Franklin County Legal Journal

Vol. 39, No. 19 November 5, 2021 Pages 64 - 74

Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201–2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Franklin County Legal Journal
The Franklin County Legal Journal is published by the Franklin County Bar Association, 100 Lincoln Way East, Suite E, Chambersburg, PA 17201–2291. Subscriptions for the weekly advance sheets are $35 per year.

Legal notices and all other materials must be received by noon on Monday of the week of publication. Send all materials to Executive Director, editor, at legaljournal@franklinbar.org or by mail to the above address.

POSTMASTER: Send address changes to the Franklin County Legal Journal, 100 Lincoln Way East, Suite E, Chambersburg, PA 17201-2291.

Commonwealth of Pennsylvania, Plaintiff, v. Tarence Lamar Reed, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Criminal - Law No. 267-2016

HOLDING: Defendant's *Petition for Post-Conviction Collateral Relief* is GRANTED and his direct appeal rights are REINSTATED.

HEADNOTES

Criminal Law – Post-Conviction Relief; Grounds for Relief; Effectiveness of Counsel;

1. The Post Conviction Relief Act (PCRA) provides the exclusive remedy for post-conviction claims seeking restoration of appellate rights due to counsel's failure to perfect a direct appeal. 42 Pa.C.S.A. § 9543(a)(2)(ii). *Commonwealth v. Lantzy*, 736 A.2d 564, 571 (Pa. 1999), *see also Commonwealth v. Haun*, 32 A.3d 697 (Pa. 2011), *Commonwealth v. Rosado*, 150 A.3d 425 (Pa. 2016).

Criminal Law – Post-Conviction Relief; Proceedings; Timeliness

2. For purposes of an exception to the requirement that a post-conviction relief petition be filed within one year of the expiration of direct review when the facts upon which the claim is predicated were unknown to petitioner and could not have been ascertained by the exercise of due diligence, due diligence demands that the petitioner take reasonable steps to protect his own interests, and petitioner must explain why he could not have obtained the new fact earlier with the exercise of due diligence; this rule is strictly enforced. 42 Pa.C.S.A. § 9545(b)(1)(ii); *Commonwealth v. Manaco*, 996 A. 2d 1076, 1080 (Pa. Super. 2010).

3. The timeliness exception set forth in the statute governing post-conviction relief petitions, also known as the "newly-discovered fact" exception, requires a petitioner to plead and prove: (1) she did not know the facts upon which she based her petition, and (2) she could not have learned those facts earlier by the exercise of due diligence; this standard, however, entails neither perfect vigilance nor punctilious care, but rather it requires reasonable efforts by a petitioner, based on the particular circumstances, to uncover facts that may support a claim for collateral relief. 42 Pa. C.S.A. § 9545(b)(1)(ii); *Commonwealth v. Shiloh*, 170 A.3d 553, 558 (Pa. Super. 2017).

Criminal Law – Post-Conviction Relief; Proceedings; Timeliness; Information of Public Record, Prisoners

4. The presumption that information which is of public record cannot be deemed "unknown," for purposes of the provision setting forth the newly-discovered facts exception to the time limits of the Post-Conviction Relief Act (PCRA), does not apply to *pro se* prisoner petitioners because a prisoner's access to public records is "distinctly compromised." 42 Pa. C.S.A. § 9545(b)(1)(ii); *Commonwealth v. Burton*, 158 A.3d 618, 638 (Pa. 2017).

Criminal Law – Appellate Proceedings; Pro Se Litigants, Self Representation; Compliance with Standards and Rules

5. Although an appellate court is willing to construe liberally materials filed by a *pro se*

appellant, *pro se* status generally confers no special benefit upon an appellant. *Commonwealth v. Lyons,* 833 A.2d 245, 251-52 (Pa. Super. 2003).

6. A pro se litigant must comply with the procedural rules set forth in the Pennsylvania Rules of Court. *Commonwealth v. Lyons,* 833 A.2d 245, 251-52 (Pa. Super. 2003).

PUBLISHER'S NOTE: The within Opinion contains reference to *Commonwealth v. Chester*, 586 Pa. 468, 895 A.2d 520 (Pa. 2006), which held that matters which are of public record are presumed "known" by the petitioner for the purposes of the timeliness exceptions enumerated in 42 Pa. C.S. § 9545(b)(1)(ii). However, the Pennsylvania Supreme Court has since overturned *Chester*, holding that the plain language of the "newly discovered facts" exception to the one-year statute of limitations for PCRA relief does not call for any assessment of whether the facts appear in the public record. The Court found that, in requiring that the facts be unknown to the petitioner, the statute itself contains no exception, express or constructive, regarding information that is of public record; it merely requires that the facts were unknown to the petitioner and could not have been ascertained by the exercise of due diligence. *Commonwealth v. Small*, 238 A.3d 1267 (Pa. 2020) (overruling *Commonwealth v. Taylor*, 620 Pa. 429, 67 A.3d 1245 (2013), *Commonwealth v. Edmiston*, 619 Pa. 549, 65 A.3d 339 (2013), *Commonwealth v. Lopez*, 616 Pa. 570, 51 A.3d 195 (2012), *Commonwealth v. Hawkins*, 598 Pa. 85, 953 A.2d 1248 (2008), *Commonwealth v. Chester*, 586 Pa. 468, 895 A.2d 520 (2006), *Commonwealth v. Whitney*, 572 Pa. 468, 817 A.2d 473 (2003), and *Commonwealth v. Lark*, 560 Pa. 487, 746 A.2d 585 (2000)). *See also* 42 Pa. C.S.A. § 9545(b)(1)(ii).

Appearances:
David Frantz , Esquire *for the Commonwealth*
Shawn Stottlemyer, Esquire *for Defendant*

OPINION

Before Sponseller, J.

Petitioner appeals to this Court following his first *Post-Conviction Relief Act* Petition, requesting that we reinstate his direct appeal rights after he was abandoned by his attorney, who then failed to perfect his direct appeal. We are posed with an interesting question: When an inmate is abandoned by his attorney while attempting to exercise his direct appeal rights, how much "due diligence" is required of the inmate to meet the timeliness exception of 42 Pa.C.S. § 9545(b)(1)(ii)? For the reasons set forth below, we find that Petitioner met his burden to plead a timeliness exception and that we retain jurisdiction over his claim. Subsequently, we find that his direct appeal rights must be reinstated.

I. FACTUAL AND PROCEDURAL HISTORY

The facts in this case are largely undisputed. Following a weeks-long jury trial in September 2017, Petitioner was convicted of a variety of charges surrounding the murder of Deval Green. Along with numerous co-conspirators, Petitioner had participated in a conspiracy to burglarize the victim's house and rob him at gunpoint. Petitioner fatally shot the victim during the robbery and was convicted of first-degree murder as well as a variety of other charges related to the conspiracy, burglary, and robbery. Petitioner was sentenced on November 2, 2017, by the Honorable J. Carol Van Horn, to a life sentence for the murder as well as a substantial amount of additional time on the remaining charges. Petitioner, through his court-appointed counsel ("Counsel"), quickly filed a timely Notice of Appeal on December 4, 2017.

The case moved as usual to the Superior Court until April 27, 2018. At that time, Petitioner, through his counsel, filed an Application for Extension of Time to file his brief with the Superior Court. The request was granted on May 1, 2018. This was the last time Counsel acted in the case. For reasons unknown to this Court, Counsel failed to meet the deadline to file Petitioner's brief. Petitioner's direct appeal was subsequently dismissed by the Superior Court on July 2, 2018, due solely to Counsel's failure to file the brief. The Order further directed: "Counsel SHALL file a certification with this court within 10 days of the date of this order, stating that the client has been notified of the entry of this order." No certification was ever filed.

What occurred next is known only to Petitioner and Counsel. Petitioner testified at an evidentiary hearing on this matter, held on May 20, 2021, but Counsel did not testify. Therefore, we have only Petitioner's word as to what occurred between July 2, 2018, and June 5, 2020. With that said, we find that Petitioner testified credibly, and we further note that no evidence has been presented to contradict his statements.

After his sentencing, Petitioner had written Counsel's office numerous times, receiving no response.[1] This was not unusual, as Counsel apparently had not been sending him correspondence relating to his appeal.[2] At some point before his appeal was dismissed, Petitioner spoke to Counsel[3], who indicated that he intended to file a brief on Petitioner's

---

1 May 20, 2021, *Evidentiary Hearing* (hereafter "E.H.") 6:17-20.

2 *E.H.* 6:22-25. We note that different attorneys handle their incarcerated clients differently, and not all attorneys forward their clients updates on the process of their appeals. However, it is important to note that Petitioner, even when Counsel *was* involved in the appeal, did not have regular or consistent mail correspondence with his Counsel. Thus, receiving nothing from Counsel for months on end, and receiving no response to his written inmate correspondence, was not unusual to Petitioner.

3 While Petitioner was not clear on how he spoke to Counsel, we find that it was likely telephonic.

behalf.[4] Petitioner subsequently never heard from his attorney again. He was, *per se*, abandoned.[5]

Asked on cross-examination how often he attempted to contact Counsel after his sentencing, Petitioner admitted that he had never tried to contact his attorney by telephone. He did, however, write to Counsel "at least four, five, six times."[6] He then testified as follows:

> "But the people that I asked at – in the law library, I told them I haven't heard from my lawyer. Sometimes it takes a minute for appeals and briefs to get back. Then, I hadn't seen anything in over a year, that's when I wrote the Superior Court to see what was going on."

E.H. 9:4-9.

Sometime in October, 2019, Petitioner contacted the Prothonotary of the Superior Court and learned that his appeal had been dismissed.[7] Sometime in November of 2019, Petitioner "filed" something with the Superior Court, which was apparently forwarded to Counsel with no action taken.[8] Petitioner made no further attempts to contact anyone, nor did he attempt to file anything related to his appeal, until June 25, 2020.[9]

Throughout the entirety of his appeal, its dismissal, and the filing of the instant appeal, Petitioner was incarcerated. Although the Court heard no evidence as to specifically where Petitioner was housed during these periods, we take judicial notice that Petitioner has been housed in SCI-Pine Grove, a level-II medium-security penitentiary, since at least November 20, 2019. We further take judicial notice that, following the COVID-19 pandemic, the Pennsylvania Department of Corrections began implementing a variety of restrictions on state prisons beginning March 29, 2020. This included a statewide inmate quarantine which did not begin to relax until May of 2020. Some restrictions continue to this day. While Petitioner did not specifically state that restrictions related to COVID-19 affected his ability to do legal research or effectuate his filings, we find that he likely did encounter barriers

---

4 May 20, 2021, Evidentiary Hearing (hereafter "E.H.") 3:3-7.

5 Having heard no evidence as to why, we decline to speculate as to Counsel's reasons for abandonment. For Petitioner's purposes, the reason is irrelevant. Petitioner was not notified and, until as late as November of 2019, had a good-faith belief that he was represented by Counsel. The fact that Petitioner was abandoned is not in dispute.

6 *E.H.* 9:3-9.

7 *E.H.* 9:9-22.

8 There is evidently no record of this filing, nor is there record of Petitioner's exchange with the Superior Court, and Petitioner was not explicitly clear on how these interactions took place. The Court therefore finds, by weighing the evidence, that this is the most likely occurrence.

9 *E.H.* 10:13-20, 12:2-13.

related to COVID-19 response.[10]

On June 25, 2020, Petitioner filed a petition to reinstate his direct appeal *nunc pro tunc* along with a request for the appointment of new counsel with the Pennsylvania Commonwealth Court. The petitions having been filed in the incorrect court, the Commonwealth Court transferred the filing to the Pennsylvania Superior Court. On August 24, 2020, the Superior Court denied his application without prejudice and directed Petitioner to seek relief in the trial court. On October 9, 2020, Petitioner filed an *Application for Reinstatement of Direct Appeal Nunc Pro Tunc* with this Court. Petitioner simultaneously filed a *Motion to Dismiss Present Court Appointed Attorney and Appointment of New Court Appointment Attorney.* The petitions were taken together and construed as Petitioner's first PCRA petition on October 12, 2020, and Shawn Stottlemyer, Esq., was appointed to represent Petitioner.[11]

On January 25, 2021, Mr. Stottlemyer filed an *Amended Petition for Post-Conviction Collateral Relief* setting forth many of the facts supporting the reinstatement of Petitioner's direct appeal. The Commonwealth responded on February 17, 2021, admitting most of the claims, but challenging whether Petitioner had properly exercised due diligence in the pursuit of his rights. An evidentiary hearing was held on May 20, 2021, at which Petitioner provided the only testimony. This Court subsequently ordered simultaneous briefs to be filed by June 27, 2021. Both briefs were timely filed, and the Commonwealth again requested this Court deny the instant Petition. This matter is now ripe for decision.

II. DISCUSSION

The PCRA is intended to be the sole means of post-conviction relief. *See* 42 Pa.C.S. §9542; *see also Commonwealth v. Haun*, 32 A.3d 697 (Pa. 2011). A PCRA must be filed within one year of the date the judgment becomes final, which occurs either at the conclusion of direct review "or at the expiration of time for seeking review." 42 Pa.C.S. §9545(b)(3). Because the PCRA's timeliness requirement is set by statute, we do not have jurisdiction over an untimely appeal and therefore cannot entertain one unless the petitioner proves one of the three timeliness exceptions under

10 We stress that COVID-19 and the response thereto is by no means a *carte blanche* excuse for failures to exercise due diligence. Since the start of the pandemic, courts have been evaluating barriers caused by COVID-19 on a case-by-case basis. In this case, it is highly relevant that, during part of the time Petitioner was expected to exercise due diligence, the most restrictive pandemic response measures ever to be instituted by the Department of Corrections were in place at Petitioner's facility. We cannot ignore this as a factor when evaluating Petitioner's claim.

11 We note that Michael Palermo, Esq., was briefly appointed to represent Petitioner in the instant matter, but upon the discovery a conflict of interest, Shawn Stottlemyer, Esq., was appointed in his stead on November 25, 2020.

42 Pa.C.S. §9545(b)(1).

In this case, Petitioner's petition is facially untimely. Petitioner's sentence became final on August 1, 2018, which is the date of expiry for his direct appeal. Therefore, for his PCRA to be timely, Petitioner needed to file by August 1, 2019. Petitioner did not attempt to file anything until June 25, 2020, and it was not *properly* filed until October 9, 2020. Both dates are well past the deadline.

To overcome this barrier, Petitioner attempts to plead the exception under 42 Pa.C.S. §9545(b)(1)(ii), which allows the Court to retain jurisdiction over an untimely appeal if the Petitioner proves that "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." In this case, the unknown fact upon which the claim is predicated is the fact that Petitioner's direct appeal had been dismissed.

The Commonwealth has conceded that Petitioner is entitled to relief under the PCRA, if it was timely filed, since his direct appeal rights were lost due to the abandonment of his Counsel. As the Commonwealth points out in their brief, the failure of counsel to perfect an appeal constitutes ineffective assistance of counsel *per se*. *Commonwealth v. Rosado*, 150 A.3d 425 (Pa. 2016), *citing Commonwealth v. Lantzy*, 736 A.2d 564, 571 (Pa. 1999). The Commonwealth argues only that the instant PCRA petition is untimely, as they allege Petitioner has failed to prove that he exercised due diligence throughout the appeal. This is partially because the fact that his appeal had been dismissed was a matter of public record, which is ordinarily presumed "known" for the purposes of 42 Pa.C.S. §9545(b)(1)(ii). *Commonwealth v. Chester*, 586 Pa. 468, 895 A.2d. 520 (Pa. 2006).

As they note in their brief, due diligence requires that Petitioner "take reasonable steps to protect his own interests." *Commonwealth v. Manaco*, 996 A. 2d 1076, 1080 (Pa. Super. 2010). To meet the due diligence requirement, a petitioner is not required to show "perfect vigilance nor punctilious care, but rather it requires reasonable efforts by a petitioner, **based on the particular circumstances** to uncover facts that may support a claim for collateral relief." *Commonwealth v. Shiloh*, 170 A.3d 553, 558 (emphasis added).

Therefore, we are required to review the particular circumstances surrounding Petitioner's claim. We further note that Petitioner's status as an inmate abolishes the presumption that information of public record is not "unknown" for the purposes of 42 Pa.C.S. §9545(b)(1)(ii). *Commonwealth v. Burton*, 158 A.3d 618, 638 (Pa. 2017). Indeed, the *Burton* court went into great detail explaining the limitations that incarcerated *pro se* petitioners incur when they attempt to effectuate their own appeals from prison. The

Burton court ultimately upheld the "implicit conclusion" that a prisoner's access to public records is "distinctly compromised." *Id.*

When we review the circumstances in this case, it is clear to this Court that, beyond any doubt, Petitioner exercised due diligence in attempting to effectuate the instant PCRA. We start by reiterating that due diligence does not require "perfect vigilance nor punctilious care," but rather that Petitioner made **reasonable** efforts to uncover the fact that his appeal had been dismissed. In other words, Petitioner must exercise only the diligence that is "due" given the circumstances of his case. We fail to see what more diligence, under these circumstances, was due of the Petitioner in this case.

Petitioner is an inmate serving a life sentence, presently incarcerated at a medium security state prison. His access to the outside world is necessarily limited. Furthermore, Petitioner was placed in an unusual situation that make the circumstances of his case even more extreme than the circumstances in *Burton*. In *Burton*, the petitioner was attempting to represent himself *pro se* on a second PCRA petition for which he had no right to court-appointed counsel. In the instant case, Petitioner was *never* representing himself *pro se*. From the time he was sentenced until today, Petitioner has *always* been represented by counsel.

This is a significant fact which makes Petitioner's case particularly extraordinary. *Pro se* litigants, while their filings may be construed liberally, do not enjoy any special benefit due to their status and must comply with all relevant procedural rules. *See Commonwealth v. Lyons,* 833 A.2d 245, 251–52 (Pa.Super. 2003). But for a litigant whose *pro se* status is necessitated due to the abandonment of his court-appointed counsel, what is required of him as a litigant becomes very difficult for him to ascertain.

At some point before he was abandoned by Counsel[12], Petitioner was informed by Counsel that Counsel intended to write a brief on Petitioner's behalf. When Counsel failed to do so and Petitioner's appeal was dismissed, Counsel was ordered to provide certification with the Court demonstrating that Petitioner had been made aware of the dismissal. As Petitioner points out, "it is illogical to believe that a counsel that abandons his or her client for a requested appeal will inform his client that his case has been dismissed because of his own failures." *Commonwealth v. Bennett*, 593 Pa. 382, 401,

12 Although the Commonwealth notes that Petitioner did not provide a specific timeframe regarding his communication with counsel, and indeed, is unsure as to how many times he attempted to contact Counsel, we find that the lack of a definite timeframe is immaterial. Petitioner, as an incarcerated inmate then represented by an attorney, cannot be expected to keep meticulous records of his attempts at correspondence with his attorney, nor can he be expected to remember years later with specificity the details of such correspondence. Furthermore, it is without question that Petitioner's futile attempts to contact Counsel occurred during the relevant period while his appeal was pending. *See E.H.* 8:25-9:9. While we do express that more information would have aided us in the proper disposition of this case, the lack of such specific information does not necessitate the dismissal of this appeal.

930 A.2d 1264, 1275 (2007). Illogical though it may be, Counsel's failure to supply the necessary certification supplies Petitioner with the presumption that Petitioner was *not* informed by Counsel of the appeal's dismissal on July 2, 2018. Therefore, we find that the dismissal was unknown to Petitioner until October of 2019 when he wrote to the Superior Court.

We then have to ask what level of diligence was "due" of Petitioner between July 2, 2018, and October of 2019. The Commonwealth suggests Petitioner's failure to track the progress of his appeal during this time constitutes a lack of due diligence. We disagree.

During this timeframe, Petitioner was still represented by Counsel on paper, though in practice, Petitioner had been abandoned. Petitioner received no response to his correspondence to Counsel, but as we noted above, it was not unusual for Petitioner not to hear from Counsel. We also take judicial notice of inmate correspondence to this Court in other cases where inmates complain of having no contact with their attorneys. Again, as we noted above, inmates not hearing from their attorneys is not usually cause for alarm.

Petitioner was nevertheless alarmed. He attempted to utilize the resources available to him at the prison law library. People there told him the same thing, "sometimes it takes a minute for appeals and briefs to get back." While it is true that appeals can take many months or even years to move through the system, Petitioner was demonstrably right to be suspicious. Although Petitioner may have fallen prey to the kind of "jailhouse lawyering" that is the bane of most legal professionals working in the field of criminal law, Petitioner reasonably believed that all was well and that his appeal was proceeding as planned. It is impossible to speculate how long it should take an incarcerated defendant to realize that he has been abandoned by his attorney.

After over a year of waiting, Petitioner finally had enough. Rather than continuing to depend on Counsel, Petitioner took it upon himself to contact the Superior Court directly in October of 2019. By the time he had learned that his direct appeal had been dismissed, his deadline to file a PCRA petition had also long passed.

The Commonwealth claims that, because the prison law library may have had access to legal databases or public docket sheets, "then any argument derived from Defendant's status as a *pro se* prisoner with limited access to public records is significantly weakened."[13] This argument is wholly without merit. Such legal databases and public docket sheets existed when the Pennsylvania Supreme Court decided *Burton*, and the court

13 Commonwealth's Answer, p. 7.

addressed the argument directly. The *Burton* court noted a substantial amount of barriers[14] faced by inmates incarcerated by the Pennsylvania Department of Corrections, including lack of access "to the internet or internet-based tools for legal research." *Burton*, 158 A.3d 618, 636.

The Commonwealth further claims that, "Because Defendant failed to provide any testimony as to the resources available to him in the law library and how often he was able to access those resources, the Commonwealth contends that Defendant's argument forces the Court to rely upon speculation and conjecture."

Petitioner bears the burden of establishing that the dismissal of his appeal was unknown to him and how he exercised due diligence. It is not Petitioner's burden to establish what he could have or should have done. The only entity asking the Court to rely on conjecture and speculation is the Commonwealth, who asks us to find that, *if* Petitioner had access to legal databases and online docket sheets, then we should find that Petitioner's failure to use such resources constitutes a failure to exercise due diligence. The answer to whether Petitioner had access to such resources while incarcerated at SCI-Pine Grove or any other facilities at which he was housed is also a question that was readily ascertainable by the Commonwealth, and for that matter, by this Court. Consequently, we find that Petitioner did *not* have access to such resources.

Even if he did, the Commonwealth assumes that Petitioner would know to use them, and further, that he would know *how* to use them. We reiterate that Petitioner, recognizing his own limitations as a person with minimal education and no legal training or experience, chose at all times throughout this proceeding to be represented by an attorney. At some point, he came to the realization that he was on his own. An inmate who has been forced to go it alone, having had no choice in the matter, cannot be reasonably expected to navigate even the prison law library, let alone legal-research databases and online docket sheets.

Despite his lack of knowledge and experience in the law, Petitioner did, indeed, try to navigate the law library. Most inmates, upon learning that their appeal was never litigated and that their attorney had abandoned them, would have sent outraged letters to everyone they knew in an attempt to preserve their rights. Petitioner did not do that. Rather, Petitioner did his

14 The barriers expressed in *Burton* are well-known to this Court, and although we are unaware whether Petitioner has encountered these specific barriers, we want to briefly note the reasons why the *Burton* court chose to abolish the presumption that inmates have access to public records. Prisoners are not given access to the internet, nor are they given access to internet-based legal research tools such as the Commonwealth suggests. Even if they were given such access, many prisoners are not computer literate. The law libraries themselves are limited, containing mostly case law and statutes, and they do not include public case dockets or pleadings. Prisoners often express struggles in accessing court filings in their own cases, partially because of difficulties obtaining information from outside the prison. Lastly, staff at the law libraries are forbidden from giving legal advice and they are not required to have legal training or experience, meaning that prisoners are typically unable to obtain decent legal advice.

best to research and craft his two October 9, 2020, filings. Although initially misdirected, they found their way to us, and we properly construed them as his first PCRA.

Petitioner did not merely send us a handwritten letter on October 9, 2020, pleading for help. Rather, Petitioner had researched and written two properly-drafted requests, the first to reinstate his appeal *nunc pro tunc* and the second to dismiss his Counsel and receive a new attorney. While the pleadings are not the quality of a licensed attorney, we note that they are unusually well-done for a *pro se* inmate with no prior legal experience. Petitioner set forth the relevant facts in numbered paragraphs, attached appropriate exhibits, included the required proof of service and verification, cited to the appropriate authorities, and made the appropriate requests for relief.

We mention these facts because, in this inquiry of Petitioner's diligence, we note that in order to craft such filings, he must have exercised a considerable amount of diligence in researching his legal position. We also note that Petitioner managed to do this over the first half of 2020, despite the aforementioned *Burton* barriers, and despite the added restrictions he would have faced due to the COVID-19 pandemic restrictions in place at his facility.

Petitioner is not required to show that he exercised "perfect vigilance or punctilious care." He did not. There are many things Petitioner *could* have done differently and they are easy to spot with the benefit of hindsight. But Petitioner is required only to show that he took "reasonable steps to protect his own interests." Given the circumstances, we fail to see what more could be asked of someone in Petitioner's position. For that reason, we find that Petitioner has plead and proven the timeliness exception under 42 Pa.C.S. §9545(b)(1)(ii).

III. CONCLUSION

In conclusion, we find that Petitioner has met his burden to prove the timeliness exception as outlined in 42 Pa.C.S. §9545(b)(1)(ii). As such, this Court retains jurisdiction over Petitioner's PCRA. We find that, given the *per se* ineffectiveness of Counsel as discussed above, Petitioner's right to a direct appeal must be reinstated. An appropriate Order follows.

ORDER OF COURT

AND NOW, this 26th day of July, 2021, upon review and consideration of the Defendant's *Amended Petition for Post-Conviction Collateral Relief*, filed January 25, 2021, the evidence of record, arguments of counsel and their respective briefs, and the applicable law,

IT IS HEREBY ORDERED that the Defendant's Petition is **GRANTED** and his direct appeal rights are hereby **REINSTATED.** Defendant is directed to file a Notice of Appeal within thirty (30) days of the date of this Order.

Pursuant to the requirements of Pa.R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.