealth of Pennsylvania and an “Officer of the Court,” has an ethical obligation to make truthful statements of material fact to a tribunal, pursuant to the Pennsylvania Rules of Professional Conduct, and this Trial Court found his statements, offered voluntarily, were credible regarding whether the possibility of DNA testing was discussed with and pursued by Appellant. In addition, at the undersigned judge's inquiry to both counsel, Attorney Hathaway and Assistant District Attorney Chad Vilushis, as to whether Attorney Pitonyak needed to be sworn in, neither then-Assistant District Attorney Vilushis nor Appellant's then-PCRA counsel William J. Hathaway, Esq., requested this Trial Court swear in Attorney Pitonyak. *See id, pg. 9, lines 5-10*. Therefore, upon consideration of the voluntary and credible nature of Attorney Pitonyak's statements to this Trial Court and after review of the Pennsylvania Rules of Professional Conduct, this Trial Court properly considered Attorney Pitonyak's statements as relevant for this Trial Court's determination as to the fourth (4th) prong for PCRA relief eligibility, i.e. whether the failure to pursue DNA testing was the result of any rational, strategic or tactical decision by counsel, being met. *See 42 Pa. C. S. §9543(a)(4)*.

Assuming *arguendo* Attorney Pitonyak's statements are not considered, Appellant is still not entitled to relief under 42 Pa. C. S. §9543(a) because Appellant cannot plead and prove by a preponderance of the evidence the second (2nd) prong of PCRA relief eligibility, i.e. that the DNA test results would likely result in a different outcome at trial if introduced. *See 42 Pa. C. S. §9543(a)(2)(vi)*. Testing was conducted regarding the rape kits collected from the June 30, 1998 incident (docket no. 2648 – 1999) in January of 2013 and in October of

2014. The January 31, 2013 DNA Report indicates “the individual associated with CCB1243-0152-R17 (Emmitt Grier) **cannot be excluded** as a possible contributor of the partial Y-STR profile obtained from the epithelial fraction (EF) of sample CCB1243-0152-E03a.” *See Bode Technology Forensic Case Report, January 31, 2013, pg. 2* [emphasis added]. The October 5, 2014 DNA Report indicates “due to the limited data obtained and the possibility of allelic drop out, **no conclusions can be made** on this partial mixture Y-STR profile.” *See Bode Technology Forensic Case Report, October 5, 2014, pg. 1* [emphasis added]. Furthermore, following the incidents on June 30, 1998, November 12, 1998 and August 31, 1999, Appellant gave two (2) videotaped voluntary confessions to City of Erie Police detectives for the crimes charged, and these confessions were never challenged or overturned on direct appeal or in subsequent PCRA proceedings. Therefore, even if Attorney Pitonyak’s statements are not considered, Appellant is still not entitled to relief as all of the elements of 42 Pa. C. S. §9543(a) have not been pled and proven by a preponderance of the evidence.

2. Commonwealth v. Hawk and Commonwealth v. Crews are distinguishable from the instant criminal action and, therefore, are inapplicable.

Although Appellant has continuously argued the Pennsylvania Supreme Court’s decisions in *Commonwealth v. Hawk*, 709 A.2d 373 (Pa. 1998), and *Commonwealth v. Crews*, 640 A.2d 395 (Pa. 1994), are applicable to the instant criminal action, these cases are clearly distinguishable. In *Hawk*, the defendant, charged with rape, presented testimony from Sarah Gotwald, a forensic scientist of the Pennsylvania State Police Crime Lab, regarding DNA test results of a rape kit of the victim. Following an *in camera* hearing, the trial court ruled the DNA evidence was inadmissible, concluding “although the evidence offered by Ms. Gotwald may be logically relevant in enhancing the possibility that intercourse did not occur, it does not enhance the *probability* that there was no intercourse.” *Id* at 375. Unlike the instant case, there appears to be no confession presented in the *Hawk* case. The defendant in the *Hawk* case was convicted and sentenced to incarceration for six (6) to twelve (12) years, which was upheld by the Pennsylvania Superior Court. The defendant in the *Hawk* case appealed to the Pennsylvania Supreme Court, arguing the trial court erred in precluding the forensic scientist’s testimony. The Pennsylvania Supreme Court reversed, holding the trial court abused its discretion in precluding Ms. Gotwald’s testimony regarding the rape kit tests results because the DNA evidence, although inconclusive, was relevant to the issue of whether sexual intercourse occurred, and it was for the jury to determine the weight and persuasiveness of the evidence. *See id* at 376-377.

The decision in *Hawk* was derived from *Commonwealth v. Crews*, 640 A.2d 395 (Pa. 1994), wherein the Pennsylvania Supreme Court upheld a trial court’s admission of a DNA expert’s opinion that DNA evidence found at the crime scene was “strongly associated” with the defendant’s DNA, reasoning “the relevant, though inconclusive, DNA evidence was admissible... [and that] its weight and persuasiveness were properly matters for the jury to determine.” *See Crews* at 403. Again, unlike the instant case, there appears to be no confession in the *Crews* case.

The factual circumstances in *Hawk* and *Crews*, where DNA evidence was actually presented to a trial court for consideration as to its relevancy, were distinguishable. In the instant criminal action, neither the Commonwealth nor Appellant Emmitt J. Grier, Jr. presented

DNA evidence during Appellant's criminal trial, nor was DNA testing ever conducted on the rape kits obtained from the victim; rather, the Commonwealth in the instant criminal action presented Appellant's two (2) videotaped voluntary confessions provided to City of Erie Police detectives and the eyewitness testimony of the victim, which were never challenged at the trial court level, yet were challenged, but unsuccessfully, on direct appeal and in subsequent PCRA proceedings. Furthermore, the issues in both *Hawk* and *Crews* were raised on direct appeal, not in a second or subsequent PCRA Petition as in the instant case. Therefore, *Hawk* and *Crews* are distinguishable from the instant criminal action, and Defendant remains ineligible for relief under the Post-Conviction Collateral Relief Act for all of the aforementioned reasons.

3. Due to Appellant's federal litigation being initiated in 2005, said federal litigation is not relevant to the timeliness of his third PCRA Petition, and this Trial Court is without jurisdiction to toll the statutory PCRA time period due to federal litigation.

A PCRA petition must be filed within one (1) year of the date 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). The PCRA'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. *See Commonwealth v. Taylor*, 933 A.2d 1035, 1042-43 (Pa. Super. Ct. 2007).

Appellant initiated a federal 42 U. S. C. §1983 claim in the United States District Court for the Western District of Pennsylvania on January 6, 2005, claiming his due process rights were violated by several parties who refused him right of access to evidence for the purpose of DNA testing. Said federal litigation ended on September 17, 2012. Appellant now argues this Trial Court erred by considering the time period of Appellant's federal litigation in deciding whether Appellant's third PCRA Petition was patently untimely. However, Appellant had more than ample opportunities to raise the issue of DNA testing prior to initiating his federal claim. The relevant timeline is shown as follows:

- Appellant was sentenced by this Trial Court on August 10, 2000;
- Appellant appealed his judgment of sentence to the Pennsylvania Superior Court on August 30, 2000, which was affirmed on October 2, 2001;
- Appellant filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on October 15, 2001, which was denied May 15, 2002;
- The time period for filing a Petition for Writ of *Certiorari* to the United States Supreme Court expired on August 13, 2002;

- **The Post-Conviction DNA testing law, 42 Pa. C. S. §9543.1, went into effect on September 2, 2002;**
- **The time period for filing a timely PCRA Petition expired on August 13, 2003;** and
- Appellant filed his federal §1983 claim on January 9, 2005.

As this timeline indicates, Appellant had the benefit of the Post-Conviction DNA testing law, pursuant to 42 Pa. C. S. §9543.1, from September 2, 2002 until August 13, 2003, when the time period for filing a timely PCRA Petition expired on August 13, 2003. In fact, Appellant had the benefit of the Post-Conviction DNA testing well before filing his federal §1983 claim on January 9, 2005, whether pursued in a timely or untimely PCRA Petition. These time periods are well before Appellant initiated his federal 42 U. S. C. §1983 claim. Moreover, this Trial Court is without authorization to have Appellant's federal litigation toll the time period for filing a timely PCRA Petition. Therefore, Appellant's federal §1983 claim is not relevant to the period during which Appellant could have filed a timely PCRA Petition. As Appellant's third PCRA Petition was filed on January 9, 2015, over **eleven (11) years** after the time period for filing a timely PCRA Petition expired, and Appellant did not argue successfully to this Trial Court any of the three (3) timeliness exceptions to said timeliness requirement, this Trial Court was without jurisdiction to consider Appellant's third PCRA Petition.

4. Appellant failed to prove successfully a *prima facie* case pursuant to *Commonwealth v. Lawson* and *Commonwealth v. Palmer*.

Appellant's third PCRA Petition was 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 has 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 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, fn. 18 [emphasis added].

Appellant failed to prove initially his eligibility for relief under the Post-Conviction Collateral Relief Act and failed to prove one of the three (3) timeliness exceptions applied to his third PCRA Petition. In addition, Appellant failed to demonstrate or even argue either the proceedings resulting in his conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate or that he is innocent of the crimes charged.

Furthermore, Appellant failed to seek actively Post-Conviction DNA testing, pursuant to 42 Pa. C. S. §9543.1, in a timely manner, which, as explained above, he had more than ample opportunities to pursue. Finally, the results of the DNA tests did not raise the possibility Appellant was innocent of the crimes charged. Therefore, as Appellant has failed to meet the standards set forth in *Commonwealth v. Lawson* and its progeny, Appellant's third PCRA Petition is barred from review, and this Trial Court properly dismissed Appellant's third PCRA Petition.

5. Appellant's allegation that this Trial Court erred by an alleged "ruling" that Appellant should not seek DNA testing is a vague statement being raised by Appellant for the first time to this Trial Court since the filing of his third PCRA Petition in January of 2015 and in this appeal to the Pennsylvania Superior Court.

Appellant argues this Trial Court allegedly ruled at the time of trial that Appellant "should not seek DNA testing of rape kits because it was not his burden to prove innocence," and therefore denied Appellant due process. Appellant raises this issue for the first time to this Trial Court since the filing of his third PCRA Petition in January of 2015, and to the Pennsylvania Superior Court in this appeal. Furthermore, his allegation is vague as Appellant does not cite the specific alleged "ruling" of this Trial Court and where and when it was made.

However, the fact of the matter remains that Appellant had more than ample opportunities to seek or argue for DNA testing of the Sexual Assault Evidence Collection Kits collected on June 30, 1998 and August 31, 1999 – at the time of trial, during direct appeal to the Pennsylvania Superior Court, by Petition for Allowance of Appeal to the Pennsylvania Supreme Court, by Petition for Writ of *Certiorari* to the United States Supreme Court, and in a timely filed PCRA Petition – and Appellant had these numerous avenues of review.

6. This Trial Court performed its required duty under the PCRA DNA testing law, pursuant to 42 Pa. C. S. §9543.1(f)(3).

The procedure following DNA testing of evidence is outlined as follows:

(f) Post-testing procedures.

(1) After the DNA testing conducted under this section has been completed, **the applicant may**, pursuant to section 9545(b)(2) (relating to jurisdiction and proceedings), **during the 60-day period beginning on the date on which the applicant is notified of the test results, petition to the court for post-conviction relief pursuant to section 9543(a)(2)(vi)** (relating to eligibility for relief).

(2) Upon receipt of a petition filed under paragraph (1), the court shall consider the petition along with any answer filed by the Commonwealth and **shall conduct a hearing thereon.**

(3) In any hearing on a petition for post-conviction relief filed under paragraph (1), **the court shall determine whether the exculpatory evidence resulting from the DNA testing conducted under this section would have changed the outcome of the trial as required by section 9543(a)(2)(vi).**

See 42 Pa. C. S. §9543.1(f) [emphasis added].

Although Appellant, argues that, pursuant to relevant statutory law, this Trial Court must determine whether the DNA evidence should go to a jury, Appellant incorrectly states the requirements of the statute, which is outlined above. Following DNA testing, Appellant petitioned this Trial Court pursuant to §9543(a)(2)(vi)³ of the Post-Conviction Collateral Relief Act. Thereafter, this Trial Court properly conducted a hearing, pursuant to 42 Pa. C. S. §9543.1(f)(2), and determined whether the exculpatory evidence would have changed the outcome of trial. Ultimately, this Trial Court determined Appellant is not entitled to relief, as (1) the decision not to seek DNA testing was Appellant's rational, strategic or tactical decision by counsel; and (2) the results of DNA testing would not have altered the outcome of trial if introduced.⁴ Therefore, this Trial Court followed the statutory requirements and properly decided Appellant is not entitled to relief.

Conclusion

For all of the foregoing reasons, this Trial Court respectfully requests the Pennsylvania Superior Court affirm its Order dated May 27, 2016.

BY THE COURT

/s/ Stephanie Domitrovich, Judge

³ 42 Pa. C. S. §9543(a)(2)(vi) states "that the conviction or sentence resulted from one for more of the following:... the unavailability at the time of trial of **exculpatory evidence** that has subsequently become available and **would have changed the outcome of the trial if it had been introduced**."

⁴ For a more thorough analysis, see this Trial Court's Notice dated May 3, 2016

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

COMMONWEALTH OF PENNSYLVANIA

v.

EMMITT J. GRIER, JR., Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 847 WDA 2016

Appeal from the PCRA Order, May 27, 2016,
in the Court of Common Pleas of Erie County
Criminal Division at No. CP-25-CR-0002646-1999

BEFORE: GANTMAN, P.J., FORD ELLIOTT, P.J.E., AND SOLANO, J.

MEMORANDUM BY FORD ELLIOTT, P.J.E.

FILED APRIL 17, 2017

Emmitt J. Grier, Jr., appeals from the May 27, 2016 order entered in the Court of Common Pleas of Erie County which dismissed his third petition filed pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The PCRA court set forth the extensive procedural history of this case, as follows:

On August 31st, 1999, [a]ppellant was arrested and charged with two counts of Rape by Forcible Compulsion, in violation of 18 Pa.C.S.[A.] § 3121(a)(1), one count of Criminal Attempt – Rape, in violation of 18 Pa.C.S.[A.] § 901(a), three counts of Unlawful Restraint – Risking Serious Bodily Injury, in violation of 18 Pa.C.S.[A.] § 2902(1), one count of Kidnapping to Facilitate a Felony, in violation of 18 Pa.C.S.[A.] § 2901(a)(2), and one count of Burglary, in violation of 18 Pa.C.S.[A.] § 3502(a), regarding three separate incidents occurring on June 30th, 1998; November 12th, 1998 and August 31st, 1999.[¹] Appellant’s counsel, A.J. Adams, Esq., filed a Motion for Competency Evaluation and Continuance on March 8th, 2000, which was granted by Judge William R. Cunningham on March 8th, 2000. A.J. Adams, Esq., filed a Motion to Withdraw as Counsel on April 18th, 2000, citing “a personality conflict.” Judge Cunningham granted Attorney Adam’s [sic] Motion to Withdraw as Counsel on April 20th, 2000 and appointed the Erie County Public Defender’s Office to represent [a]ppellant. Appellant’s counsel, James A. Pitonyak, Esq., filed a Notice of Alibi Defense on May 26th, 2000.

A [j]ury [t]rial was held before the undersigned judge from June 20th to June 22nd, 2000. The jury found [a]ppellant guilty of Counts 1 & 2 at docket no. 2646-1999, Counts 1 & 2 at docket no. 2647-1999[^{Footnote 1}], and Counts 1, 2 & 3 on

¹ The record reflects that appellant’s convictions resulted from three separate incidents that involved the same victim, who was the mother of appellant’s girlfriend and the grandmother of his children. (Notes of testimony, 6/20/00 at 43.) The victim testified that on June 30, 1998, she was in bed and lying on her stomach when she felt someone on her back who then taped her eyes and her head before he raped her. (*Id.* at 31-32.) The victim further testified that on November 12, 1998, she was driving her van when she heard noise coming from the rear of the van, and “then the next thing [she knew,] the hood of [her] coat [came] over [her] face and he tape[d] the hood around [her] neck so that [her] face [was] covered” before he attempted to rape her. (*Id.* at 46.) The victim also testified that on August 31, 1999, appellant arrived at her home claiming to need water and then raped her. (*Id.* at 55-62.)

2648-1999. On August 10th, 2000, this Trial Court sentenced [a]ppellant [to an aggregate term of imprisonment of 28 ½ to 75 years].

[Footnote 1] Count 3: Kidnapping to Facilitate a Felony at docket no. 2647-1999 was withdrawn by the Commonwealth.

....

Appellant, by and through Attorney Pitonyak, filed a Motion for Judgment of Acquittal/Motion for a New Trial/Motion for Reconsideration and/or Modification of Sentence on August 15th, 2000, which were denied by this Trial Court on August 15th, 2000. Appellant, by and through Attorney Pitonyak, filed a Notice of Appeal to the Pennsylvania Superior Court on August 30th, 2000. The Pennsylvania Superior Court affirmed [a]ppellant's judgment of sentence on [August 15], 2001. Appellant filed a *pro se* Petition for Allowance of Appeal to the Pennsylvania Supreme Court on October 15th, 2001, which was denied on [April 24], 2002.

Appellant, *pro se*, filed his first PCRA Petition on August 6th, 2002. On August 7th, 2002, this Trial Court appointed William J. Hathaway, Esq., as [a]ppellant's PCRA counsel and directed Attorney Hathaway to supplement/amend [a]ppellant's first PCRA Petition within thirty (30) days. Following a request for extension of time, which was granted, Attorney Hathaway filed a Supplement to [a]ppellant's first PCRA Petition on October 1st, 2002. By Order dated October 3rd, 2002, this Trial Court directed the Commonwealth to respond to [a]ppellant's first PCRA Petition within thirty (30) days. Assistant District Attorney Chad J. Vilushis filed a Response to [a]ppellant's first PCRA Petition on October 24th, 2002. Following two Evidentiary Hearings on November 27th, 2002 and December 23, 2002, this Trial Court dismissed [a]ppellant's first PCRA Petition on January 24th, 2003.

On April 10th, 2003, upon consideration of correspondence received from [a]ppellant on April 9th, 2003[Footnote 2], wherein [a]ppellant requested his right to appeal the dismissal of his first PCRA Petition be granted *nunc pro tunc*, this Trial Court directed the Commonwealth to respond to [a]ppellant's correspondence within fourteen (14) days. Assistant District Attorney Chad J. Vilushis filed a Response on April 11th, 2003 objecting to the reinstatement of [a]ppellant's right to appeal. Following an Evidentiary Hearing on May 19th, 2003, this Trial Court granted [a]ppellant's second PCRA Petition, reinstated [a]ppellant's right to appeal the dismissal of his first PCRA Petition *nunc pro tunc* and directed Attorney Hathaway to file said appeal within thirty (30) days. On June 5th, 2003, [a]ppellant, by and through Attorney Hathaway, filed a Notice of Appeal to the Pennsylvania Superior Court. On September 23rd, 2003, [a]ppellant filed a Motion for Appointment of New Counsel, which this Trial Court denied on September 24th, 2003. The Pennsylvania Superior Court affirmed the dismissal of [a]ppellant's first PCRA Petition on [March 25], 2004. Appellant, by and through Attorney Hathaway, filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court on May 18th, 2004, which was denied on [November 30], 2004.

[Footnote 2] Appellant's April 9th, 2003 correspondence was treated as [a]ppellant's second PCRA Petition. William J. Hathaway, Esq. consented to assist Appellant.

On January 6th, 2005, [a]ppellant filed a *pro se* 42 U.S.C. § 1983 claim in the United States District Court for the Western District of Pennsylvania against Superintendent Edward J. Klem, Erie County District Attorney's Office, the Commonwealth of Pennsylvania and the Office of Prothonotary, claiming these parties violated his procedural due process rights by refusing him access to the rape kits for DNA testing. Appellant filed a *pro se* Motion for Summary Judgment on July 28th, 2005, which was dismissed as premature by United States District Magistrate Judge Susan Paradise Baxter on August 1st, 2005. Edward J. Klem, by and through his counsel, Mary L. Friedline, Esq., filed a Motion to Dismiss on October 4th, 2005. The Erie County District Attorney's Office, by and through its counsel, Matthew J. McLaughlin, Esq., Assistant Solicitor for Erie County, filed a Motion to Dismiss on January 23rd, 2006. On January 24th, 2006, United States District Judge Sean J. McLaughlin, who was initially assigned to preside over [a]ppellant's § 1983 claim, recused himself and reassigned the matter to Senior United States District Judge Maurice B. Cohill, Jr. Appellant filed a second *pro se* Motion for Summary Judgment on March 30th, 2006, and filed a third *pro se* Motion for Summary Judgment on April 10th, 2006. On May 15th, 2006, Judge Baxter filed her Report and Recommendation, wherein she recommended Edward J. Klem's and the Erie County District Attorney's Office's Motions to Dismiss be granted and [a]ppellant's two Motions for Summary Judgment be dismissed as "an improper attempt to collaterally attack his state court criminal conviction and sentence." By Order dated June 29th, 2006, Judge Cohill, Jr. adopted Judge Baxter's Report and Recommendation, granted Edward J. Klem's and the Erie County District Attorney's Office's Motions to Dismiss and denied [a]ppellant's two Motions for Summary Judgment. Appellant filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit on July 26th, 2006. On January 12th, 2010, the United States Court of Appeals for the Third [Circuit], in an Opinion published by Senior United States Circuit Judge Franklin S. Van Antwerpen, vacated Judge Cohill, Jr.'s Order and remanded for further proceedings, holding the case of *Heck v. Humphrey*, 512 U.S. 477 (1994), does not bar a § 1983 claim requesting access to evidence for post-conviction DNA testing. On remand, Judge Baxter, in a Report and Recommendation dated September 19th, 2011, determined [a]ppellant's procedural due process rights had been violated and recommended [a]ppellant's Motion for Summary Judgment be granted. On October 19th, 2011, Judge Cohill, Jr. adopted Judge Baxter's Report and Recommendation and granted [a]ppellant's Motion for Summary Judgment, wherein final judgment for [a]ppellant was entered on November 10th, 2011. The Erie County District Attorney's Office filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit. Prior to a decision being rendered by the United States Court of Appeals for the Third Circuit, the parties agreed upon a Stipulated Order for Post-Conviction DNA Testing and filed a Joint Motion for Entry of Consent Judgment on September 10th, 2012. The Erie County District Attorney's Office filed a Motion to Voluntar[ily] Dismiss the Appeal, which was granted on September 17th, 2012.

The rape kits were submitted to Bode Technology in Lorton, Virginia for testing. A Forensic Case Report dated January 31st, 2013 and a Supplemental Forensic Case Report dated October 5th, 2014 were both submitted. Upon receiving these Reports, [a]ppellant filed the instant *pro se* PCRA Petition, his third, on January 9th, 2015. This

Trial Court appointed William J. Hathaway, Esq., as [a]ppellant's PCRA counsel on January 22nd, 2015. Attorney Hathaway filed a Motion to Withdraw as Counsel on January 28th, 2015, citing a conflict. This Trial Court granted Attorney Hathaway's Motion to Withdraw on February 4th, 2015, and appointed Thomas D. Brasco, Jr., Esq., as [a]ppellant's PCRA counsel, who was directed to supplement/amend [a]ppellant's third PCRA Petition within thirty (30) days. Following several extensions, Attorney Brasco filed a Supplement to [a]ppellant's third PCRA Petition on January 22nd, 2016. On January 26th, 2016, this Trial Court directed the Commonwealth to respond to the Supplement to [a]ppellant's third PCRA Petition within thirty (30) days. Assistant District Attorney Michael E. Burns filed a Response to Supplement to Motion for Post-Conviction Collateral Relief on February 24th, 2016. An Evidentiary Hearing was scheduled for April 18th, 2016, where, by Stipulation, counsel only presented oral arguments. Following the Evidentiary Hearing, this Trial Court filed its Notice of Intent to Dismiss Appellant's third PCRA Petition as patently untimely and stating no grounds for which relief may be granted under the [PCRA]. Appellant filed Objections to PCRA Court's Notice of Intent to Dismiss on May 27th, 2016. On May 27th, 2016, this Trial Court dismissed [a]ppellant's third PCRA Petition.

Appellant filed a Notice of Appeal to the Superior Court on June 10th, 2016. This Trial Court filed its 1925(b) Order on June 10th, 2016. Appellant filed a Motion for Extension of Time to file a Concise Statement on [June 30], 2016, which was granted by this Trial Court on July 1st, 2016 and provided an additional five (5) days for [a]ppellant to file his Concise Statement. On July 6th, 2016, [a]ppellant filed his Concise Statement of Errors Complained of on Appeal.

PCRA court opinion, 8/9/16 at 2-6.

Appellant raises the following issues for our review:²

1. Was the trial Court's use of, and citation to, remarks made by Attorney James Pitonyak at the PCRA argument, held November 27, 2002, to determine whether an evidentiary hearing shall be held, improper and an abuse of discretion, and therefore a denial of [appellant's] 14th Amendment Due Process Rights, in that Attorney Pitonyak essentially offered factual evidence to be considered when the purpose of the hearing was to determine whether an evidentiary hearing was necessary?
2. Should this Court apply the point of law in *Commonwealth v. Hawk* [, 709 A.2d 373 (Pa. 1998),] requiring any and all DNA testing results where identification is at issue in a trial to go to a jury to the PCRA statute concerning DNA testing?
3. Does acknowledgment by the Western District of [Pennsylvania] federal court that [appellant's] procedural due process rights had been violated by barring [appellant] access to DNA testing toll the timeliness of filing of any subsequent PCRA petition?

² Present appellate counsel was appointed following appellant's filing of a *pro se* notice of appeal.

4. Did a miscarriage of justice occur, and has it been occurring, since the PCRA hearing held by Judge Domitrovich, on November 27, 2002, where Attorney James Pitonyak offered fact evidence to the Court, without being sworn, and offered testimonial evidence in a non-evidentiary hearing, and then was cited to by Trial Court, PCRA Court, Third Circuit Court, and Western District of [Pennsylvania] Court as valid evidence of trial strategy without offering [appellant] the right to confront the “witness”, in violation of the Conflict Clause of the 6th Amendment of the Constitution?

Appellant’s brief at 5-6.

We limit our review of a PCRA court’s decision to examining whether the record supports the PCRA court’s findings-of-fact and whether its conclusions of law are free from legal error. *Commonwealth v. Mason*, 130 A.3d 601, 617 (Pa. 2015) (citations omitted). We view the PCRA court’s findings and the evidence of record in a light most favorable to the prevailing party. *Id.*

All PCRA petitions, including second and subsequent petitions, must be filed within one year of when a defendant’s judgment of sentence becomes final. 42 Pa.C.S.A. § 9545(b)(1). “A judgment 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 at the expiration of the time for seeking the review.” 42 Pa.C.S.A. § 9545(b)(3). The Pennsylvania Supreme Court has held that the PCRA’s time restriction is constitutionally sound. *Commonwealth v. Cruz*, 852 A.2d 287, 292 (Pa. 2004). In addition, our supreme court has instructed that the timeliness of a PCRA petition is jurisdictional. If a PCRA petition is untimely, a court lacks jurisdiction over the petition. *Commonwealth v. Callahan*, 101 A.3d 118, 120-121 (Pa.Super. 2014) (courts do not have jurisdiction over an untimely PCRA); *see also Commonwealth v. Wharton*, 886 A.2d 1120 (Pa. 2005).

Here, the trial court sentenced appellant on August 10, 2000. Appellant filed timely post-trial motions, which the trial court denied. On August 30, 2000, appellant filed a direct appeal to this court. Subsequently, on August 15, 2001, this court affirmed appellant’s judgment of sentence. *Commonwealth v. Grier*, 785 A.2d 1028 (Pa.Super. 2001) (decision without published opinion). On April 24, 2002, our supreme court denied appellant’s petition for allowance of review. *Commonwealth v. Grier*, 797 A.2d 910 (Pa. 2002). Consequently, appellant’s judgment of sentence became final on July 23, 2002, which was 90 days after our supreme court denied discretionary review on April 24, 2002. See 42 Pa.C.S.A. § 9545(b)(3); Pa.R.A.P. 903; *Commonwealth v. Cintora*, 69 A.3d 759, 763 (Pa.Super. 2013). Therefore, appellant’s petition, filed nearly 13 years later on January 9, 2015, is facially untimely. As a result, the PCRA court lacked jurisdiction to review appellant’s petition, unless appellant alleged and proved one of the statutory exceptions to the time-bar, as set forth in 42 Pa.C.S.A. § 9545(b)(1).

Those three narrow exceptions to the one-year time-bar are: when the government has interfered with the appellant’s ability to present the claim, when the appellant has recently discovered facts upon which his PCRA claim is predicated, or when either the Pennsylvania Supreme Court or the United States Supreme Court has recognized a new constitutional right and made that right retroactive. 42 Pa.C.S.A. § 9545(b)(1)(i-iii); *Commonwealth v. Brandon*, 51 A.3d 231, 233-234 (Pa.Super. 2012). The appellant bears the burden of pleading and

proving the applicability of any exception. 42 Pa.C.S.A. § 9545(b)(1). If an appellant fails to invoke a valid exception to the PCRA time-bar, this court may not review the petition. *See* 42 Pa.C.S.A. § 9545(b)(1)(i-iii).

Although appellant raises a myriad of complaints that, for the most part, challenge the dismissal of his first PCRA petition wherein he alleged ineffective assistance of trial counsel for failure to pursue DNA testing, the gravamen of appellant's complaint is that he is entitled to "a new trial based upon the DNA evidence showing that he, while could [sic] not be excluded as a potential perpetrator of the first completed rape, but also showing that he may not necessarily be included." (Appellant's brief at 32-33.) Appellant seemingly attempts to invoke the new-facts exception to the one-year time bar set forth in 42 Pa.C.S.A. § 9545(b)(1)(ii). The PCRA requires that all petitions invoking an exception must be filed within 60 days of the date the claim could have been presented. *Id.* at 9545(b)(2).

The record before us fails to demonstrate when appellant received the October 5, 2014 supplemental DNA test report upon which he rests his claim, but the record does reflect that appellant filed the instant *pro se* petition on January 9, 2015, which was 96 days after the date of the report. Appellant has failed to come forth with any evidence to demonstrate that he filed his petition within 60 days of learning of the DNA test results or that his tardiness can be excused by the prisoner mailbox rule. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997) (extending prisoner mailbox rule to all appeals by *pro se* prisoners). Therefore, appellant's petition appears to be untimely. But even if the petition was timely, dismissal was nevertheless warranted.

In analyzing a claim of new facts under Subsection 9545(b)(1)(ii), our supreme court in *Commonwealth v. Bennett*, 930 A.2d 1264, 1271 (Pa. 2007), made clear that the exception set forth in Subsection (b)(1)(ii) does not require any merits analysis of the underlying claim. Rather, the exception merely requires that the facts upon which the claim is predicated must not have been known to appellant and could not have been ascertained by due diligence. *Id.* (citation omitted). Therefore, the plain language of Subsection (b)(1)(ii) is not so narrow as to limit itself to only claims involving after-discovered evidence. *Id.* at 1272. Rather, Subsection (b)(1)(ii) has two components, which appellant must allege and prove: (1) that the facts upon which the claim was predicated were unknown and (2) that those facts could not have been ascertained by the exercise of due diligence. *Id.* If the petitioner alleges and proves these two components, then the PCRA court has jurisdiction over the claim under this subsection. *Id.* (citation omitted).

Appellant asserts that the new facts are the results of the DNA testing contained in the October 5, 2014 supplemental report. In order to be eligible for relief, the PCRA requires that the evidence was unavailable at the time of trial. *See* 42 Pa.C.S.A. § 9543(a)(2)(vi). The record reflects that appellant raised an ineffective assistance of counsel claim in his first PCRA wherein he alleged trial counsel's ineffectiveness for failure to request DNA testing. The record further reflects that the PCRA court held a hearing on November 27, 2002, at which time trial counsel "just happened to walk in[to]" the courtroom and stated that "[appellant] did not request [DNA] testing himself." (Notes of testimony, 11/27/02 at 7-8.) The Commonwealth then stated that the "main reason [it] did not go forward with DNA testing" was because "[appellant] had basically given a video taped [sic] confession." (*Id.* at 7.) Subsequently, the PCRA court entered an order that denied appellant relief.

Although appellant takes issue with trial counsel's statement at the November 27, 2002 PCRA hearing that appellant did not request DNA testing because counsel was not under oath, the record demonstrates that the main reason why appellant was unable to obtain DNA testing in his first PCRA was because of his confessions. In 2011, our supreme court held that "a confession, even if previously and finally adjudicated as voluntary, does not constitute a *per se* bar to establishing a *prima facie* case, and the convicted person may, therefore, obtain DNA testing under [PCRA] Section 9543.1 if he or she meets all of this statute's pertinent requirements." *Commonwealth v. Wright*, 14 A.3d 798, 817 (Pa. 2011). The record reflects that appellant did not file a motion seeking post-conviction DNA testing pursuant to Section 9543.1, seemingly because he filed that petition on August 6, 2002, which was prior to the September 3, 2002 effective date of Section 9543.1. The record is clear, however, that the underlying goal of appellant's first PCRA petition was to obtain DNA testing. The record further reflects that the PCRA court denied that petition because appellant's "conviction rest[ed] largely on his own confession" and, therefore, "his assertion that the outcome of his trial would have been different if counsel had sought out DNA testing [] is without merit." (PCRA court notice of intention to dismiss, 1/3/03 at 6.) It was after appellant was foreclosed from obtaining state-based relief in his quest for DNA testing that he sought relief in federal court which, after many years, ultimately proved successful. We, therefore, find that appellant has met the requirements for the new-facts exception, and we have jurisdiction to entertain this appeal.

The record reflects that the results of the biological evidence obtained from the rape kit used to gather evidence in connection with the June 30, 1998 rape³ were set forth in the January 31, 2013 report and the October 5, 2014 supplemental report. The record further reflects that the January 31, 2013 report concluded that "[appellant] cannot be excluded as a possible contributor of the partial Y-STR profile obtained from the epithelial fraction (EF) of sample CCB1243-0152-E03a." (Appellant's letter request for evidentiary hearing, 1/21/16 at Exhibit "A"; Docket # 67). The October 5, 2014 supplemental report was issued "due to a request for additional testing" in which 3 of the 18 previously tested samples were retested. (*Id.* at Exhibit "B".) The report concludes that:

[t]he partial Y-STR profile obtained from the epithelial fraction (EF) of sample CCB1243-0152-R07 is consistent with a mixture of at least two individuals.

Due to the limited data obtained and the possibility of allelic drop out, no conclusions can be made on this partial mixture Y-STR profile.

Id.

Therefore, the October 5, 2014 supplemental report was inconclusive. Indeed, by appellant's own admission, he "[can]not be excluded as a potential perpetrator of the first completed rape." (Appellant's brief at 33.) Clearly then, because the DNA test results do not exclude appellant from having committed the June 30, 1998 rape and would not conclusively

³ The record reflects that rape kits were used to gather biological evidence in connection with the June 30, 1998 and August 31, 1999 rapes. It appears that no rape kit was used in connection with the November 12, 1998 incident because the crime committed was attempted rape. Additionally, appellant did not seek DNA testing of the rape kit used in connection with the August 31, 1999 rape because appellant maintains that that sexual act was consensual.

exculpate him from having committed that rape, the admission into evidence of those test results would not have changed the outcome of appellant's trial. *See* 42 Pa.C.S.A. § 9543(a)(2)(vi) (requiring that for a petitioner to be eligible for PCRA relief, the petitioner must prove by a preponderance of the evidence that his conviction resulted from "the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced").

Order affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn, Esq.

Prothonotary

Date: 4/17/2017

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CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania

Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Alex Lee Brinager to Alex Lee Riversong.

The Court has fixed the 6th day of June, 2017 at 11:30 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place 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.

May 26

DISSOLUTION NOTICE

Notice is hereby given that: (1) the voluntary dissolution of Ferraro Landscaping, LLC, a Pennsylvania Limited Liability Company with a registered office at 161 South Lakeside Drive, North East, PA 16428, has been recommended and approved by its Members; and (2) this Company is engaged in winding up and settling its affairs so that its corporate existence shall be ended by the issuance of a Certificate of Dissolution by the Pennsylvania Department of State, under the provisions of the Business Corporation Law of 1988 as amended. Any claims should be sent to the The Law Offices of Gery T. Nietupski, Esquire LLC, 818 State Street, Erie, Pennsylvania 16501.

May 26

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: The Saucery Tavern
2. Principal business address: 2606 West 26th Street, Erie, PA 16509
3. Name/address of registrant: Saucery Operations, LLC, 790 Hickory Hill Boulevard, Erie, PA 16509
4. The fictitious name registration was filed with the Department of State on April 26, 2017

May 26

FICTITIOUS NAME NOTICE

1. Fictitious Name: Treasures and More
2. Address of the principal place of business is 4960 Iroquois Avenue, Erie, Pennsylvania 16511.
3. Person who is party to the registration: R-Blox Sound Control, Inc. of 4960 Iroquois Avenue, Erie, Pennsylvania 16511.
4. An application for registration of a fictitious name under the Fictitious Names Act was filed on May 11, 2017.

Law Offices of Gery T. Nietupski, Esquire, LLC
818 State Street, Suite A
Erie, PA 16501

May 26

ORGANIZATION NOTICE

Notice is hereby given that Amos Judson Historical Properties, LLC has been organized under the provisions of the Pennsylvania Limited Liability Company Law of 1994, as amended.

Jeffrey G. Herman, Esq.,
HERMAN & HERMAN LLC
114 High Street
Waterford, PA 16441

May 26

LEGAL NOTICE

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW
AMERICAN FINANCIAL
RESOURCES, INC, Plaintiff
vs.**

DANIEL CONNOLLY, in his capacity as Heir of SEAN P. CONNOLLY A/K/A SEAN PATRICK CONNOLLY, Deceased PATRICIA CONNOLLY, in her capacity as Heir of SEAN P. CONNOLLY A/K/A SEAN PATRICK CONNOLLY, Deceased UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER SEAN P. CONNOLLY A/K/A SEAN PATRICK CONNOLLY, DECEASED, Defendants
COURT OF COMMON PLEAS
CIVIL DIVISION
ERIE COUNTY
No. 10894-2017

NOTICE

To UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER SEAN P. CONNOLLY A/K/A SEAN PATRICK CONNOLLY, DECEASED

You are hereby notified that on March 27, 2017, Plaintiff, AMERICAN FINANCIAL RESOURCES, INC, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of ERIE County Pennsylvania, docketed to No. 10894-2017. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 2703 ATHENS STREET, ERIE, PA 16510-2413 whereupon your property would be sold by the Sheriff of ERIE County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered

against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Notice to Defend:

Lawyer Referral & Information Service

P.O. Box 1792 Erie, PA 16507

Telephone (814) 459-4411

May 26

LEGAL NOTICE

Anyone with an interest in the 1980, mobile home Vin #FUQ6A0012 located at 411 Kelso Drive #51 Erie, Pa 16505, please contact Mae at 814-868-9069 or appear at the court hearing scheduled June 2nd 2017 Court room "222G" Judge Domitrovich @ 3:15 PM.

May 26

LEGAL NOTICE

Anyone with an interest in the 1987, mobile home Vin #11D9862 located at 78 Pinewood Lane Erie, Pa 16509, please contact Mae at 814-868-9069 or appear at the court hearing scheduled June 2nd 2017 Court room "222G" Judge Domitrovich @ 3 PM.

May 26

LEGAL NOTICE

ATTENTION: YOLONDA A. RANKIN
INVOLUNTARY TERMINATION OF PARENTAL RIGHTS
IN THE MATTER OF THE

ADOPTION OF MINOR FEMALE CHILD E. M. S. - DOB: 05/23/2015 BORN TO: YOLONDA A. RANKIN 28 IN ADOPTION, 2017

If you could be the parent of the above mentioned child at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphans' Court of Erie County, Pennsylvania, at the Erie County Court House, Senior Judge Shad Connelly, Court Room No. 208-B, City of Erie, on June 15, 2017, at 1:30 p.m., and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the Hearing by a lawyer. 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.

Family/Orphans' Court Administrator Room 204 - 205

Erie County Court House Erie, Pennsylvania 16501 (814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S. §§2731-2742.

This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following

an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the Court. The agreement must be signed and approved by the Court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Erie County Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

May 26

join us for our

2017 ANNUAL CHARITY GOLF TOURNAMENT

11:00 a.m. Registration | 12:00 p.m. Shotgun Start on Thursday, June 29

at Venango Valley Inn & Golf • 21217 US 19, Venango, PA 16440

Benefits Erie County Law Foundation Programs including the Chief Justice Samuel J. Roberts Scholarship Fund

schedule of events

11:00 a.m. - Registration

12:00 p.m. - Shotgun Start

4:30 p.m. - Cocktails

5:00 p.m. - Dinner and Awards Presentation

50/50 will be drawn during awards presentation

trophies and awards

- ECBA Low Gross (male/female)
- John E. Britton Trophy (low net)
- Will J. Schaaf Senior Trophy (low net age 60+)
- Team Scramble
- Closest to the Pin (male/female)
- Longest Drive (male/female)
- Longest Putt (male/female)

about the course

Just a short drive from Erie, Venango Valley was constructed in 1968 by Kemp and Erath. Paul Erath, the construction supervisor for Arnold Palmer's Laurel Valley Golf Course in Latrobe PA, brought his skill and experience gained from working with the great Arnold Palmer to design and build Venango Valley. This mature, well groomed course offers both wooded and open fairways, a number of strategically placed sand bunkers and large, challenging greens. The superb layout of the course provides ample tests of skill, but also lends itself to an enjoyable round for golfers of all levels.

Cost: \$79 per player

Includes greens fee, half cart, hot dogs at registration, on-course beverages, and dinner following the tournament!

Reservations are due to the ECBA office by Friday, June 16.

Participants are responsible for forming their own foursomes.

**Please don't submit the name(s) of your foursome until you have confirmed that they will be joining your group.*

Play as an individual golfer or in the optional scramble

Online!
REGISTRATION
Available at
www.eriebar.com

**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 **Wednesday, May 10, 2017** and confirmed Nisi.

June 21, 2017 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>2017 ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
123. David T. McMillan a/k/a..... David Thomas McMillan	David Lindsey, Executor.....	Joan M. Fairchild, Esq.
124. Rosemary Emery	James P. Emery, Executor	Robert J. Jeffery, Esq.
125. Agnes H. Olesky	Mark E. Oleskey, Cynthia M. Olesky, Co-Executors ...	Gary H. Nash, Esq.
126. Maynard G. Sanders.....	Kimberly Hall, Administratrix	Robert C. Ward, Esq.
127. Laurinda Rae Harouff	Jackie Harouff, Administratrix	Grant M. Yochim, Esq.

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

May 19, 26

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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

**BARNES, PHILLIP L.,
deceased**

Late of the City of Corry, County of Erie and State of Pennsylvania
Administrator: Mary C. Barnes, c/o 227 West 5th Street, Erie, PA 16507
Attorney: Mark O. Prenatt, Esquire, 227 West 5th Street, Erie, PA 16507

**FRONTINO, SIERO J.,
deceased**

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Helen R. Frontino, c/o John J. Shimek, III, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

**KINSINGER, BONITA E., a/k/a
BONITA KINSINGER,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-Executrices: Kathleen M. Chulick and Barbara J. Wolf, c/o Quinn Buseck Leemhuis Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn Buseck Leemhuis Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**KLEMPAY, JANET E., a/k/a
JANET M. KLEMPAY, a/k/a
EILEEN THERESA KLEMPAY,
a/k/a EILEEN KLEMPAY,
deceased**

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania
Executrix: Barbara Brairton, c/o Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507
Attorney: Gary H. Nash, Esq., Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507

**MARKS, COLLEEN J.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Michelle Kay Tarr, 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

**PASTORE, DOLORES C.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Timothy P. Pastore
Attorney: Thomas J. Buseck, Esquire, The McDonald Group, L.L.P., 456 West Sixth Street, Erie, PA 16507-1216

**PASTORE, PAUL A., a/k/a PAUL
PASTORE,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Timothy P. Pastore
Attorney: Thomas J. Buseck, Esquire, The McDonald Group, L.L.P., 456 West Sixth Street, Erie, PA 16507-1216

**SNYDER, ROBERT J., a/k/a
ROBERT JAMES SNYDER,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executrix: Bernadette S. Catrabone, c/o Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**SPRONATTI, ANGELO M.,
deceased**

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

**TABOLT, CLAIRE O.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Robert J. Tabolt, 728 Memory Lane, Longmont, CO 80504
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**TREDWAY, ROBERT a/k/a
ROBERT E. TREDWAY,
deceased**

Late of Fairview Township, Erie County, Pennsylvania
Executor: Philip M. Tredway, c/o Robert G. Dwyer, Esq.
Attorney: Robert G. Dwyer, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

VOLSKI, CYNTHIA M., a/k/a CYNTHIA VOLSKI, deceased

Late of City of Erie, Erie County, Pennsylvania
Executrix: Kimberly A. Volski, c/o Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

WILSON, MARION D., deceased

Late of the City of Erie, Erie County, Pennsylvania
Personal Representative: Barbara Ann Wilson Marlette, PO Box 253 Findley Lake, NY 14736
Attorney: Al Lubiejewski, Esq., 402 West 6th Street, Erie, Pennsylvania 16507

SECOND PUBLICATION BENACCI, LORIA., deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

BOWMAN, DENISE, a/k/a DENISE M. BOWMAN, a/k/a DENISE H. BOWMAN, deceased

Late of North East Township
Administrator: Trever A. Owens and Thomas E. Owens, c/o David W. Bradford, Esq., 731 French Street, Erie, PA 16501
Attorney: David W. Bradford, Esq., 731 French Street, Erie, PA 16501

CASEY, ARTHUR R., deceased

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Ronald J. Susmarski, 4030 West Lake Road, Erie, PA 16505
Attorney: Aaron E. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

FISHER, JAMES R., a/k/a JAMES ROBERT FISHER, deceased

Late of the City of Erie
Executor: David Charles Fisher, 290 Carilla Lane, Columbus, OH 43228
Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

HYDZIK, EDWARD B., a/k/a EDWARD HYDZIK, deceased

Late of the Township of Millcreek, County of Erie and State of Pennsylvania
Executrix: Mary Ann Jakubowski, 224 Maryland Avenue, Erie, PA 16505
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

JONES, HELENE L., deceased

Late of the City of Erie, Erie County, Pennsylvania
Executor: Christopher Michael Jones, 245 East Fifth Street, Apt. #1, Erie, PA 16507
Attorney: Gary J. Shapira, Esq., 305 West Sixth Street, Erie, PA, 16507

KARPIK, ANN M., deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Lucille Karpik
Attorney: Thomas J. Minarcik, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

KEARNEY, JAMES P., deceased

Late of City of Erie, Erie County, Commonwealth of Pennsylvania
Executrix: Colleen A. Kozlowski, 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

KERECMAN, GEORGE J., a/k/a GEORGE KERECMAN, deceased

Late of the Township of Greene, County of Erie and Commonwealth of Pennsylvania
Executrix: Kristen Golixer, 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

KLING, DONALD W., a/k/a DONALD W. KLEIN, deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Donald N. Klein, 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

LYLE, BETTY L., deceased

Late of the Borough of Union City, County of Erie, Commonwealth of Pennsylvania
Co-Executrices: Linda L. Hanlin, Donna J. Buell c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**McKINNEY, WILLIAM D.,
deceased**

Late of Union Township, Erie County
Executrix: Colleen A. McKinney, 8400 West High Street, Union City, PA 16438
Attorney: Melanie M. LaSota, Esq., Business & Succession Planning Advisors, LLC, One PPG Place, Ste. 1710, Pittsburgh, PA 15222

**ROOS, ALFRED THOMSON,
deceased**

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania
Executor: Northwest Savings Bank, 1030 State Street, Suite 100, Erie, PA 16501
Attorney: Thomas E. Kuhn, Esquire, Quinn, Buseck, Leemhuis, Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**VAUGHAN, DOUGLAS L., SR.,
a/k/a DOUGLAS LANE
VAUGHAN, SR.,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executor: Douglas L. Vaughan, Jr.
Attorney: Thomas J. Buseck, Esquire, The McDonald Group, L.L.P., 456 West Sixth Street, Erie, PA 16507-1216

**YOCHIM, ANTHONY P., a/k/a
ANTHONY YOCHIM,
deceased**

Late of Millcreek Township, Erie County
Executor: Daryl Pfadt, 9580 Donation Road, Waterford, Pennsylvania 16441
Attorney: John Mir, Esquire, 2530 Village Common Dr., Suite B, Erie, Pennsylvania 16506

THIRD PUBLICATION

**CHERNICKY, EMIL J., a/k/a
EMIL CHERNICKY,
deceased**

Late of the Township of McKean, County of Erie and Commonwealth of Pennsylvania
Executor: Kenneth R. Chernicky
Attorney: Adam J. Williams, Esquire, 425 West Tenth Street, Erie, PA 16502

**COPPLE, DORIS C.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Barry L. Copple
Attorney: Gerald J. Villella, Esquire, Dailey, Karle & Villella, 150 East Eighth Street, 2nd Floor, Erie, PA 16501

**CZARNECKI, MARY M.,
deceased**

Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania
Executor: Jeffrey Czarniecki, c/o Quinn Buseck Leemhuis Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Colleen R. Stumpf, Esq., Quinn Buseck Leemhuis Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**FELDE, DAVID V., a/k/a DAVID
VICTOR FELDE,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Lori A. Felde, c/o Quinn Buseck Leemhuis Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Darlene M. Vlahos, Esq., Quinn Buseck Leemhuis Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**JOHNSON, LOUIE P., SR.,
deceased**

Late of the Borough of Union City, County of Erie, Commonwealth of Pennsylvania
Executrix: Tiana M. McChesney, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**KREIDER, BETTY RUTH, a/k/a
BETTY R. KREIDER,
deceased**

Late of the Boro of Girard, County of Erie and Commonwealth of Pennsylvania
Executrix: Kimberly S. Horvath, 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

**LUDDY, MARY LOUISE,
deceased**

Late of Summit Township
Executor: James J. Luddy, c/o 246 West 10th Street, Erie, PA 16501
Attorney: Evan E. Adair, Esq., 246 West 10th Street, Erie, PA 16501

**MALINSKI, NANCY L.,
deceased**

Late of Erie County, Pennsylvania
Co-Administrators: Rebecca Malinski & Teresa A. Baker
Attorney: Stephen Hutzelman, Esq., 305 West Sixth Street, Erie, PA 16507

**McCOOL, ROBERT J., a/k/a
ROBERT McCOOL,
deceased**

Late of the Borough of Lake City, County of Erie and State of Pennsylvania
Executor: Daniel McCool, 2533 Lee Road W, Ashtabula, OH 44004
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**MEOLA, ANTONIO N., a/k/a
ANTONIO MEOLA, a/k/a
ANTHONY MEOLA,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Executor: Daniel J. Moela, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esq., Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**PAKULSKI, LOUISE A.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Vicki Risjan
Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**PAYHA, MARY D., a/k/a
MARY J. PAYHA,
deceased**

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania
Executor: Joseph M. Payha, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**ROBERTS, JOHN J., D.D.S.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: John B. Fessler, 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, Quinn Buseck Leemhuis Toohy & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**SCALISE, WILMA E.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Raymond W. Scalise, c/o Melaragno, Placidi, Parini & Veitch, 502 West Seventh Street, Erie, PA 16502
Attorney: Gene P. Placidi, Esquire, Melaragno, Placidi, Parini & Veitch, 502 West Seventh Street, Erie, PA 16502

**SCHULZE, WADE ALAN, a/k/a
WADE A. SCHULZE,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administratrix: Justine Sullivan, 411 Kelso Drive, #17, Erie, PA 16505
Attorney: Michael J. D'Amico, Esquire, D'Amico Law Offices, L.L.C., 310 Grant Street, Suite 825 Grant Building, Pittsburgh, PA 15219

**SIMMONS, RITA B.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Donald E. Benson, c/o 504 State Street, 3rd Floor, Erie, PA 16501
Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**SIMON, MICHAEL J.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executor: Elaine M. Wright
Attorney: Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505

**TULLIO, VITO, JR., a/k/a
VITO C. TULLIO, JR.,
deceased**

Late of Erie County, Pennsylvania
Executor: Jeff Lombardo & Dennis Galletta, c/o Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507
Attorney: Joseph P. Martone, Esquire, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

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