

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
BRADLEY GRANT SARVER	:	No. 1498 WDA 2025

Appeal from the PCRA Order Entered November 7, 2025
In the Court of Common Pleas of Westmoreland County Criminal Division
at No(s): CP-65-CR-0000238-2018

BEFORE: SULLIVAN, J., NEUMAN, J., and STEVENS, P.J.E.*

MEMORANDUM BY SULLIVAN, J.:

FILED: September 25, 2026

The Commonwealth appeals from the order granting Bradley Grant Sarver's ("Sarver") petition filed pursuant to the Post Conviction Relief Act ("PCRA").¹ Because the record is missing essential facts to establish whether the PCRA court had jurisdiction over this facially untimely petition, filed five years after Sarver's judgment of sentence became final, we vacate and remand for a second evidentiary hearing.

In June 2019, a jury convicted Sarver of aggravated indecent assault of a child, indecent assault of a person less than 13 years of age, corruption of minors, and endangering the welfare of a child.² Prior to sentencing, Sarver

* Former Justice specially assigned to the Superior Court.

¹ **See** 42 Pa.C.S.A. §§ 9541-9546.

² **See** 18 Pa.C.S.A. §§ 3125(b), 3126(a)(7), 6301(a)(1)(ii), 4304(a)(1).

fired his trial counsel and retained Attorney Christopher N. Urbano (“Attorney Urbano”). The court sentenced Sarver in October 2019 to an aggregate term of ten to twenty years of imprisonment.

Attorney Urbano filed a post-sentence weight of the evidence motion in November 2019. Attorney Urbano then requested a series of extensions to file supplemental post-sentence motions, which the court granted. Attorney Urbano filed supplemental post-sentence motions in January 2020; following a hearing, the trial court denied all post-sentence motions that same month. There were no further filings in the case for the next five years.

Sarver filed a *pro se* PCRA petition on January 24, 2025. Attorney Kenneth F. Noga (“Attorney Noga”) was appointed to represent Sarver. Sarver filed an amended, counseled PCRA petition on June 20, 2025. The PCRA court held a hearing on the matter on October 30, 2025. Despite inconsistencies in dates and details, it found the testimony credible. **See** Opinion, 11/7/25, at 6. The PCRA court found that Attorney Urbano’s unreliable representations served to establish an exception to the PCRA’s jurisdictional time bar and justify the entire five-year period between the denial of the post-sentence motions and Sarver’s filing of a *pro se* PCRA petition, based on the following details:

In January 2020, Attorney Urbano told Sarver that he would file a PCRA petition.³ **See** N.T., 10/30/25, at 9-10. Sarver testified that, after his post-

³ We note Sarver would have been entitled to a timely direct appeal, not a PCRA petition.

sentence motions were denied, he expected Attorney Urbano to “[f]ile a PCRA and go to an appeal of some sort with it.” **Id.** at 11. Sarver further testified that Attorney Urbano called him once or twice while he was incarcerated and said he was working on the PCRA. **See id.** Sarver testified that Attorney Urbano made those representations “before the one-year deadline” **Id.** at 12. Attorney Urbano told Sarver there was a way around the deadlines, including the COVID-19 pandemic, and that he was not worried. **See id.** Sarver stated his last contact with Attorney Urbano was early 2022, when Attorney Urbano stated that he was going to win the case and encouraged Sarver to “hang in there.” **See id.** at 13.

When asked why he waited three years after his last contact with Attorney Urbano to file his present PCRA, Sarver responded that he contacted his niece, who was communicating with Attorney Urbano at the time, and that Attorney Urbano had stopped answering her texts; he further testified his niece got mad at him and told him to have his father and stepmother handle the matter. **See id.** at 14. Sarver testified his father and stepmother were in contact with Attorney Urbano through text message until around mid-2022. **See id.** Sarver stated he attempted to send mail to Attorney Urbano from prison, but his letters were returned to sender. **See id.**

Wayne Sarver (“Wayne Sarver”), Sarver’s father, testified that in 2020, another attorney that told him Attorney Urbano was not working on the case. **See id.** at 33. Wayne Sarver testified that, in response, he “guess[ed he] told [Sarver] that [Attorney Urbano was] a waste of time and [they] need[ed]

somebody else.” **Id.** at 33. He further testified that he communicated with Sarver on a weekly basis. **See id.** at 34.

Rebecca Sarver (“Rebecca Sarver”), Sarver’s stepmother, testified that she had last been in contact with Attorney Urbano in late 2022. **See id.** at 37. She testified that he would respond with excuses and that in late 2022 to early 2023, she stopped trying to talk to him “[b]ecause he never answered anything.” **Id.** at 37-38.

Sarver later learned Attorney Urbano had been suspended from the practice of law, and subsequently disbarred. **See id.** at 15.⁴ Sarver was unable to state the specific date he learned of the suspension and disbarment. However, in June 2023, Sarver sent a letter to the Westmoreland County Clerk of Courts, requesting that she file a letter with the Public Defender explaining that Attorney Urbano had not contacted him for over one year and that he needed a public defender. **See Pro Se Letter**, 6/30/23, at 1-2. In July 2023, Sarver sent another letter to the Westmoreland County Clerk of Courts, asking her to forward a letter to Attorney Urbano. **See Pro Se Letter**, 7/4/23. The letter stated, in relevant part, “[i]t has come to my attention that you have been suspended from practicing law for a six-month period. You still have not filed my Post Conviction Relief Appeal, as you promised me you would.” **Id.**

⁴ The PCRA court took judicial notice of the following: Attorney Urbano was suspended from the practice of law by the Supreme Court of Pennsylvania on April 18, 2023, and formally disbarred on July 16, 2024. **See N.T.**, 10/30/25, at 42.

Sarver informed his father. In response to Attorney Urbano's disbarment, Wayne Sarver hired another attorney, whose name or firm Wayne Sarver did not provide at the hearing. **See** N.T., 10/30/25, at 15. Wayne Sarver paid the attorney a \$2,500 retainer; Rebecca Sarver testified that she wrote the check for that amount. **See id.** at 15, 38. The check does not appear in the record and was not offered into evidence. Wayne Sarver testified the unnamed attorney told him Sarver's claim was time barred and there was nothing to be done. **See id.** at 15. Sarver testified that at some unspecific time he reached out to four other attorneys that people in prison had referred him to, but did not receive an answer. **See id.** at 16. Sarver testified that, after this, he filed his own PCRA, stating, "That's the only thing left to do." **Id.**

Sarver testified that by July 2023, he knew Attorney Urbano had not filed an appeal on his behalf. **See** N.T., 10/30/25, at 22. He further testified that he waited until 2025 to file a PCRA because he did not know that it was an option to file it himself, or he would have done so upon learning that it was time-barred. Sarver testified he learned through the library he could file a PCRA about a month before he did so. **See id.** at 22, 25.⁵

Sarver's PCRA was filed on January 24, 2025, although it was dated 9/30/24. **See** Sarver's PCRA Petition, 1/24/25. Sarver testified he likely

⁵ Sarver testified he could access the law library once per week for about two hours and had a high school education. **See id.** at 12.

incorrectly dated the petition, but was unsure he did so. **See** N.T., 10/30/25, at 26.

Sarver's amended PCRA alleged "Attorney Urbano's failure to effectuate a direct appeal on behalf of [Sarver] constitutes *per se* ineffective assistance of counsel regardless of the merits." Sarver's Amended PCRA Petition, 6/20/25, at 2. Sarver acknowledged that the petition was facially untimely, but asserted that Attorney Urbano's ineffective assistance *per se* fell within an exception to the PCRA's time bar. **See id.** at 4-5.

The PCRA court considered Sarver's petition and reinstated Sarver's direct appeal rights. **See** Order, 11/7/25. The PCRA court did not expressly state that Attorney Urbano's actions, or lack thereof, constituted ineffectiveness *per se*. However, the PCRA court found Sarver satisfied the newly discovered facts exception pursuant to 42 Pa.C.S.A. § 9545(b)(1)(ii) and detailed Attorney Urbano's lack of contact and misleading conduct. **See** Opinion, 11/7/25, at 3-6. Additionally, the PCRA court "[found] the testimony of [Sarver] and his family to be credible, even though at times they were unclear about specific dates and details." **Id.** at 6.

The Commonwealth timely appealed. The Commonwealth and the trial court complied with Pa.R.A.P. 1925.

The Commonwealth raises the following issue for our review:

1. Whether the PCRA court erred when it granted . . . Sarver's petition for Post Conviction Collateral Relief when the petition was untimely filed and no exception to the statutory timeliness requirement applied, nor was proven[?]

- a. Whether the PCRA court lacked jurisdiction to entertain the merits of . . . Sarver's PCRA petition because the petition was untimely filed and no statutory timeliness exception applied, nor was proven, to give the PCRA court jurisdiction over the petition[?]
- b. Whether the PCRA court erred when it granted . . . Sarver's PCRA petition by simultaneously addressing the timeliness of the petition and the merits of the petition, thereby conflating the same in the process[?]

Commonwealth's Brief at 4 (unnecessary capitalization omitted).

Our standard of review for an order granting a PCRA petition is well-settled:

When reviewing an order granting PCRA relief, we must determine whether the decision of the PCRA court is supported by the evidence of record and is free of legal error. Moreover, we will not disturb the findings of the PCRA court unless those findings have no support in the certified record.

Commonwealth v. Rivera, 154 A.3d 370, 377 (Pa. Super. 2017) (internal citations and quotations omitted). This Court analyzes PCRA appeals "in the light most favorable to the prevailing party at the PCRA level." ***Commonwealth v. Steckley***, 128 A.3d 826, 831 (Pa. Super. 2015) (internal citation and quotations omitted).

A PCRA petition must be filed within the one-year period immediately following the date on which the judgment of sentence became final. **See *Commonwealth v. Hernandez***, 79 A.3d 649, 651 (Pa. Super. 2013). Exceptions to this rule include: 1) the claim was not previously raised due to interference by government officials; 2) the petitioner did not know and could not have known of the claim earlier through the exercise of due diligence; or

3) the petitioner asserts a right recognized after sentence was final that has been held to apply retroactively. **See** 42 Pa.C.S.A. § 9454(b)(1)(i)-(iii). To invoke the newly discovered evidence time-bar exception, the petitioner must establish not only that the facts upon which the claim is predicated were unknown but also that they could not have been ascertained with the exercise of due diligence. **See** 42 Pa.C.S.A. § 9545(b)(ii); **Commonwealth v. Brown**, 111 A.3d 171, 176 (Pa. Super. 2015). A petition invoking one of the above exceptions “shall be filed within one year of the date the claim could have been presented.” 42 Pa.C.S.A. § 9545(b)(2).

Our courts have generally rejected attempts to circumvent the PCRA’s timeliness requirements by asserting prior counsel’s ineffectiveness as a newly discovered fact for purposes of the timeliness exception set forth in section 9545(b)(1)(ii). **See Commonwealth v. Gamboa-Taylor**, 753 A.2d 780, 785 (Pa. 2000) (holding the “fact” that current counsel discovered prior PCRA counsel had failed to develop an issue of trial counsel’s ineffectiveness was not a newly-discovered fact qualifying for an exception to the PCRA time limitations). However, **Gamboa-Taylor** and its progeny do not apply to situations when counsel completely abandons his client for purposes of appeal. **See Commonwealth v. Bennett**, 930 A.2d 1264, 1273 (Pa. 2007) (recognizing complete abandonment occurs where counsel had failed to file an appeal, as opposed to situations in which counsel has narrowed the ambit of appellate review by the claims he has raised or foregone); **see also Commonwealth v. Peterson**, 192 A.3d 1123, 1129 (Pa. 2018) (clarifying

the distinction between claims of ineffectiveness for partial deprivations of appellate review, such as attorney errors that narrow the issues for review, from instances in which a petitioner assert claims of ineffectiveness resulting in complete deprivations of appellate review, such as those attorney errors that result in petitioners losing any opportunity for appellate review). The complete deprivation of appellate review is the functional equivalent of having no counsel at all, and constitutes a form of ineffectiveness *per se*. **See id.**

In his amended PCRA petition, Sarver asserted that Attorney Urbano's failure to file a direct appeal constituted ineffectiveness *per se*. **See** Sarver's Amended PCRA at 2. He explained that his incarceration impeded his ability to exercise due diligence, but "once it became clear that not only Attorney Urbano failed to effectuate his appeal—he was in fact suspended from the practice of law—[Sarver] proceeded as quickly as possible to file his [p]ro [s]e [p]etition." **Id.** at 5. Thus, the newly discovered fact exception applied. **See id.**

The PCRA court did not expressly state that Attorney Urbano's actions, or lack thereof, constituted ineffectiveness *per se*, thus providing an exception to the PCRA's timeliness requirements. Nevertheless, the PCRA court found that Sarver satisfied the newly discovered facts exception and detailed Attorney Urbano's lack of contact and misleading conduct. **See** Opinion, 11/7/25, at 3-6.

The PCRA court had jurisdiction over this petition if, and only if, Sarver filed it within one year of the date it could have been presented. **See** 42

Pa.C.S.A. § 9545(b)(2). The PCRA court's findings as to the operative dates to establish its jurisdiction are not supported by the record before us. The PCRA court operated under the presumption that the one-year deadline to file a timely PCRA petition began in December 2024, when Sarver "realized that no appeal or PCRA would or could in fact[] be filed[.]" Opinion, 11/7/25, at 6.⁶ To the contrary, the record contains evidence that Sarver knew no appeal had been filed for years prior to that date; December 2024, the date the court used, is the date Sarver testified he learned he was able to file his own (*pro se*) appeal. **See** N.T., 10/30/25, at 23. The PCRA court also asserted Sarver testified he continually attempted to reach Attorney Urbano up to and including 2024. **See** Opinion, 11/7/25, at 4. However, Sarver testified his last contact with Attorney Urbano was in 2022, **see** N.T., 10/30/25, at 13, and Sarver's last letter to Attorney Urbano that appears in the record is dated 2023. **See Pro Se Letter**, 7/4/23.

We acknowledge that the PCRA court found the testimony credible despite muddled dates and details. However, while the PCRA court's credibility findings are accorded great deference, "this deference does not extend so far as to permit the PCRA court to base its decision on speculation derived from the testimony which it finds to be credible." **Commonwealth v. Spatz**, 84 A.3d 294, 313 (Pa. 2014). Assuming, as the PCRA court found,

⁶ We note the PCRA court includes July 2024, when Attorney Urbano was disbarred, as an alternative date. However, both of these dates are in 2024 and occurred after Sarver's last contact with Attorney Urbano in 2023.

the witnesses' testimony is credible and Attorney Urbano misled Sarver until 2023, there is still a two-year period that remains between the date Sarver testified he learned that no appeal had been filed and the date he filed his PCRA petition.

After a thorough review of the record, we are unable to determine whether Sarver has satisfied the newly discovered facts exception and thus whether the PCRA court had jurisdiction over his 2025 PCRA petition. The timeline between January 2020 and January 2025 is profoundly imprecise, pieced together by uncertain—and at times conflicting—testimony, lacking in essential evidence and resulting in fundamental inaccuracies. Our independent review of the record has revealed little to no evidence necessary to our review of Sarver's claim that the newly discovered facts exception applies. Specifically, there is no evidence Sarver requested that Attorney Urbano file a direct appeal.⁷ There is no evidence, other than testimony from Sarver and his family, to verify Attorney Urbano's misleading communications and establish that Sarver or his family retained new representation in 2023. The record is devoid of any mention of even the name of the attorney they spoke to in 2023 or the name of their law firm. Further, there is conflicting testimony, including Wayne Sarver's testimony that he spoke with an attorney in **2020** who told him Attorney Urbano was not working on the case and

⁷ There is evidence that Sarver expected Attorney Urbano to file a **PCRA petition**. However, his amended PCRA petition is predicated upon the claim that Attorney Urbano failed to file a direct appeal.

Sarver's testimony that he found out Attorney Urbano was not working on the case in **2023**. A pertinent analysis from the PCRA court about this time gap is missing because the PCRA court asserted, without record support, that Sarver learned no appeal had been filed in 2024. If that assertion is correct, then there must be evidence in the record to support it. To move forward without this information would essentially require this Court to make findings of fact and act as an advocate, which we are not permitted to do. **See, e.g., Commonwealth v. Murchinson**, 294 A.3d 1251, 1260-61 (Pa. Super. 2023) (*en banc*) (internal citation omitted) (explaining our review "is limited to examining whether the PCRA court's findings of fact are supported by the record, and whether its conclusions of law are free from legal error.").

We wholeheartedly agree with the PCRA court that it is "egregious that [Sarver] was unable to rely on his attorney's representations regarding the status of [his] post-conviction matters." Opinion, 11/7/25, at 6. However, on the record before us, we are unable to determine whether Sarver established Attorney Urbano's failure to file an appeal was unknown to him, that Attorney Urbano's failure to do so could not have been ascertained with the exercise of due diligence, and that his PCRA petition was filed within one year of the date he realized Attorney Urbano was not working on his case. **See** 42 Pa.C.S.A. § 9545(b)(ii); 42 Pa.C.S.A. § 9545(b)(2). Currently, there is record evidence that Sarver knew Attorney Urbano had failed to file a PCRA by July 2023, in the form of testimony and letters to Westmoreland County Clerk of Courts, which conflicts with the PCRA court's determination of

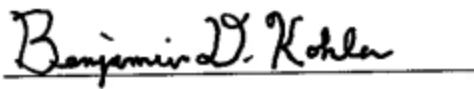
December 2024 as the date to use for purposes of the PCRA. There is also testimony establishing that Wayne Sarver knew since 2020 that Attorney Urbano was not working on the case. There is a lack of evidence, which the PCRA court has not explained, to extend the one-year limit to December 2024. Moreover, the PCRA court stated generally that it found Sarver and his family's testimony credible, but did not acknowledge which testimony it credited when the testimony contradicted itself. The gaps in time leading up to December 2024 must be filled in order for the newly discovered fact exception to apply. Thus, we are constrained to vacate the grant of PCRA relief.

We direct the PCRA court to hold an evidentiary hearing within sixty days of the date of this order. At this hearing, the PCRA court should elicit additional evidence and testimony, at minimum, regarding the following: (1) whether Sarver asked Attorney Urbano to file a direct appeal rather than a PCRA petition; (2) the specific dates and contents of Attorney Urbano's communications with Sarver and his family; (3) identifying information about the law firm retained in 2023, the legal advice that firm provided to Sarver's family, and Sarver's family's reliance upon this information; (4) clarification as to whether and to whom Wayne Sarver spoke in 2020 who said Attorney Urbano was not working on the case; (5) approximate dates of efforts made by Sarver to determine his options going forward after he learned Attorney Urbano failed to file a direct appeal; and (6) confirmation of the approximate last date Sarver communicated or attempted to communicate with Attorney expressly state on the record whether it finds that Attorney Urbano provided

ineffective assistance of counsel to Sarver, and if so, whether it caused a complete or partial deprivation of his appellate rights. The PCRA court should also determine the date that Sarver found out his appeal had not been filed and the one-year limit on his claim began to run

Order vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 09/25/2026