IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 472 WAL 2019
	:	
Respondent	:	Petition for Allowance of Appeal
	:	from the **Unpublished**
	:	**Memorandum and Order** of the
v.	:	Superior Court at No. 1468 WDA
	:	2018 (Olson, **Ott**, Colins, JJ.),
	:	entered on October 2, 2019,
JAMIE M. BROWN,	:	**affirming** the PCRA Order of the
	:	Beaver County Court of Common
Petitioner	:	Pleas at No. CP-04-CR-0000913-
	:	2001 (McBride, S.J.), entered on
	:	September 21, 2018

CONCURRING AND DISSENTING STATEMENT

JUSTICE WECHT

Although I agree that three of the four issues that Petitioner raises do not merit our review, I would grant *allocatur* as to his remaining question. In that issue, Petitioner asks:

> Whether, in a matter of first impression, the panel erred in finding that the PCRA[1] court did not have jurisdiction to consider Brown's timeliness claims raised within sixty days of discovery following a remand for a hearing on a separate timeliness claim, which is inconsistent with the plain language of 42 Pa.C.S. § 9545(b)(2), *Commonwealth v. Lark*, 746 A.2d 585 (Pa. 2000), *Commonwealth v. Porter*, 35 A.3d 4 (Pa. 2012), and conflicts with *Commonwealth v. Montgomery*, 181 A.3d 359 (Pa. Super. 2018) (*en banc*)?

Petition for Allowance of Appeal ("PAA"), 472 WAL 2019, at 7 (footnote omitted).

In *Commonwealth v. Sepulveda*, 144 A.3d 1270 (Pa. 2016), this Court stated "that a PCRA court does not have discretion to treat new claims raised by a PCRA petitioner

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1 Post Conviction Relief Act. 42 Pa.C.S. §§ 9541-46.

as an *amended* PCRA petition following remand from this Court unless such *amendment* is expressly authorized in the remand order." *Id.* at 1280 (emphasis added); *see also Commonwealth v. Rivera*, 199 A.3d 365, 388-89 (Pa. 2018) (applying *Sepulveda* and holding that a PCRA petitioner could not amend his petition upon remand). Petitioner asserts that, "[t]o the extent *Sepulveda* and *Rivera* preclude *amendments* after a remand, they did not hold that timeliness based claims and their related derivative merits based issues cannot be considered as a *separate petition* and consolidated with the remanded claim." PAA at 23-24 (emphasis added).

Petitioner has identified a gap in our PCRA jurisprudence: this Court has not yet answered the question of whether a PCRA court can consider a new PCRA petition while another petition is on remand. This issue is an appropriate one for *allocatur* review, as it offers this Court an opportunity to provide guidance for PCRA courts confronting similar circumstances.